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STATE OF MICHIGAN

COURT OF APPEALS

SCHELL ROAD, LLC, Plaintiff-Appellant,	UNPUBLISHED October 13, 2026 2:16 PM
v	No. 375453 Grand Traverse Circuit Court LC No. 23-036512-AW
STEVE VANDERFORD, GRANT TOWNSHIP ZONING ADMINISTRATOR, GRANT TOWNSHIP PLANNING COMMISSION, GRANT TOWNSHIP, STEVEN MOYER, and ED BREITMEYER, Defendants-Appellees.	

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

In this civil action, plaintiff, Schell Road, LLC sought a writ of mandamus directing the Grant Township Zoning Administrator to process plaintiff's special land use application to operate a gravel mine and directing the Grant Township Planning Commission to hold a hearing and make a determination on the application pursuant to the prior version of the Grant Township Zoning Ordinance. Plaintiff also claimed that the Township had delayed a public hearing on its application and amended the Ordinance in bad faith and that the amendments did not comply with MCL 125.3205. Plaintiff appeals by right the trial court's opinion and order granting defendants summary disposition under MCR 2.116(C)(8) (failure to state a claim) and (C)(10) (no genuine issue of material fact) and denying plaintiff's motion for summary disposition. We affirm.

I. BACKGROUND

In 2022, plaintiff purchased 80 acres of property located on Schell Road in Grant Township with the intention of developing and operating a gravel mine on the property. On September 20, 2022, plaintiff submitted an initial application to the Township for a special use permit, consisting of a form and site plans provided by Civil Engineer Bill Crain. This was the first application for a mining operation Grant Township had received since 2003. After the project was introduced to the Planning Commission, several Township officials met with counsel and a consultant to discuss

what was necessary for review of a mining permit application and to gather information about how to proceed. Whether the mining regulations in the Township's Zoning Ordinance were sufficient became a concern, as the regulations had not been amended since 1998 and the relevant state law had been amended in 2011. While discussions about amending the Ordinance were occurring, plaintiff submitted supplemental information to its application on December 5, 2022, and January 27, 2023, to address deficiencies in the application. Township officials then informed plaintiff of their intent to delay consideration of the application until amendments to the Ordinance could be made.

After an exchange of letters in which plaintiff's counsel suggested the Township was "playing a dangerous game" of intentionally delaying consideration of plaintiff's application to amend the Zoning Ordinance for the purpose of defeating plaintiff's application, on February 17, 2023, plaintiff filed a complaint seeking a writ of mandamus from the circuit court requiring defendants to hold a public hearing. Defendants admitted that plaintiff's application prompted review of the mining regulations in the Township's Ordinance, however, defendants maintained that amendments were necessary to comply with the requirements of MCL 125.3502. During the pendency of the litigation, following a recommendation from the Planning Commission, the Township adopted amendments to the Zoning Ordinance on March 23, 2023, with an effective date of March 30, 2023. After attempts at mediation, plaintiff amended its complaint asserting additional claims for violation of due process, injunctive relief, and declaratory relief. Plaintiff alleged that the amendments to the Ordinance had been enacted in bad faith for the purpose of preventing plaintiff from operating a gravel mine and sought declaratory relief that the amended Ordinance could not be applied to plaintiff's application. Further, plaintiff alleged that the amended Ordinance was invalid because it went beyond the regulatory authority given to the Township by MCL 125.3205.

After the parties filed motions for summary disposition and a hearing on the motions was held, the trial court granted defendants summary disposition and denied plaintiff's motion for summary disposition. The trial court determined that plaintiff's application was incomplete; therefore, plaintiff had not shown a clear, legal right to a public hearing and was not entitled to a writ of mandamus. Further, the trial court concluded that plaintiff had not shown bad faith to preclude applying the amended Ordinance to plaintiff's application and that the amended Ordinance complied with MCL 125.3205.

This appeal followed.

II. STANDARDS OF REVIEW

We review for an abuse of discretion the trial court's decision whether to issue a writ of mandamus. *Citizens for Higgins Lake Legal Levels v Roscommon Co Bd of Comm'rs*, 341 Mich App 161, 177-178; 988 NW2d 841 (2022). "A court abuses its discretion when its decision is outside the range of reasonable and principled outcomes. *Id*. at 178 (quotation marks and citation omitted). "A trial court necessarily abuses its discretion when it makes an error of law." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016). We also review de novo, as questions of law, "whether defendants have a clear legal duty to perform and whether plaintiff has a clear legal right to performance of any such duty." *Christenson v Secretary of State*, 336 Mich

App 411, 417; 970 NW2d 417 (2021) (quotation marks and citation omitted). "Related issues of statutory interpretation are also reviewed de novo." *Id*.

