

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

MICHIGAN MATERIALS AND AGGREGATES  
COMPANY d/b/a STONECO OF MICHIGAN, a  
domestic corporation,

Case No. 2023-\_\_\_\_\_ - AV

Appellant,

vs.

SHARON TOWNSHIP,

Appellee,

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Laura Biery (P82887)  
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**CLAIM OF APPEAL**

1. Appellant, Stoneco of Michigan, files this Claim of Appeal as of right from a decision of the Board of Trustees of Sharon Township denying Appellant's application for special land use approval for a proposed sand and gravel extraction operation. (Ex. A; Approved Minutes of July 17, 2023 special meeting).

2. Bond is not required.

3. There is no Register of Actions.

4. A written request has been made to Appellee, Sharon Township, for a certified copy of the record to be sent to this Court. (Ex. B, Record Request).

5. Appellant sought approval of a special land use within the Township.
6. The Township Planning Commission recommended denial of that special land use.
7. The Township Board of Trustees denied the special land use.
8. The basis of Appellee's denial of the appeal is stated in Exhibit A at page 1-2.
9. Article 6, Section 28 of the Michigan Constitution recognizes a right to judicial review of administrative agency decisions if they are final and are judicial or cause of judicial nature and affect private rights.
  10. A final order is subject to direct review by the Court as provided by law.
  11. Appeal to this Court is proper pursuant to MCL 600.631 and MCR 7.123.
  12. Venue is proper in this Court because the subject property and Appellee Township are located in Washtenaw County, Michigan.
13. The grounds on which relief is sought are as follows:
  - A. The decision is made in contravention of Michigan law, specifically including MCL 125.3205.
  - B. The decision is made in contravention of the Township Zoning Ordinance, specifically Section 5.12.
14. Appellant seeks relief from this Court to reverse the Board of Trustees' decision and require issuance of a special land use permit as requested by Appellant.
15. If a transcript was made, it will be ordered and filed with the Court.

Respectfully submitted

HONIGMAN LLP

By: Michael P. Hindelang

Michael P. Hindelang (P62900)

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*Attorneys for Appellant Stoneco*

**CERTIFICATE OF SERVICE**

I certify that a copy of the Claim of Appeal was served on Edward Plato, attorney for Sharon Township, who accepted service by email.

By: /s/ Michael P. Hindelang  
Michael P. Hindelang (P62900)

**Sharon Township  
Special Board Meeting Minutes**

**July 17, 2023  
approved**

**Special BOARD MEETING**

**CALL MEETING TO ORDER:**

The Sharon Township Board held their special meeting on **July 17, 2023 at 7:00PM**. There were 27 members of the public present. The Pledge of Allegiance was said.

**ROLL CALL:** Michelle Mrocko performed a roll call.

Present: Brickley, Cooper, Holda, Mrocko, Spiegel      ABSENT:

**APPROVAL OF THE AGENDA:**

Supervisor Spiegel removed the agenda item 5 "Approval of June 1, 2023 minutes."

Trustee Cooper moved to approve the Agenda dated July 17, 2023 as amended; Seconded by Clerk Mrocko.

Yea: Brickley, Cooper, Holda, Mrocko, Spiegel      ABSENT:      All in favor. **Motion passed**

**REGULAR BOARD MEETING MINUTES dated June 14, 2023.**

Trustee Holda moved to approve the minutes dated June 14, 2023; Seconded by Treasurer Brickley.

Yea: Brickley, Cooper, Holda, Mrocko, Spiegel      ABSENT:      All in favor. **Motion passed**

**PUBLIC COMMENT:** No members of the public made comments.

**OLD BUSINESS:**

1. **Special Land Use Permit Application by StoneCo:** Supervisor Spiegel shared a recent letter from StoneCo as well as petitions from Sharon Preservation Society.

**Trustee Cooper made a motion to deny the Special land Use application by Stone Co and open the meeting for discussion by the Board.** Seconded by Treasurer Brickley.  
The Board entered into discussions.

**After discussion Trustee Cooper brought a motion to amend her original motion to read;**

The following motion is offered by Trudi Cooper: Seconded by Treasurer Brickly

Stoneco of Michigan has filed an application seeking special land use approval for a proposed sand and gravel operation at 19024 Pleasant Lake Road, on both the north and south side of Pleasant Lake Road (the "Property), under Section 5.12 of the Township's Zoning Ordinance ("Stoneco Application").

