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November 6, 2025

**VIA EMAIL**

Jason Kuboushek  
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**Re: *Bryan Rock Products, Inc. v. Waterford Township*  
No. 19AV-CV-25-3228**

Dear Jason,

On behalf of Bryan Rock Products, Inc. (Bryan Rock), this letter is submitted in response to the Township's recently noticed (though subsequently canceled) public hearing on proposed Ordinance No. 2025-01 amending its mining ordinances.<sup>1</sup>

**I. THE RELEVANT CHRONOLOGY OF THE TOWNSHIP'S MINING ORDINANCE AMENDMENTS**

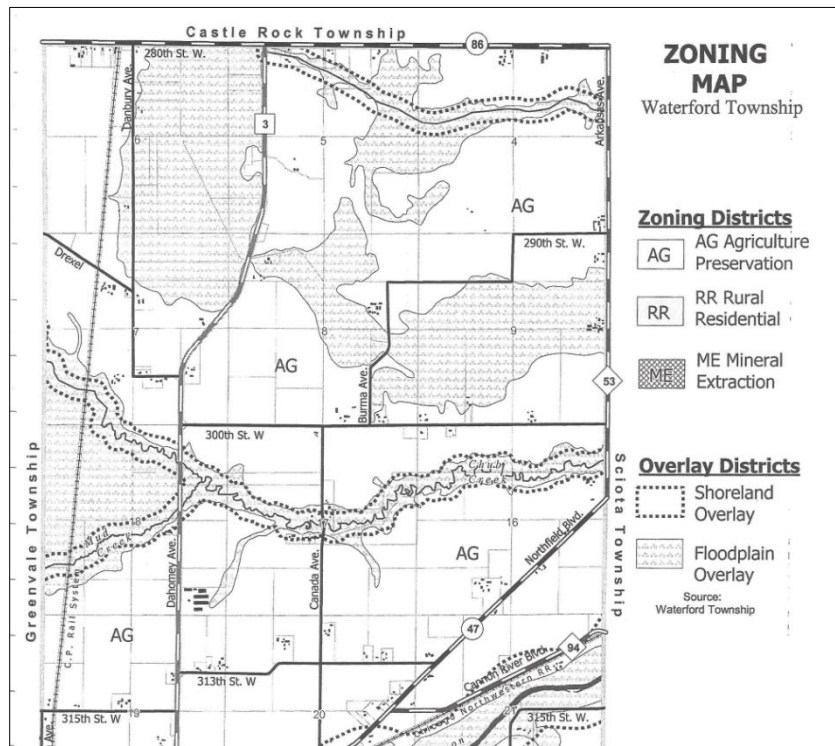
The below chronology identifies the relevant ordinances and zoning maps with respect to mining in the Township and Bryan Rock's understanding of the provisions and maps as applied to its property.

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<sup>1</sup> The Court's October 27, 2025 Order found that Bryan Rock "alleges, without citation to any exhibits, that Township representatives have further threatened to undo and perpetually extend the Environmental Impact Statement by hiring another consultant to redo the analysis. Para. 48." Order at 3 ¶ 14. But, as proof of this fact, Bryan Rock refers to statements made during the October 9, 2025 Regular Board & Planning Commission meeting wherein Town Board Supervisor Bobby Nelson stated as follows:

WSB, our new planning consultant agency, [is] on the state's list as having a master contract for reviewing and preparing EIS's. . . . WSB is on the list of being approved to evaluate environmental reviews, so I thought, we had talked about hiring them for general engineering in the future, but I thought maybe we should hire them and have them here to actually consult with us on the EIS. Maybe they would be able to look at it and go over it with us since Stantec isn't necessarily interested in that.

1. In 2001, the Township adopted its Official Zoning Ordinance, which included Section 1-7.<sup>2</sup> Relevant to this matter are Sections 1-3 (Name, Purpose and Definitions), 6 (Zoning Districts/Use Regulations) and 7 (Performance Standards). Attach. 1. Section 6.02 also included the Zoning Map. Attach. 2. Under the Township's 2001 Official Zoning Ordinance, Section 6.01 established a "ME Mineral Extraction District" and Section 6.06 allowed mineral extraction as an interim use subject to Section 7.23's performance standards. Attach. 1 at 27 and 32. The corresponding Zoning Map's key identifies, as follows, the ME Mineral Extraction district as cross-hatching, but the black and white map does not appear to include any areas in cross-hatching:

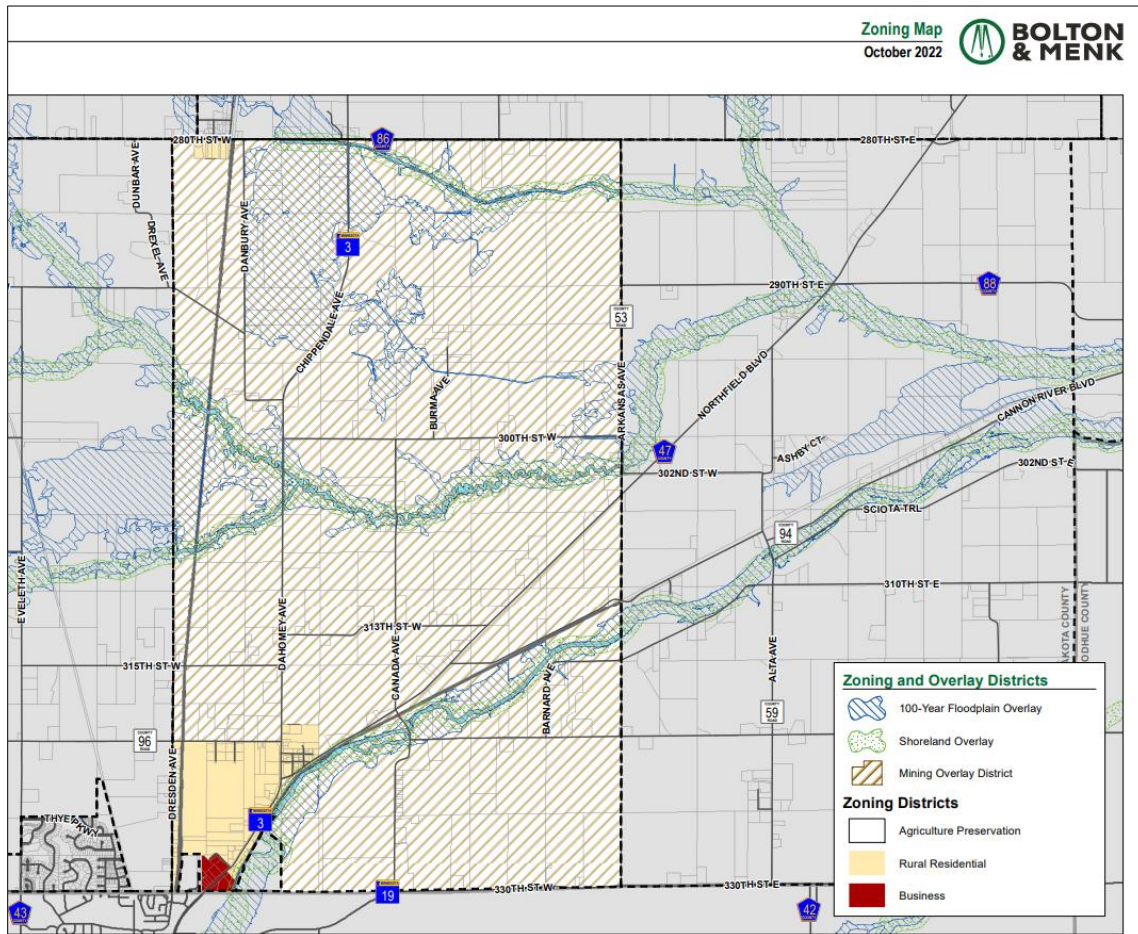


See <https://web.plaud.ai/share/0aa81762358455072> at 1:09:04-1:10:43 (note that the AI transcript provided for at this link has some of these comments, but it is not a complete or accurate transcript based on a comparison of what is actually stated in the recording). The Order further stated that "the pleadings provided by Petitioner only talk about a 'tentative' schedule and do not confirm when the relevant dates have or have not actually occurred." Order at 5. But, regardless of the provided-for "tentative" schedule, the undisputed evidence also proves that the Township has failed by nearly a year to comply with Minn. Stat. § 116D.04, subd. 2a(j)'s 280-day deadline. Based on this evidence, Bryan Rock has established its mandamus claim with regard to the EIS issue.

<sup>2</sup> The Table of Contents accessible on the Township's website suggests that there is a Section 8 regarding the Effective Date, but there is no Section 8 on the website.

Attach. 2.