Further, we review de novo a trial court's ruling on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Defendants brought their motion for summary disposition under MCR 2.116(C)(8) and (10). Plaintiff brought its motion for summary disposition under MCR 2.116(C)(8).

Summary disposition under MCR 2.116(C)(8) is properly granted "when the opposing party has failed to state a claim upon which relief may be granted." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 212; 933 NW2d 363 (2019). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are to be accepted as true and are to be construed in the light most favorable to the nonmoving party." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *El-Khalil*, 504 Mich at 160.

On the other hand, a motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id*. at 160. "Under MCR 2.116(C)(10), summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Piccione v Gillette*, 327 Mich App 16, 19; 932 NW2d 197 (2019) (quotation marks and citation omitted). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *In re Gregory Hall Trust*, 346 Mich App 75, 81; 11 NW3d 552 (2023) (quotation marks and citation omitted). "The reviewing court 'considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion.' " *Gueye v State Farm Mut Auto Ins Co*, 343 Mich App 473, 481; 997 NW2d 307 (2022), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

III. LEGAL ANALYSIS

A. WRIT OF MANDAMUS

Plaintiff argues that the trial court abused its discretion by refusing to issue a writ of mandamus. We disagree.

" '[M]andamus is an extraordinary remedy and it will not lie to review or control the exercise of discretion vested in a public official or administrative body.' " *Citizens for Higgins Lake Legal Levels*, 341 Mich App at 178 (citation omitted). To obtain a writ of mandamus,

> the plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. In relation to a request for mandamus, a clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided. [*Christenson*, 336 Mich App at 419, quoting *Rental Props*

Owners Ass'n of Kent Co v Kent Co Treasurer, 308 Mich App 498, 518-519; 866 NW2d 817 (2014).]

"A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Berry v Garrett*, 316 Mich App 37, 42; 890 NW2d 882 (2016) (quotation marks and citation omitted).

In the present case, plaintiff sought a writ of mandamus requiring the Planning Commission to hold a public hearing on their special land use application for the purpose of operating a gravel mine. Under Section 16(h)(10) of the Ordinance prior to amendment, earth removal, quarrying, gravel processing, and mining were permitted special land uses subject to "conditions in the interest of safety, reduction of noise, dust and obnoxious odors." The Ordinance included specific performance standards for such operations and other application requirements, such as inclusion of a development plan, operational statement, and rehabilitation plan. Grant Twp Ordinance § 16(h)(10)(a)(1) to (8). Further, the Ordinance provided that, "[a]fter receiving an application for a Special Land Use Permit for earth removal, quarrying, gravel processing, mining and related mineral extraction business, accompanied by the required plans, specifications, and permit fee, the Grant Planning Commission *shall* hold a public hearing." Grant Twp Ordinance § 16(h)(10)(a)(9) (emphasis added).

The trial court found that plaintiff's application was incomplete and did not meet the requirements of the original Ordinance. Therefore, the trial court held that plaintiff did not have a clear, legal right to a public hearing and defendants did not have a clear, legal duty to hold such a hearing. On appeal, plaintiff argues that the record demonstrates that its application was complete, that the trial court engaged in impermissible fact-finding under the applicable summary disposition standards, and that the trial court imposed requirements on plaintiff's application beyond what the original Ordinance actually required. Accordingly, plaintiff argues that it was entitled to a public hearing, and the trial court abused its discretion by denying plaintiff's request for a writ a mandamus.

At the outset, the trial court's thorough review of the record when considering the competing motions for summary disposition, brought in part under MCR 2.116(C)(10), was appropriate. The trial court's decision reflects that it merely reviewed the original Ordinance and the pleadings, depositions, and substantial documentary evidence submitted by the parties. See MCR 2.116(G). Further, it was well within the trial court's purview to determine as a matter of law whether plaintiff's application was complete under the Ordinance prior to amendment. Whether or not the application was complete was not a factual issue on which reasonable minds could differ, see *In re Gregory Hall Trust*, 346 Mich App at 81, but a mixed question of law and fact discernable by the trial court. Moreover, the evidence necessary to determine the completeness—the application itself—was in the record and not in dispute. Plaintiff has not demonstrated that a genuine issue of material fact exists that would have precluded summary disposition under MCR 2.116(C)(10). Accordingly, the trial court could appropriately make a determination on the completeness of the application at the summary disposition stage. See *Haupt v Kerr Mfg Co*, 210 Mich App 126, 132 n 2; 532 NW2d 859 (1995).