The Township completed proceedings under Part I under Section 5.12 of the Township Zoning Ordinance, addressing the issue of whether there is a need for the natural resources from the Property by the person or in the market served by the person. After public hearing and recommendation by the Planning Commission, the Township Board determined that applicant satisfied its burden only to the extent of a showing that there is a low-to-moderate need for the resources proposed to be mined on Property for the person or in the market served by the person.

For Part II under Section 5.12 of the Township’s Zoning Ordinance, the Township must determine whether the applicant has satisfied its burden of proof with regard to the effect of the operation under the standard provided under state law, namely, whether “no very serious consequences” would result from the extraction, by mining, of the natural resources on the Property. On this issue, the Planning Commission conducted a public hearing, for which the applicant, Stoneco of Michigan, presented many pages of information in its application and in follow-up materials after the hearing, and extensive input was presented by residents and stakeholders, as well as input from Township consultants. At meetings held on April 11, 2023, May 9, 2023, May 23, 2023, and June 13, 2023, the Planning Commission deliberated at great length on the evidence presented at the hearing. At the conclusion of its deliberations, the Planning Commission presented a detailed analysis, findings, and recommendation as part of a motion recommending to the Township Board that the applicant failed to demonstrate that the proposed operation would result in “no very serious consequences,” and that, considered on a cumulative basis, very serious adverse consequences to the Township will result from the proposed operation. The Township Board has reviewed in detail the Planning Commission’s detailed analysis, findings, and recommendation made on June 13, 2023, which are hereby made a part of this motion. After careful review, the Board concurs with the Planning Commission’s detailed analysis and recommendation.

NOW, THEREFORE, based on all of the detailed analysis, findings, and recommendation, along with the earlier determinations made in this matter, as outlined above, it is concluded and held by the Township Board that the Stoneco application for special land use approval under Section 5.12 of the Zoning Ordinance is DENIED.

**Roll Call Vote on the Motion to Amend:** Brickley: Yea, Cooper: Yea, Holda: Yea, Mrocko: Yea, Spiegel: Yea ABSENT:  
Motion to Amend the Motion passed

**Roll Call Vote on the Amended Motion to Deny the Special Land use application by StoneCo :** Brickley: Yea, Cooper: Yea, Holda: Yea, Mrocko: Yea, Spiegel: Yea ABSENT: All in favor. **Motion passed to deny the Special Land use application by StoneCo.**

**PUBLIC COMMENT:** There were 4 public comments.

Supervisor Spiegel moved to adjourn the meeting at 7:25 PM; Seconded by Trustee Cooper.

**YEA:** Brickley, Cooper, Holda, Mrocko, Spiegel; **ABSENT:** All in favor. **Motion passed**

**The next regular Board Meeting will be held August 3, 2023 at 7:00PM. The meeting will take place at the Sharon Township Hall, 18010 Pleasant Lake Rd, Manchester, MI 48158.**

*Michelle Mrocko*  
Sharon Township Clerk

*Via U.S. Mail*

August 24, 2023

Michelle Mrocko  
Sharon Township Clerk  
18010 Pleasant Lake Road  
Manchester, MI 48158

**Re: Request for Provision of Record**  
**Michigan Materials and Aggregates Co., d/b/a Stoneco of Michigan v. Sharon Twp**  
**Washtenaw Circuit Court Case No. 2023-\_\_\_\_\_ -AV**

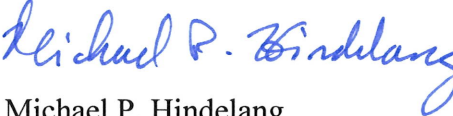
Dear Clerk Mrocko,

We represent Stoneco of Michigan in connection with an appeal of a decision of the Township Board denying a special land use application, as reflected in the approved minutes of the special meeting on July 17, 2023. Pursuant to MCR 7.104(D)(3), we request that you provide a certified copy of the record to the Court.

If you have any questions, please feel free to contact me.

Very truly yours,

HONIGMAN LLP



Michael P. Hindelang

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

MICHIGAN MATERIALS AND AGGREGATES  
COMPANY d/b/a STONECO OF MICHIGAN, a  
domestic corporation,

23-001108-CZ

Case No. 2023-\_\_\_\_\_ - CZ

Plaintiff,

JUDGE TIMOTHY P. CONNORS

vs.