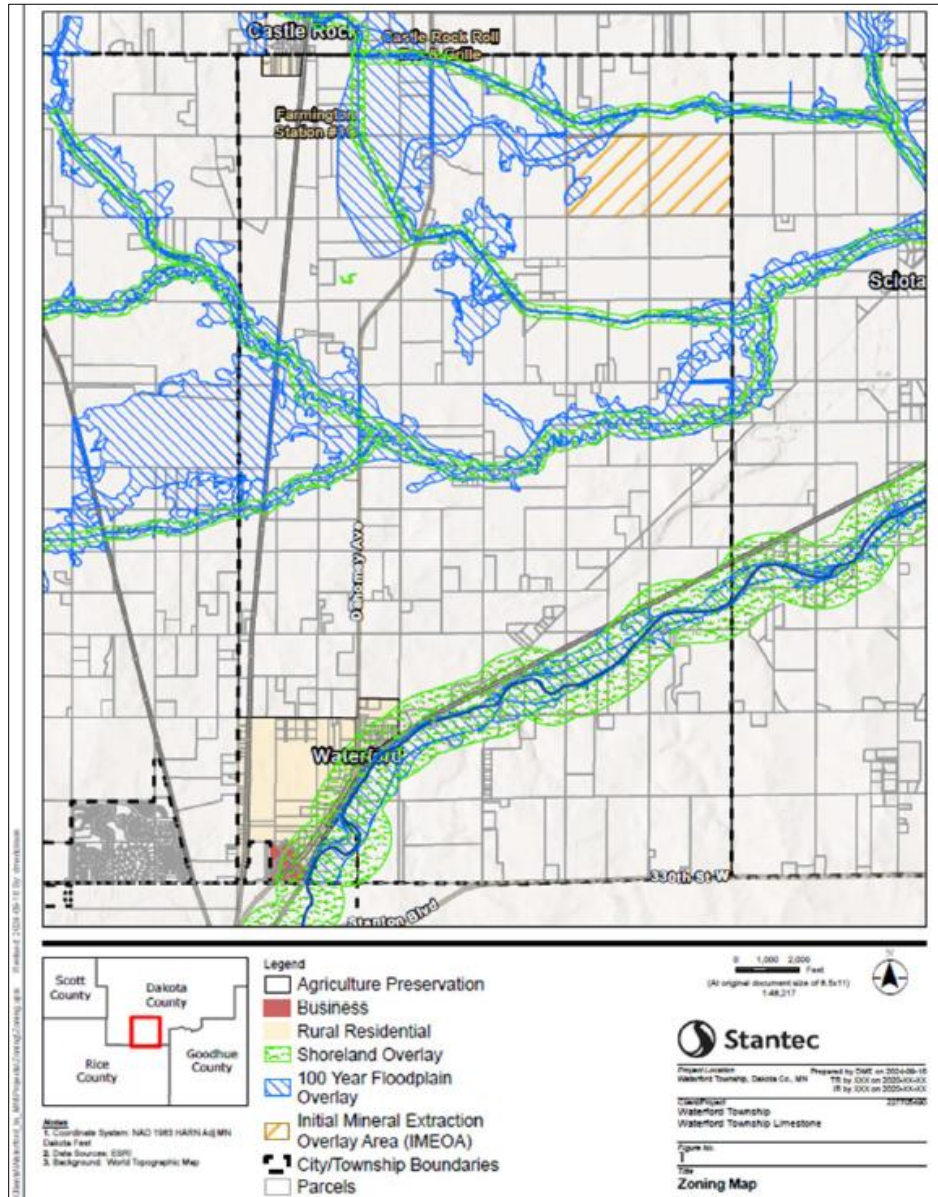
2. On July 8, 2019, the Township adopted Ord. No. 2001-5 Amendment No. 2019-3. Attach. 3. Amendment No. 2019-1 amended Sections 3, 6 and 7 of the Township's Official Zoning Ordinance, which, among other things, "struck in its entirety" the ME Mineral Extraction District and added under Section 6.04.B.8 "Mineral Extraction (subject to performance standards in Section 7.25)" as a "permitted use" in the Agricultural Preservation District. *Id.* at 2. And, though not clear from its ordinance amendments and not otherwise identified in Amendment No. 2019-3, the Township appears to have adopted the following new "2019"<sup>3</sup> Zoning Map, which is dated October 2022 and prepared by Bolton & Menk, and shows a "Mining Overlay District" over the entire Township:



<sup>3</sup> Per the Township's website, this map is labeled as "2019 – Waterford Township Zoning Map – includes Mining & Business Districts."