In the present case, the trial court determined that the application was incomplete, addressing each supplement in turn. Specifically, the trial court found that the application lacked

a reclamation statement identifying post-mining land use methods, phasing and timing of such reclamation, and the method of disposing of any equipment or structures used in the operation after completion of the excavation.[1] The trial court also found that the First Supplement submitted on December 5, 2022 did not include a complete operational statement, which required at a minimum the approximate date mining would commence, the method of extracting and processing, the equipment proposed to be used in the operation of the excavation, and the location and type of processing plants.[2] While the trial court concluded that some of these requirements were met by the Second Supplement submitted on January 27, 2023, the trial court nonetheless found that the application was still ultimately incomplete under the original Ordinance. Even considering the Second Supplement, the reclamation plan still did not provide details of the phasing or timing as required by Section 16(h)(8)(c)(1) of the Ordinance.

Moreover, the trial court found that it did not appear that a soil erosion and drainage plan had been submitted to the Grand Traverse County Soil and Erosion Officer or that a reclamation plan or map was submitted to the Grand Traverse County Cooperative Extension Office and Soil and Conservation District as required by Section 16(h)(8)(a)(14) of the Ordinance. Further, the trial court found that the application was also incomplete because the Grand Traverse County Road Commission had not provided approval for improvements to Karlin Road to facilitate the project. Notably, plaintiff has argued on appeal that its application is complete without addressing the trial court's findings or demonstrating where the required information can be found in its application.

Upon review of the application and supplemental information, the trial court did not err in finding that necessary items were missing from plaintiff's application and it was incomplete. With regard to the reclamation statement, the application provides that plaintiff "agrees to retain all topsoil from the property in order to reuse as topsoil over mined areas at the end of mine life." The application also notes that plaintiff consulted with agricultural support services regarding the process, had topsoil analysis conducted on the property, as well as provided an example of a current gravel mine project undergoing similar reclamation. Although this reclamation plan provides significant detail, and plaintiff indicated that the mining project would likely be completed in 10 years from commencement of the project, the reclamation plan does not include the necessary information on phasing or timing. See Grant Twp Ordinance § 16(h)(8)(c)(1). The lack of this required information alone was sufficient to deem the application incomplete and not ready for immediate public hearing under the original Ordinance.

With regard to the submission of plans disclosing the final grades, elevations, and proposed uses of the land after completion of the mining operation, the trial court also did not err in finding that plaintiff's application did not demonstrate that such plans were provided to the appropriate authorities. At that time, the Ordinance provided that an application for gravel processing or mining "shall include" in the development plan,

> [a] map or plan disclosing the final grades, elevations to be established following the completion of the mining operations, including the proposed uses then

[1] Grant Twp Ordinance § 16(h)(8)(c)

[2] Grant Twp Ordinance § 16(h)(8)(b)

> contemplated for the land, future lakes and roads and such other matters as may evidence the bona fide nature of the reclamation and rehabilitation plans and the fact that the land will not be devastated and rendered unusable by the proposed mining activities. [Grant Twp Ordinance § 16(h)(8)(A)(14).]

Further, "[s]uch plan *shall be submitted* to the Grand Traverse County Cooperative Extension Office and to the Grand Traverse Soil & Water Conservation District for recommendation to the Grant Planning Commission." Grant Twp Ordinance § 16(h)(8)(A)(14) (emphasis added). Within the Specific Performance Standards Checklist provided in the Second Supplement to plaintiff's application, plaintiff referenced the requirement for such plans to be submitted to the Grand Traverse County Cooperative Extension Office and the Grand Traverse Soil and Water Conservation District. However, plaintiff merely stated it "[a]greed" with the requirement. There was no indication whether the requirement had been met.