SHARON TOWNSHIP,

Defendant,

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**COMPLAINT**

There is a pending civil appeal arising out of related facts and  
circumstances, and between the same parties, filed on August 24,  
2023 and assigned to Hon. Timothy P. Connors, bearing  
Washtenaw County Case No. 23-1102-AV.

/s/ Michael P. Hindelang  
Michael P. Hindelang (P62900)

Plaintiff, Michigan Materials and Aggregates Company d/b/a Stoneco of Michigan,  
("Stoneco"), through its attorneys Honigman LLP, for its Complaint states as follows:



## **PRELIMINARY STATEMENT**

1. Stoneco, in accordance with a newly enacted ordinance designed to prevent gravel mining, sought special land use approval to operate a gravel mine. Stoneco demonstrated need for the gravel from the mine for its own operations. The Township, disregarding the statutory requirement to only determine whether need existed, sought to characterize the extent of the “need” and to then deem it equivalent to the statutory factor of “public interest.” Relying on these violations of Michigan law, the Township determined that the mining operation would, if approved to operate, cause very serious consequences for the Township. That is in direct contravention of the information provided to the Township, it is in contravention of Michigan law, and the Township’s actions are in violation of Stoneco’s rights.

## **THE PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff Stoneco is a Michigan corporation headquartered in Monroe County, Michigan.

3. Defendant Sharon Township (“Township”) is a Michigan Township located within Washtenaw County, Michigan.

4. This matter arises out of a decision by the Township Board of Trustees, and jurisdiction and venue are otherwise appropriate in this Court.

## **FACTUAL BACKGROUND**

5. Stoneco is a Michigan company that, among other things, operate significant and gravel and sand extraction operations across the State of Michigan.

6. In other words, Stoneco mines sand and gravel.

7. Stoneco uses certain amounts of the sand and gravel for its own business, and sells other amounts.

8. There is a statewide shortage of sand and gravel, and Stoneco has a need for further supplies of both materials.

9. Stoneco is the owner of a parcel located within the Township (“Property”).

10. Stoneco proposed to establish a mining operation on the Property.

11. The Township had recently enacted a new ordinance designed to prevent gravel mines within the Township (the “Ordinance”).

12. The Ordinance requires following a lengthy and expensive application process for a special land use approval before gravel mining could begin. In fact, even if special land use approval is granted, a mining license must also be applied for and obtained before mining can begin.

13. Stoneco complied with the Ordinance, submitting an application and detailed supporting materials to establish that it had a need for the proposed extraction of materials.

14. That application, which is extremely voluminous, is in the possession of the Township.

15. The Township considered the application and, through its Planning Commission, made certain findings.

16. The Planning Commission determined that Stoneco did not have any need for the materials.

17. The Township Board determined that Stoneco had a low to moderate need for the materials.

18. Stoneco then, in accordance with the Ordinance, submitted a second application, addressing the issue of whether very serious consequences would arise from its operations (together with the need application and supporting materials, the “Application”).

19. The Planning Commission determined that, especially in light of the “low-to-moderate need” findings previously made, the consequences of the operation would be very serious.

20. In making that determination, the Planning Commission treated the Township Board’s finding of “need” as the equivalent as the statutorily called-for determination of “public interest.”

21. The Township Board adopted this determination, finding that very serious consequences would arise from the extraction of minerals from the Property.

22. The Township Board denied Stoneco’s Application.<sup>1</sup>

23. As a result of the denial of Stoneco’s Application at this stage, Stoneco has not progressed to the stage of seeking a separate mining permit, which is also part of the Township’s approval process.

24. The Township violated its own Ordinance, Michigan law, or both, by:

- (a) Conflating “need” with “public interest”;
- (b) Using a sliding scale to weigh the statutory factors for determining very serious consequences;
- (c) Improperly using a quantification of need determination in the assessment of very serious consequences; and
- (d) Failing to apply MCL 125.3201, et seq.

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<sup>1</sup> That denial is the subject of a pending appeal to this Court. See Case No. 2023-1102-AV.

