

**RESOLUTION
#2015 - 9**

**To Repeal and Re-Create the Resolution Regarding
the Guarantee Of Property Values by Town of Dovre, Barron County, Wisconsin
Related to Chieftain Sand and Proppant**

WHEREAS, the Town of Dovre ("Town") has adopted a Nonmetallic Mining Ordinance, which calls for the guaranteeing by Nonmetallic Mine Operators of real property values under circumstances described in the Ordinance for real property on which is situated single-family or multiple-family residences and which property parcels on which residences are situated no farther than one-half (1/2) mile from the borders of any given nonmetallic mine site; and

WHEREAS, the Town Board of the Town of Dovre ("Town Board") adopted a Resolution entitled "To Fund Excess of Property Value Guarantees from Revenues Generated from Annual Royalty Payments from Nonmetallic Mining Operations Versus Limits in Nonmetallic Mining Operation Agreements" on April 11, 2013; and,

WHEREAS, the Town Board has amended said Resolution twice, with Resolution 2014 – 3, and Resolution 2015 – 1; and,

WHEREAS, the Town has entered into a Nonmetallic Mining Operations Agreement ("Operations Agreement") with Chieftain Sand and Proppant Barron, LLC., ("Chieftain") a mine operator in the Town; and,

WHEREAS, said Operations Agreement, dated April 1, 2013, limits the impact of the ordinance upon it, namely by 1) reducing the eligible property zone from one-half (1/2) mile to one-fourth (1/4) mile, 2) by limiting the operator's exposure to the property value guarantee to a maximum payment of \$25,000 per eligible property and by eliminating inclusion of property including a single-family or multi-family residence as of December 19, 2012, from coverage, which property parcels are situated across USH 53 from the operator's mine site; and,

WHEREAS, as part of the Operations Agreement, Chieftain, will make certain royalty payments as described in the Operations Agreement to the Town for inclusion in the Town's general fund over the entirety of the life of its nonmetallic mining operations in the Town as specified in the Operations Agreement; and,

WHEREAS, the Town Board is willing to commit monies from its receipt of royalty payments to: 1) make up for a diminution in Market Value to affected single family and multi-family property owners (residences) from the reduction in the eligible property zone of coverage from one-half (1/2) to one-fourth (1/4) mile from the border of the mine site; 2) by increasing the size of a possible total Property Value Guarantee Payment to an affected property owner to above \$25,000, should the property value guarantee be

invoked and should the mine site operator be liable for a diminution in the Fair Market Value of an Eligible Property; and, 3) to provide protection under the guarantee for any affected property owner whose single-family or multiple-family residence is within one-half (1/2) mile of the boundary of a mine site; and,

WHEREAS, the Town Board, after careful evaluation of the Property Value Guarantee Program Resolution dated April 11, 2013, and as amended, has determined that further definition and clarification of the Town's financial and procedural participation in the Property Value Guarantee Program is necessary to protect and preserve the Town's rights and resources;

NOW, THEREFORE, BE IT RESOLVED by the Town Board that:

1. The Resolution adopted by the Town Board on April 11, 2013, and its amendments, namely Resolution 2014-3, and 2015-1, are hereby repealed and shall no longer be in effect as of the date of adoption of this Resolution; and,
2. The Town Board reiterates the Board's willingness to: 1) commit the resources in an amount or amounts as defined below; and, 2) to fund deficit in payments under the property value guarantee incorporated in the Town's Nonmetallic Mine Operations Ordinance pursuant to the provisions, procedures and limitations contained in this Resolution; and,
3. This willingness is limited to eligible properties as to arm's length sales for which there is the production of appraisal-derived Market Value real estate values which demonstrate a reduction in Market Value due to the location of a Nonmetallic Mine Operation site in proximity to an affected property versus the Market Value of the property derived as if the mine site were not in operation, and that the diminution in Market Value exceeds \$25,000 in the case of single family and multi-family residences located within one-half (1/2) mile of the boundary of a mine site, property located across USH 53 within one-half (1/2) mile of the borders of Chieftain, sand processing facility; and,
4. In no instance shall the Town's payment to an Eligible Owner under the Property Value Guarantee Program exceed the lesser of \$25,000 or ten percent (10%) of the fair market value determined by the appraisal process described in the Agreement; and,
5. No right to a payment is vested in any property owner under this Resolution until such time as the Town Board approves such a payment; and,
6. No payment by the Town shall be made for any sale which is contingent upon such a payment; such a sale is deemed to not be a true arm's length sale; and,
7. For purposes of this Resolution and any payment made under this Resolution that following definitions shall apply:

- a. **Eligibility Area:** An area that includes all legally described property parcels that are located within one-half (½) mile of the borders of the Chieftain mine site or processing plant.
- b. **Annual Royalty Payment:** The Annual Royalty Payment is the annual payment the Town shall receive as a result of the royalties paid pursuant to the Operational Agreement with Chieftain is responsible for payment of the Annual Royalty Payment to the Town.
- c. **Chieftain Sand Royalty Fund:** The monetary Fund at a financial institution selected by the Town Board in which all Annual Royalty Payments from Chieftain are deposited and from which any Town Property Value Guarantee Payments are made.
- d. **Appraiser:** An individual, properly trained, licensed and certified by the State of Wisconsin to establish Market Value of Eligible Property pursuant to this Resolution.
- e. **Appraisal Report:** The report prepared by an appraiser properly licensed and certified by the State of Wisconsin at the direction of the Town Board.
- f. **Market Value:** Market Value is the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 - i. Buyer and seller are typically motivated;
 - ii. Both parties are well informed or well advised, and acting in what they consider to be their own best interests;
 - iii. A reasonable time is allowed for exposure in the open market;
 - iv. Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto;
 - v. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale;
 - vi. The price represents the amount the property will sell for in an arm's-length transaction on the open market between a willing seller not obliged to sell and a willing buyer not obliged to purchase the property.

g. **Residence:**

- i. A building, or portion thereof, in the Eligible Area which is owner occupied and includes services such as water and sewer, provisions for heat and lighting and other amenities so as to make the building suitable for human habitation by one family unit which is used exclusively for residential occupancy. A residence, as used in this paragraph, shall also be the Eligible Owner's permanent home as supported by the qualification of the Property Parcel for the Wisconsin Homestead Credit Program. A residence is also the location listed on the Eligible Owner's Wisconsin Driver's License and the address used by the Eligible Owner for purposes of voting in Federal, State and local elections; or,
 - ii. A building, or portion thereof, in the Eligible Area which existed as of December 19, 2012, and included services such as water and sewer, provisions for heat and lighting and other amenities so as to make it suitable for human habitation and which is suitable for occupancy by more than one (1) family unit. Such buildings do not include hotels, motels, boarding or rooming houses. Such multi-family residence may, but is not required to be, the location listed on the Eligible Owner's Wisconsin Driver's License and the address used by the Eligible Owner for purposes of voting in Federal, State and local elections;
- h. **Family Unit:** Family Unit means an individual or two (2) or more persons related by blood or marriage, adoption or legal guardianship, or evidence of a stable family relationship, or a group of not more than four (4) persons unrelated by blood or marriage, living together for single housekeeping purposes in a residence.
- i. **Residential Unit:** Residential Unit means one or more rooms in a building designed for occupancy by a single family unit for living purposes and having its own permanently installed water, sewer, heat, lighting and other amenities so as to make it suitable for human habitation.
- j. **Eligible Property:** Any legally described property parcel, or portion thereof, in the Town, on which was located a "residence" and which existed on December 19, 2012, and continues to exist in the Town as of the effective date of this Resolution, and which legally described and recorded property parcel, or portion thereof, was located within ½ mile of the borders of the Chieftain mine site or processing plant. The Town Property Value Payment for any Eligible Property shall not exceed \$25,000 or ten percent (10%) of the Market Value, whichever is less.
- k. **Eligible Owner:** The legal owner of record of any Eligible Property as of the date of the first sale of the Eligible Property after December 19, 2012.
- l. **Town Property Value Payment:** The calculated payment which the Town may provide to an Eligible Owner if the sale of an Eligible Property is completed pursuant to the provisions and procedures of this Resolution

and if a diminution of Market Value has occurred due to the Eligible Property's location within one-half (1/2) mile of the borders of the Chieftain mine site or processing plant borders.