On appeal, plaintiff also argues that the trial court erred by imposing a requirement that plaintiff have approval from these entities for plaintiff's application to be considered complete and ready for a public hearing. Plaintiff argues that the plain language of the original Ordinance indicated that "the materials provided with the application will be submitted as part of the process," not that approval is needed before submission. Notably, this conclusory statement is the entirety of plaintiff's argument that the original Ordinance did not require that the reclamation plan be submitted to the appropriate entities.

Plaintiff's argument is not persuasive and misinterprets the trial court's opinion. The trial court stated only that it "[did] not appear" that the materials had been submitted or that there was a recommendation from the appropriate entities; the trial court did not require approval. Further, contrary to plaintiff's argument, the Ordinance did not state that the plan would be submitted as part of the review process. Although the second operative phrase of Subsection (A)(14) was in the passive voice and created some ambiguity on who was required to submit the reclamation plan to the appropriate entities, it plainly required that the reclamation plan "be submitted" to the appropriate entities for recommendation to the Planning Commission. For practical reasons, the more reasonable interpretation is that the Subsection (A)(14) required the reclamation plan be submitted before an application was deemed complete and a public hearing was required. If the application was deemed complete before submission and before the Planning Commission received a recommendation from the required entities, it would inevitably have led to tabling of the application at any public hearing that was held.

Plaintiff also argues that the trial court ignored Crain's testimony; however, this is contradicted by the record. In fact, the trial court referenced his testimony throughout its analysis. The trial court acknowledged that Crain testified the Second Supplement was merely a reformatted version of the First Supplement and that Crain testified retaining experts to provide guidance on an application was not uncommon. Thus, the trial court did not ignore Crain's testimony. To the extent plaintiff argues only that the trial court did not credit Crain's testimony that the application was complete, Crain's testimony amounted to a legal conclusion that the trial court was not required to accept. As discussed, plaintiff did not demonstrate that its application addressed the phasing or timing of the reclamation plan or that the reclamation plan had been submitted to the appropriate entities. Rather, plaintiff suggests that the trial court should have held that there were genuine issues of fact and permitted plaintiff to present further testimony by Crain to support his

statement that the application was complete. But under MCR 2.116(G)(4), the mere possibility that plaintiff might later present evidence in support of a claim is insufficient to survive a motion for summary disposition. *Maiden*, 461 Mich at 120-121.

As the application was incomplete under the Ordinance in effect at that time, the trial court did not err in holding that plaintiff had not shown a clear, legal right to a public hearing and dismissing plaintiff's claim for a writ of mandamus.

B. APPLICABILITY OF AMENDED ORDINANCE

Plaintiff next argues that the trial court erred by holding that the amended Zoning Ordinance applies to plaintiff's application because the amended Ordinance was enacted in bad faith. We disagree.

When determining which version of a zoning ordinance a court should apply, "the general rule is that the law to be applied is that which was in effect at the time of [the] decision." *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 161; 667 NW2d 93 (2003) (quotation marks and citations omitted). However, there are two recognized exceptions: a court will not apply an amendment where (1) "the amendment would destroy a vested property interest acquired before its enactment," or (2) "the amendment was enacted in bad faith and with unjustified delay." *Rodney Lockwood & Co v City of Southfield*, 93 Mich App 206, 211; 286 NW2d 87 (1979), citing *City of Lansing v Dawley*, 247 Mich 394, 396; 225 NW 500 (1929), and *Keating Int'l Corp v Orion Twp*, 395 Mich 539, 549; 236 NW2d 409 (1975). In the present case, plaintiff did not yet have a vested property interest, and the focus is on the second exception.

Whether an ordinance was amended in bad faith is determined by "whether the amendment was enacted for the purpose of manufacturing a defense to plaintiff's suit." *Rodney Lockwood*, 93 Mich App at 211. For example, in *Willingham v Dearborn*, 359 Mich 7, 8; 101 NW2d 296 (1960), the city denied the plaintiff a building permit for a service garage on the grounds that the application was incomplete and did not specify the required minimum setback from the front property line. However, the ordinance did not require any such setback for construction. *Id*. The plaintiff sought a writ of mandamus and, while the case was pending, the defendant amended the applicable ordinance to include setback requirements. *Id*. The trial court refused to consider the amended ordinance and noted that it was clear the amendment was passed to address the facts of that case and prevent the plaintiff from using his property in the proposed way. *Id*. at 9. Our Supreme Court affirmed, explaining that to apply the amended ordinance and a defense that did not exist when the petition was filed would be unjust. *Id*. at 10.