### **State Law Regarding Approval of Mining**

25. The Michigan Constitution directs the Legislature to provide for the protection and management of the State's natural resources. Thus the policy making branch of government, the Legislature, may prefer the extraction of natural resources over competing land use policies.

26. Under MCL 125.3205, the Legislature provided for the protection and management of the State's natural resources by limiting a local zoning authority's power to prevent mining as follows: "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." MCL 125.3205(3).

27. The statute specifically provides the "Natural Resources will 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." Id.

28. Further, MCL 125.3205(5) specifically enumerates that factors which may be considered in determining whether very serious consequences would result from extraction.

29. Those factors do not include the Township's subjective determination of the degree of an applicant's need for the extracted materials.

30. The Township has no inherent authority or power to zone. It derives that power as a political subdivision of the State under the provisions of the Michigan Zoning Enabling Act.

31. The MZEA provides the Township's only source of zoning power.

32. The Township has no power to enact zoning ordinances apart from the authority granted under MZEA.

33. The MZEA does not require a Township to adopt a zoning ordinance. If the Township chooses to be a zoning authority, it is obligated in relevant part to regulate land use to address the state's citizens' interest in natural resources. MCL 125.3201(1).

34. If the Township chooses to engage in zoning, it must follow Michigan law, as municipal ordinances may not contravene state law.

35. Accordingly, any zoning ordinance that exceeds or conflicts with the powers conferred under the MZEA is void and unenforceable.

**COUNT I – DECLARATORY JUDGMENT – PREEMPTION**

36. Plaintiff repeats and alleges each allegation contained in Paragraphs 1 through \_\_\_ as though fully set forth herein.

37. The Ordinance, both as written and as applied by the Planning Commission, and the Township Board, imposes requirements on applicants seeking the right to mine gravel over and above the very serious consequences test, which additional requirements are not included in MCL § 125.3205(5).

38. The Township exceeded its power under MZEA by rejecting the Legislative policy and directive clearly stated under MCL 125.3201, et seq..

39. The Township exceeded its limited and delegated authority by ignoring the mandate under Const 1963, art 4 section 52 that “conservation and development of the natural resources of the State are hereby declared to be a paramount public concern in the interest of the health, safety and general welfare of the people.” Article 4, Section 52 further directs the Legislature to be a protector of the State's natural resources.

40. Therefore, the Ordinance, on its face and as applied, is ultra vires.

41. The Ordinance further violates MCL 125.3205 because it openly and intentionally conflicts with and defies the very legislative act through which the Township obtains the power to zone.

WHEREFORE, Plaintiff respectfully requests entry of a declaratory judgment that the denial of Plaintiff's Application is in contravention of the Ordinance and/or state law, and that the Ordinance contravenes state law and is invalid, illegal, and unenforceable, both as applied to Plaintiff and on its face.

**COUNT II – VIOLATION OF CIVIL RIGHTS**

42. Plaintiff repeats and alleges each allegation contained in Paragraphs 1 through \_\_\_ as though fully set forth herein.

43. In Michigan, “[a]n 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.” MCL § 125.3205(3) (emphasis added).

44. Plaintiff possesses a property interest in extracting the natural resources on the Property.

45. Plaintiff has a right to the protections of Michigan law.

46. Defendant's actions above constitute violation of plaintiff's civil rights.

47. Defendant's refusal to grant the application was arbitrary and unreasonable and violates plaintiff's right to due process under the Fourteenth Amendment to the United States Constitution and Article 1, Section 17 of the Michigan Constitution.

48. There is no rational basis for Defendant's refusal to grant the Application.

49. As such, defendant's actions has caused the plaintiff to suffer irreparable harm, effectively depriving it of the right to engage in mining activities and threatening its economic

prospects. This denial constitutes violation of plaintiff's due process rights and plaintiffs are entitled to relief.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment granting Plaintiff:

- a. A declaration that the Township's procedures for deciding Plaintiff's application violate Plaintiff's right to substantive due process of law;
- b. Compensatory damages in an amount to be determined;
- c. Punitive damages against the Township in an amount appropriate to punish the Township and to deter future conduct of the type alleged herein;
- d. Plaintiff's costs, including attorneys' fees pursuant to 42 U.S.C. §1988; and
- e. Any additional relief as this Court deems just, equitable, and proper.

Respectfully submitted

HONIGMAN LLP

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