Attach. 4.

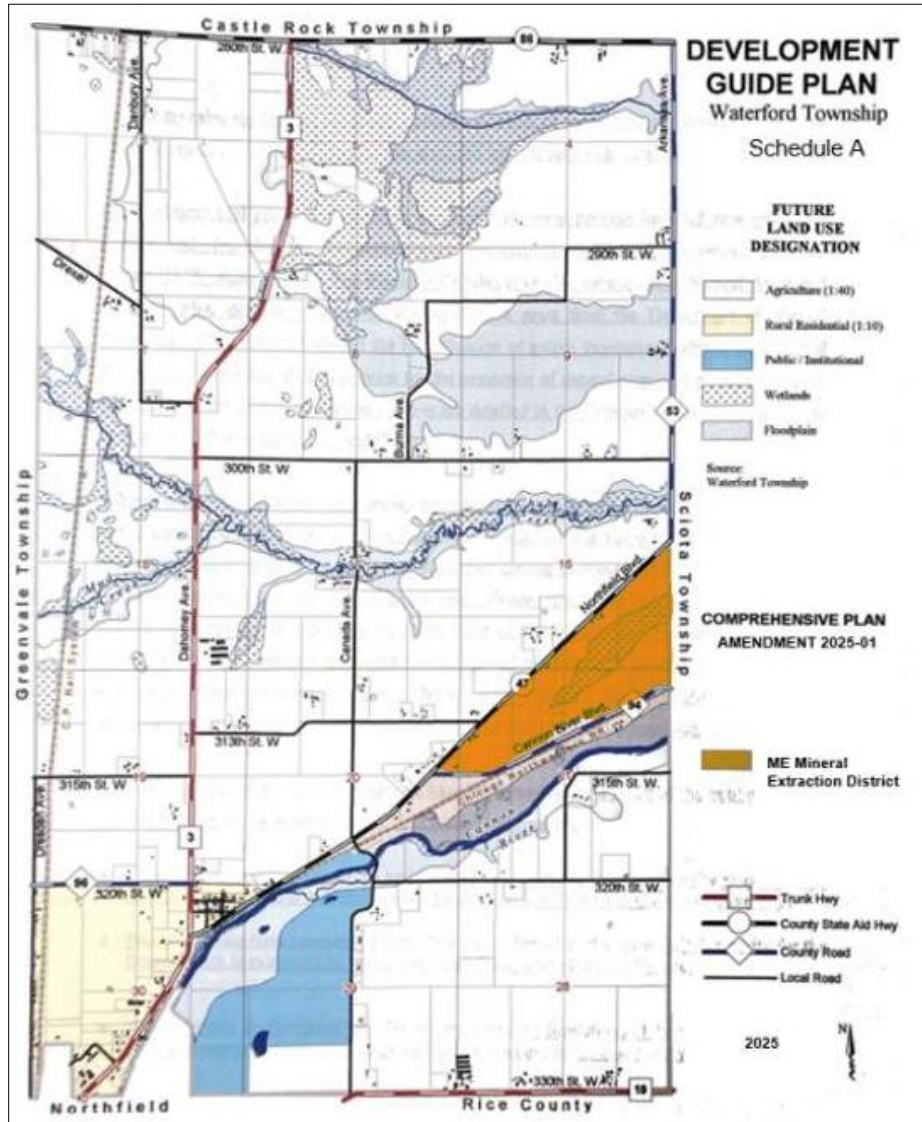
3. On October 20, 2023, the Township adopted Ord. No. 2023-01, An Interim Ordinance Enacting a Moratorium on the Establishment of Any New or Expanded Mineral Extraction Facilities or Expanded Mineral Extraction Facilities in All Zoning Districts in Waterford Township. Attach. 5. Though temporarily prohibiting the establishment of new mines for one year, the Moratorium "[s]pecifically exempted from this prohibition" Bryan Rock's then-pending October 26, 2022 land use application for the mine.
  
4. On October 7, 2024, the Township adopted Ord. No. 2024-01. Attach. 6. Ord. No. 2024-01 amended the Township's Official Zoning Ordinance related to mining by, most notably, removing Mineral Extraction as a permitted use in the Agricultural Preservation District and adding a "Mineral Extraction Overlay Area (subject to performance standards in Section 7.23)" through the creation of the "Initial Mineral Extraction Overlay Area (the 'IMEOA')." *Id.* at 1-3. The 2024 amendment also rescinds and replaces the existing Zoning Map with a new map prepared by Stantec, and this new Zoning Map identifies, as follows, Bryan Rock's property as the only property in the Township within the IMEOA:



Attach. 7. Bryan Rock does not know why this currently-adopted Zoning Map is not published or accessible on the Township's website.

5. On September 11 and October 9, 2025, the Township held public hearings on proposed Ord. No. 2025-01. Attach. 8. In stark contrast to the Township's prior amendments to its Official Zoning Ordinance, proposed Ord. No. 2025-01 appears to be a redline amendment to the Township's October 7, 2024 enacted Ord. No. 2024-01. The proposed redlines appear to, most notably, (a) remove the Mineral Extraction Overlay Area and IMEOA (*id.* at 3-4), (b) bring back the ME Mineral Extraction District that

was struck with the adoption of Ord. No. 2019-3 (*id.* at 9) and (c) rescind and replace the 2024 Zoning Map with a new map (Attach. 9).<sup>4</sup> The new proposed Zoning Map identifies, as follows, only a small portion of property in the middle-eastern area of the Township as being within the ME Mineral Extraction District and specifically excludes Bryan Rock's property therefrom:



<sup>4</sup> Attach. 9's proposed new zoning map is shaded in blue because it is provided for through redlines. Due to the blue shading, and because the proposed new zoning map is the same as the below-discussed proposed new zoning map (which does not have the blue shading), Bryan Rock used the non-blue shaded proposed new zoning map as Attach. 9 for clarity.

Attach. 9.

6. On October 28, 2025, the Township noticed a public hearing on Mining Ord. 2025-01 for October 30, 2025, and included a new version of proposed redlines to its October 7, 2024 enacted Ord. No. 2024-01. Attach. 10. Though difficult to understand, the October 28 proposed redlines appear to (a) "clean up" the proposed redline revisions that were discussed on September 11 and October 9 by removing the strike-throughs and (b) make some additional changes in wording, including, for example, changing "REPLACE SECTION 6.06" with "RESCIND AND REPLACE SECTION 6.06." Similar to above, however, the new version of proposed redlines appears to have the same effect as the above-discussed redlines: (a) remove the Mineral Extraction Overlay Area and IMEOA; (b) bring back the Mineral Extraction District; and (c) move the ME Mineral Extraction District to the new middle-east location and remove Bryan Rock's property therefrom.

## **II. BRYAN ROCK'S PROCEDURAL AND LEGAL CONCERNS WITH THE TOWNSHIP'S PROPOSED 2025 MINING ORDINANCE AMENDMENTS**

### **A. Procedural concern**

The Township's 2019 and 2024 mining ordinance amendments were presented as a complete document that explicitly identified the specific provisions to be rescinded, replaced and/or added with respect to its Official Zoning Ordinance. But, unlike the Township's 2019 and 2024 mining ordinance amendments, the proposed 2025 mining ordinance amendments are presented as a redline to the 2024 mining ordinance amendment document, thus suggesting that they seek to amend the 2024 mining ordinance amendment and not the Official Zoning Ordinance itself.

Under this format, the proposed 2025 mining ordinance amendments do not explicitly identify through words what currently-enacted provisions are being rescinded, replaced and/or added. For example, the 2024 amendments explicitly "remov[ed]" "Mineral Extraction . . . from the Agricultural Preservation District" and "added" the "Mineral Extraction Overlay Area." Attach. 6 at 1. But the proposed 2025 amendments merely have a redline through this section without explicitly identifying whether it is being rescinded, replaced and/or added as the Township has historically done. Because of this, it is difficult to follow the Township's proposed 2025 ordinance amendments and potential implications arising therefrom. And it appears even some of the Township Board Supervisors share this same concern and confusion, as Bryan Rock has been told that the Township is keeping the IMEOA under the proposed 2025 ordinance amendments, which seems directly contrary to the redline strike through and the proposed new zoning map.

**B. Legal concern**

With its October 22, 2025 Order, the Court agreed that the "Township is required to ensure that its official controls, including its zoning ordinances, are in conformance with its Comprehensive Plan." Order at 4. The Court also agreed that the Township's 2040 Comprehensive Plan "recognizes the presence of aggregate resources and the potential for future interest," but recognized that the Comprehensive Plan contains "numerous other competing goals and policies" and thus it questioned whether the proposed new ordinance would violate the Township's Comprehensive Plan. *Id.*

With the Court's framework in mind, Bryan Rock shares the following additional legal concern it has with the Township's proposed 2025 mining ordinance amendments (without waiving, compromising or otherwise addressing any other concerns that Bryan Rock may have with respect to it or Bryan Rock's legal arguments as stated in its Verified Action):

1. Minn. Stat. 473.859, subd. 2(d) provides that "[a] land use plan must also include the local government's goals, intentions, and priorities concerning aggregate and other natural resources . . . considering information regarding supply from the Minnesota Geological Survey Information Circular No. 46" (Survey No. 46) (accessible at [https://www.dnr.state.mn.us/lands\\_minerals/aggregate\\_maps/completed/seven\\_county.html](https://www.dnr.state.mn.us/lands_minerals/aggregate_maps/completed/seven_county.html)). In other words, the Township's Comprehensive Plan's land use plan and corresponding maps<sup>5</sup> are mandated to address aggregate and take into consideration the underlying aggregate supply as shown in Survey No. 46.
2. However, the proposed new zoning map in the 2025 mining ordinance amendments demonstrably fails to comply with both (a) the Comprehensive Plan's stated land use goals and policies with respect to mining and (b) Minn. Stat. § 473.859, subd. 2(d)'s mandate that the Township's Comprehensive Plan consider Survey No. 46. This is because, despite Bryan Rock's property being the only property within the Township that contains economically-viable (*i.e.*, a parcel size of at least 80 acres (Survey No. 46 at 25)) unencumbered bedrock aggregate (dolostone or dolomite) (*see id.* at 3), the proposed new zoning map (which effectively becomes the Comprehensive Plan's operative zoning map) seeks to exclude this property from

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<sup>5</sup> The Township's proposed 2025 mining ordinance amendments provide that the "ME Mineral Extraction District" are "those identified as Mineral Extraction in the Waterford Township Comprehensive Plan." Attach. 8 at 9; Attach. 10 at 5. However, the Comprehensive Plan does not have its own maps or Mineral Extraction District, but instead merely incorporates by reference in Appendix A each of Dakota County's townships' zoning maps. Thus, the Comprehensive Plan's operative zoning map is effectively the Township's current Zoning Map.

the "ME Mineral Extraction District" and thus prohibit any mining thereon (*see* Attach. 9).

3. This failure is particularly egregious in light of both (a) the Township's historic recognition of Bryan Rock's property as being either zoned mineral extraction or allowing for mineral extraction as a permitted use thereon and (b) Survey No. 46's recognition of the importance and need to allow mining of unencumbered bedrock aggregate/dolostone in the seven-county metropolitan area, including as follows:
  - a. Page 2 explains that aggregate resources in the seven-county metropolitan area "are rapidly diminishing" due to urbanization, "which on the one hand increases the demand for construction aggregate, and on the other, tends to remove aggregate-bearing lands from production through land development and zoning decisions that preclude mining";
  - b. Page 5 explains that "[t]he only bedrock deemed valuable as a source of aggregate in the seven-county metropolitan area is dolostone (sometimes termed dolomite) of the Prairie du Chien Group";
  - c. Page 5 also explains that "[t]he only volumetrically significant alternative Prairie du Chien bedrock resources are in the southern and southeastern portions of Dakota and Washington counties";
  - d. Pages 25 and 27 show Bryan Rock's property as containing the Township's only economically-viable ("[p]arcel size at least 80 acres") "[b]edrock aggregate (dolostone) meeting current industry standards"; and
  - e. Page 40 provides that "[b]ased on the assumptions about the amount of aggregate available to the region in 1997, the forecasted rates of use of aggregate, and the amount of aggregate that will be lost to the effects of urbanization, the seven-county metropolitan area will likely run out of resources between 2029 and 2034."
4. Based on the Township's Comprehensive Plan's stated goals and policies with respect to mining, Minn. Stat. § 473.859, subd. 2(d)'s mandate to consider Survey No. 46 and Survey No. 46's above-discussed maps and statements, any action by the Township to exclude Bryan Rock's property from the mining district is unlawful.

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Sincerely,

*/s/ Jack Y. Perry*

Jack Y. Perry

JYP

CC: M. Bryan  
B. Smith