In the present case, plaintiff argues that there "is very little question" that the Zoning Ordinance was amended in bad faith because there was no public discussion of any potential zoning amendments before plaintiff's application was submitted and that the timeline in the case "conclusively establishe[d] that the only reason [the] ordinance was amended was to deny Plaintiff's application and to provide a defense to this suit." Further plaintiff argues that amendments were not necessary to ensure that the Ordinance complied with MCL 125.3205 as it already complied with the law. The trial court concluded that defendants did not amend the Ordinance in bad faith and that application of the amendments was appropriate.

We agree with the trial court's analysis; the record does not support plaintiff's allegation of bad faith by the Township. As the trial court thoroughly explained in its opinion, the Township had not received an application for a special use permit for earth removal, quarrying, gravel processing, and mining since 2003. Both Vanderford and Breitmeyer testified to that effect. In 2011, MCL 125.3205 had been amended to limit local governments' zoning authority over mining projects unless very serious consequences would result. Accordingly, after receiving plaintiff's initial application in September 2022, the Township sought the advice of counsel who advised that the Zoning Ordinance should be amended to better conform with the law. Following that advice, the Township immediately began that process and informed plaintiff on December 2, 2022, that the Ordinance was in the process of being amended. Not long thereafter, in March 2023, the Grant Township Board adopted amendments to the Ordinance that reflected implementation of the standards set forth in MCL 125.3205. The amended Ordinance was widely applicable to any application for a special land use permit involving mining projects. Although plaintiff's application was a catalyst for the Township's decision to amend the Ordinance, this does not establish bad faith like the kind in *Willingham*, 359 Mich at 8-10. Further, despite plaintiff's arguments to the contrary, nothing in the amended Ordinance appears to preclude plaintiff's application. The amended Ordinance provides a clearer process by which an application for a special use permit for mining purposes will be considered.

Plaintiff argues that the defendants fabricated the excuse that the application was incomplete to justify their decision to delay a hearing until the Ordinance was amended. However, as discussed, the trial court correctly determined that the application was incomplete. And although plaintiff suggests defendants acted in bad faith because they never provided a list of information missing from plaintiff's application, plaintiff has produced no authority or statutory requirement showing defendants had such an obligation.

Plaintiff also argues that amending the Ordinance to comply with MCL 125.3205 was not necessary because the Ordinance sufficiently complied with the law. Plaintiff asserts that MCL 125.3205 merely sets forth an appellate standard and a ceiling on local government mining regulations, which the original Ordinance complied with. This argument is also unpersuasive.

As stated in the letter from the Township's general counsel to plaintiff's attorney dated February 17, 2023, the decision to amend the Ordinance was made because the provisions on mining "appeared to post date, and did not comply adequately with, [MCL 125.3205] and with other updated township ordinances designed to implement and to comply with [MCL 125.3205]." Specifically, it was determined that MCL 125.3205 applied to all zoning districts, whereas the Township's Ordinance only applied to agricultural districts. Further, the amended Ordinance implemented a two-part application process for special land use permits involving mining, to address the requirement that the applicant demonstrate need for the natural resources and that the project would not result in very serious consequences.

Absent bad faith, the Township was free to amend its Zoning Ordinance to address ambiguities or make changes it deemed necessary. See *Great Lakes Soc v Georgetown Charter Twp*, 281 Mich App 396, 420-421; 761 NW2d 371 (2008) (finding no bad faith when amendment was intended to clarify an ambiguous ordinance and was generally applicable); MCL 125.3201. It is apparent, given the significant gap in time from the last mining application in the Township and with the context given by the general counsel's letter, that the Township's intent was to create

a clearer process by which mining applications should be submitted and considered. Further, the amendments expressly address the changes in the law and reference the need and very serious consequences standards. Accordingly, there is no merit to plaintiff's argument that the amendments were enacted in bad faith for the purpose of defeating plaintiff's application.

C. VALIDITY OF AMENDED ORDINANCE

Finally, plaintiff argues that the trial court erred by holding that the amended Ordinance was valid and complied with MCL 125.3205. We also disagree.