- m. **Eligible Property Selling Price:** The selling price of any Eligible Property as contained in the Sales Contract. The selling price of any Eligible Property shall not include any personal property, seller concessions or incentives such as contributions towards closing costs or other items so as to increase the selling price.
8. Any payment of sales commissions, finder's fees or other compensation which an Eligible Owner may agree to pay regarding the sale of an Eligible Property shall not be deducted from the Selling Price of the Eligible Property when calculating the Town Property Value Guarantee Payment, provided such fees are within the usual and customary fees charged for such services, and except if the Eligible Owner or any member of his or her immediate family is the Broker such fees shall be excluded when the Town calculates any payment it may make based on the sales price. In no event shall the Town be responsible for the payment of any sales commissions, finder's fees or other compensation paid as a result of the sale of an Eligible Property; and,
 9. The following procedures shall be followed by any Eligible Owner within the Chieftain Mine site or processing plant Eligibility Area if the Eligible Owner wishes to apply for any Town Property Value Guarantee Payment under this Resolution;
 - a. The Eligible Owner shall follow the procedures outlined in Section 4 of the Operations Agreement.
 - b. The Eligible Owner shall notify the Town Clerk/Treasurer in writing of the desire to sell the eligible property. The date of receipt of the notification by the Town Clerk/Treasurer shall be determined to be the date of initial application for Town Payment;
 - c. Prior to or within ten days of notifying the Town Clerk/Treasurer of the desire to sell the Eligible Property, the Eligible Owner shall retain the services of a licensed, practicing real estate surveyor who shall prepare and provide to the Town a certified statement identifying the distance between the closest Chieftain boundary included in an NR 135 Reclamation Plan approved by the appropriate regulatory body (bodies) or sand processing plant and the Eligible Property. The Town Board may waive the survey requirement in its sole discretion.
 - d. Prior to listing the eligible property for sale, the Town may, in its sole discretion, require the property owner to provide the Town with a certified statement from a plumber licensed by the State of Wisconsin, or a septic hauler licensed in the State of Wisconsin, that the well and septic system serving the eligible property have been inspected and such well and septic system are functioning and in good repair. The Town may accept a current

septic report prepared pursuant to Barron County Ordinance § 17.64 in lieu of the certified statement. If the sales agreement requires a well and or septic inspection, the seller shall provide the Town with a copy of the inspection report within 5 days of the seller's receiving the report.

- e. The Town shall, in its sole discretion and within thirty (30) days of receipt of notification of the desire to sell an eligible property and the required survey statement, appoint an appraiser, properly licensed in the State of Wisconsin, to establish the Market Value of the Eligible Property. The Town shall be responsible for payment of the services provided by the appraiser;
- f. The appraiser shall appraise the Eligible Property as if the Chieftain mine site and processing plant were not in existence.
- g. The Town shall provide a copy of the appraisal report to the Eligible Owner within five (5) days of receipt by the Town Clerk/Treasurer.
- h. If the Town and the Eligible Owner agree that the "Market Value" as reflected in the appraisal report is accurate, such Market Value shall serve as the base value upon which any Town Property Value Guarantee Payment shall be made.
- i. If the Eligible Owner does not agree with the "Market Value" in the appraisal report, the Eligible Owner may seek a separate appraisal at the sole expense of the Eligible Owner.
- j. The Town may, in its sole discretion, consider the "Market Value" established in the appraisal report obtained in the separate appraisal report obtained by the Eligible Owner.
- k. The Eligible Owner shall enter into a real estate listing contract with a licensed real estate broker and the property shall be listed with the Multiple Listing Service, for a period of not less than six (6) months or more than twelve (12) months in an effort to sell the Eligible Property. Such real estate listing shall be provided to the Town. If the Eligible Owner or any member of his or her immediate family is the Broker, real estate commissions shall be subtracted from the sale price by the Town when the Town calculates any payment it may make based on the sales price.
- l. The listing contract shall provide for inspection of the property by a licensed inspector and the Town shall be provided with a copy of the inspection report as soon as it is available.
- m. Within five days of accepting a bona fide offer to purchase the Eligible Property, the Eligible Owner shall provide a copy of the Purchase Agreement to the Town Clerk/Treasurer.
- n. Upon the sale and closing of the Eligible Property, the Eligible Owner or the listing real estate agent shall provide a copy of the closing documents to the Town Clerk/Treasurer.

- o. The Eligible Owner shall provide the Town Clerk/Treasurer with any documents related to a property value guarantee payment made or to be made by Chieftain.
- p. The Town Clerk/Treasurer shall present the Purchase Agreement and closing documents to the Town Board and the Board shall calculate the Town Property Value Guarantee Program Payment as follows:

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|--|---------------------|
| i. Market Value of Property | \$ |
| ii. Less Selling Price of Eligible Property: | -\$ |
| iii. Less Chieftain Payment | -\$(25,000 or \$-0) |
| iv. Town Property Value Guarantee Payment, if any | \$ |

- q. The Town shall pay the Town Property Value Guarantee Payment, if any, within thirty (30) days of the date of the Town Board meeting at which a decision to make such payment was made.
- r. In no instance shall the Town Property Value Guarantee Payment exceed \$25,000 or 10% of the Market Value, whichever is less. If the difference between the Market Value and the selling price of the Eligible Property and the Chieftain Payment is less than \$25,000, then the Town Property Value Guarantee Payment shall be limited to the difference between the Market Value less the selling price and the Chieftain payment of \$25,000.
- s. In any instance wherein the selling price is greater than the Market Value as established through the appraisal process, the Eligible Property shall not qualify for a Property Value Guarantee Payment from the Town.

10. The following additional conditions apply to the sale of any Eligible Property for which a Town Property Value Guarantee Payment is sought:

- a. Upon the request of the Town Board, an Eligible Owner making application for any Property value Guarantee Payment from the Town shall provide a certified statement from a licensed, practicing real estate surveyor that identifies the distance between the closest Chieftain boundary included in an NR 135 Plan approved by the appropriate regulatory body (bodies) and the Eligible Property.
- b. No Eligible Property may receive more than one (1) Town Property Value Guarantee Payment.

11. The Buyer and the Seller shall sign an affidavit swearing that the sale was an arm's length transaction under Wisconsin law (for reference but not by limitation, see the definition of Market Value above); and,

12. Should the Annual Royalty Payment or existing balance, if any, received by the Town from Chieftain be insufficient to fund all requests for Town Property Value Guarantee Payments received and approved pursuant to the procedures and

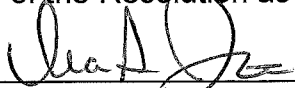
provisions of this Resolution, any unfunded requests approved by the Town shall be paid on a first come, first served basis in subsequent calendar years; and,

13. The Town shall maintain all royalty payments received from Chieftain in a separate financial fund titled Chieftain Property Value Guarantee Fund. The Town Clerk/Treasurer shall provide a monthly report to the Board which identifies all receipts to the fund and all disbursements from the fund; and,
14. The Town reserves the right to transfer excess funds to the Town general fund; and,
15. The following sales of otherwise Eligible Property shall not qualify for any Property Value Guarantee Payment from the Town:
 - a. Sales transactions which involve the sale of Eligible Property by foreclosure, deed in lieu of foreclosure, short sale, or sheriff's sale and which occurred after December 19, 2012;
 - b. Sales transactions which involve any federal, state, county or local government agency or department as either the buyer or seller which occurred after December 19, 2012;
 - c. The sale of any property currently, or hereafter, owned by Chieftain or any of its subsidiaries.
 - d. Sales which are deemed by the Town Board to not be bona fide arm's length sales.
16. Any Town Property Value Guarantee Payment shall be limited to only those Eligible Owners who filed a Notice of Intent to seek such Town Property Value Payment by December 19, 2013; and,
17. Eligible Owners not initially identified as potential participants in the Property Value Guarantee Program shall be notified by certified mail following adoption of this Resolution and shall have 90 calendar days to file a Notice of Intent to Seek such Town Property Value Guarantee Payment. Any Eligible Owner who fails to file such Notice of Intent within the time provided shall not be eligible for any Town Property Value Guarantee Payment. Further, only the Eligible Owner of the Eligible Property on the date of December 19, 2012, shall be eligible for the Town Property Value Guarantee Payment.

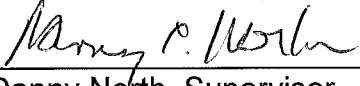
Dated this 18th day of November, 2015.

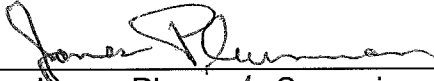
TOWN OF DOVRE

This Resolution shall take effect upon adoption by the Town Board of Supervisors and the posting of the Resolution as required by Section 60.80 of the Wisconsin Statutes.

By: 
Dean Trowbridge, Chairman

By: 
Al Nyhagen, Supervisor

By: 
Danny North, Supervisor

By: 
James Plummer, Supervisor

By: 
Mitch Hanson, Supervisor

Attest:


Kelly Phillips Town Clerk/Treasurer