"Generally, local governments may control and regulate matters of local concern when such power is conferred by the state." *DeRuiter v Twp of Byron*, 505 Mich 130, 140; 949 NW2d 91 (2020), citing *City of Taylor v Detroit Edison Co*, 475 Mich 109, 117-118; 715 NW2d 28 (2006). With regard to land use, the Legislature has empowered local governments to regulate land use through zoning for the broad purposes identified in the Michigan Zoning Enabling Act. MCL 125.3201(1); *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 577; 983 NW2d 798 (2022) (citation omitted). A challenged zoning ordinance is given a presumption of validity and the party challenging an ordinance "bears the burden of proving that the ordinance is an arbitrary and unreasonable restriction on the owner's use of [the] property." *Kirk v Tyrone Twp*, 398 Mich 429, 441; 247 NW2d 848 (1976). However, state law may preempt local regulation either expressly or by implication through field or conflict preemption. *DeRuiter*, 505 Mich at 140. "In the context of conflict preemption, a direct conflict exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *Id*. (quotation marks and citation omitted).

In the present case, plaintiff argues that the Township's Ordinance conflicts with MCL 125.3205 of the Zoning Enabling Act. The statute addresses extraction of natural resources and provides as follows:

> (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. [MCL 125.2105.]

The Legislature expressly stated that these provisions do not prevent a local government from reasonably regulating the hours of operation, blasting hours, noise levels, dust control measures, and traffic involved in mining operations. MCL 125.3205(6).

First, plaintiff argues that the statute sets forth a standard for courts to consider on appeal, and that local governments should not interpret requirements from the standards set forth therein. A similar argument was made and rejected in *Metamora Twp v American Aggregates of Michigan, Inc*, unpublished per curiam opinion of the Court of Appeals, issued April 1, 2021 (Docket No. 349069).[3] In that case, the counterplaintiffs argued that the Legislature did not intend to give the municipality quasi-judicial powers to make a needs determination, but reserved that determination for the court. *Id*. at 11. This Court held that the counterplaintiffs' argument that the statute only contemplated judicial review was without merit. *Id*. at 12. The plain language of subsection (4) did not limit its application to appeals to the circuit court, and the standard could also be applied in appeals to the zoning board of appeals. *Id*. at 11. Not only is the textual analysis in *Metamora* persuasive, but plaintiff's argument is also without merit for a practical reason. It would be illogical for local governments to ignore the standards that will be applied on appeal when enacting regulations. Taking the statutorily required standards into account reflects good governance, helping to ensure that a local government's regulations and planning decisions are likely to be upheld on appeal.

Second, plaintiff argues that the Ordinance imposes requirements on applicants that go far beyond the requirements of MCL 125.3205, which only requires that an applicant show that "a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit." However, plaintiff focuses solely on the valuableness of the resources, as defined by subsection (3), and ignores the plain language of subsection (4), which states that the applicant has the initial burden of showing that there are valuable resources on the property, that there is a need for those natural resources, *and* that very serious consequences will not result from their extraction.

[3] "Unpublished opinions are ... not binding authority but may be persuasive or instructive." *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719, 726 n 5; 957 NW2d 858 (2020).

The provisions of the amended Ordinance that plaintiff identifies as problematic go directly to whether there is a need for the resource by the person and the market and whether very serious consequences would result, mirroring the requirements of MCL 125.3205. With regard to need, plaintiff argues that the requirement that an applicant provide information on other mining operations in the area and predictions on the supply and demand for the natural resource to be extracted is unreasonable. These requirements are reasonably related to determining whether there is "a need for the natural resources by the person or in the market served by the person." With regard to whether very serious consequences would result, plaintiff is particularly concerned with the Ordinance's requirement that an applicant provide information on the impact of an applicant's proposed use and associated activities on property values in the vicinity of the property and along the proposed haul route. However, as the trial court explained, MCL 125.3205(5)(c) specifically identifies this as a factor of concern under the very serious consequences test. Accordingly, this requirement was within the Township's regulatory authority.

Overall, none of the arguments plaintiff raises on appeal overcome the presumption of the validity of the Township's Zoning Ordinance. See *Kirk*, 398 Mich at 441. Accordingly, the trial court did not err in determining that the Ordinance was valid and applicable to plaintiff.

IV. CONCLUSION

The trial court did not abuse its discretion in denying plaintiff's request for a writ of mandamus because plaintiff had not shown that it had a clear, legal right to a hearing. Further, the trial court did not err by concluding that the amended Ordinance could be applied to plaintiff's application because the amendments were not made in bad faith and were consistent with MCL 125.3205. We affirm.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado