

MINUTES OF Township Board Meeting

HELD April 11, 2016

Metamora

20  
Jennie Dagher - Page 1

Township of

Clerk

Form M-1-PT

The Free Press, Inc., Flint, Michigan

Supervisor Dave Best called the meeting to order at 7:03 p.m.

Present: Supervisor-Dave Best, Clerk- Jennie Dagher, Trustee-Dean Bedford, Treasurer-Carolyn Woodley & Trustee Ann Derderian

Also Present: Police Chief Dave Mallett, George Nash, Olive Bedford, Fire Chief/Commissioner Dave Eady, Richard Zanotti - Levy, Susan Johnson - Butzel, Harold and Garre Crosswell, Rob & Sarah Champion, David Eddy, Don Blair, Dennis Gilbert, Matt VanSembadien, Lucy Clark Dougherty, Pat Lennon, Victor Dzenowagis, Wayne Inman, Jocelyn Scofield, Edward Noble, Peter Gilles, Patrick Betcher, Robert Boice, Tamala Boice, Chris Bzdok, Rick Warror and Wes Wickham.

**0037-16**

**Motion by Derderian, supported by Woodley to approve the agenda with addition of Resolution in Support of Bridge Replacement Project for Wilder Road over the South Branch of the Flint river to be added to Township agenda. Motion carried, all voting aye.**

**Approve Consent Agenda**

**0038-16**

**Motion by Bedford, supported by Woodley, to approve the consent agenda as presented. Approval of March 2016 bills which cover checks #23234 thru #23402 for a total amount of \$126,925.15 which includes Township payroll and bills and checks #2427 thru #2431 for the amount of \$1,1112.80 which includes Building Department payroll and bills. The total amount of Township and Building payroll and bills for March 2016 is \$128,037.95. Motion carried, all voting aye.**

**Public Time:**

Commissioner Eady stated that the Commissioners have replaced Gary Howells Lapeer County Road Commissioners position with Mr. Jim Novak.

**Fire Department Business:**

Fire Chief Eady, went over the Fire report with the Board.

**Police Department Business:**

Chief Mallett went over the police report with the Board.

**Township Business:**

Township Attorney Mike Nolan stated that he received a letter from Mr. Pat Lennon dated April 5, 2016 and would like that letter put in the official minutes which is attached to these minutes. The Township Board also received a letter from Attorney Chris Bzdok dated April 11, 2016 which Attorney Nolan requested be put in the official minutes. Attorney Nolan also requested that the Memorandum providing partial response to the Levy letter dated April 12, 2016, which he and Gerald Fisher presented to the Township Board and Planning Commission at the Township Board Meeting dated April 13<sup>th</sup> (typo on date should have been April 11<sup>th</sup>), 2016 also be added to the minutes for a total of three attachments. Attorney Nolan then asked Mr. Lennon if he would like the opportunity to speak to the Township Board. Mr Lennon stated to the Board that he / Levy would like the opportunity to find an appropriate time to set up a public hearing, for sometime in the beginning of May requested. Attorney Nolan stated that he will work with Mr. Lennon to coordinate a date to set up the Public Hearing.

MINUTES OF Metamora Township Board Meeting

HELD April 11, 2016 20

Township of Metamora

Jennie Dagher

Page 2

Clerk

Form M-1-PT

The Reg's Press, Inc., Flint, Michigan

Mr. Fisher presented a report to the Board on where we stand on the zoning ordinance amendment on mining, which the public hearing for this amendment is on the April 13<sup>th</sup>, 2016 Planning Commission agenda. He will be working with the Planning Commission to set up public hearing for the rest of the ordinance amendment on mining by the May Planning Commission Meeting.

**0039-16**

Mr. Lennon of Levy Corp. stated that they were opposed to the original moratorium and that they/ Levy Corp. also are opposed to the extension of the existing moratorium which is being presented today.

**Motion by Derderian, supported by Bedford to approve Resolution Extending Moratorium on Gravel Mining Applications in Order to Complete Zoning and Planning Amendments for an additional three months. This Resolution is attached to the minutes. Roll Call Vote: Ann Derderian, aye; Dean Bedford, aye; Carolyn Woodley, aye; Dave Best, aye; Jennie Dagher, aye. 5 ayes, 0 nays. Motion carried.**

**0040-16**

**Motion by Bedford, supported by Derderian to approve Treasurer to attend Treasurer Conference in Mt. Pleasant from May 15-18, 2016 at a cost of \$325.00. Motion carried, all voting aye.**

**0041-16**

**Motion by Derderian, supported by Woodley to approve Resolution in Support of Bridge Replacement Project for Wilder Road over the South Branch of the Flint River as follows:**

**METAMORA TOWNSHIP  
RESOLUTION IN SUPPORT OF BRIDGE REPLACEMENT PROJECT FOR WILDER ROAD OVER THE SOUTH  
BRANCH OF THE FLINT RIVER**

WHEREAS, the Wilder Road Bridge over the South Branch of the Flint River in Section 1 & 2 of Metamora Township of Lapeer County is structurally deficient; and,  
WHEREAS, the Wilder Road Bridge over the South Branch of the Flint River is posted with a weight restriction of 19/23/39 tons; and,  
WHEREAS, Metamora Township wishes to have a fast, safe and efficient transportation network for its citizens; and,  
WHEREAS, Metamora Township has experienced growth and continues to grow placing further burden on the transportation network; and,  
WHEREAS, the Lapeer County Road Commission has recommended that the Wilder Road Bridges over the South Branch of the Flint River be replaced because of its structural deficiencies; and,  
WHEREAS, the Lapeer County Road Commission has reviewed cost estimates for replacement of these bridges and the budget of the Road Commission will not allow replacement of these bridges without additional funds from other sources; and,  
WHEREAS, the Lapeer County Road Commission will apply for Federal Aid funding through the Michigan Department of Transportation to replace these bridges; and,  
WHEREAS, both Metamora Township and the Lapeer County Road Commission are actively pursuing participation in the replacement of these structures.

NOW THEREFORE be it resolved that both Metamora Township and the Board of Lapeer County Road Commissioners request Local Bridge Program Funds for Wilder Road Bridges over the South Branch of the Flint River for the year 2019 and is aware of the financial obligation to fund its share for replacement of these structure.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of an excerpt from the minutes of the Regular Board Meeting of Metamora Township of the County of Lapeer, Michigan, held at Metamora, Michigan on the 11th day of April, 2016.

RESOLUTION DECLARED ADOPTED.

IN WITNESS WHEREOF, I have hereunto affixed by name as Clerk of the Board of Metamora Township of the County of Lapeer, Michigan, this 11<sup>th</sup> day of April, 2016.

Motion by Dederian, supported by Woodley to approve the Resolution in Support of Bridge Replacement Project for Wilder Road over the South Branch of the Flint River. Roll Call Vote: Ann Derderian, aye; Dean Bedford, aye; Carolyn Woodley, aye; Dave Best, aye; Jennie Dagher, aye. Motion carried, 5 ayes, 0 nays.

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Jennie Dagher, Clerk

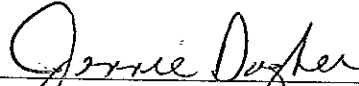
**Supervisor Time:**


Supervisor Best had nothing to report at this time.

**Adjourn:**

0042-16

Motion by Derderian, supported by Bedford to adjourn Metamora Township Board Meeting at 7:20p.m. Motion carried, all voting aye.

  
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Jennie Dagher, Clerk  
Recording Secretary

  
\_\_\_\_\_  
Dave Best, Supervisor

CC: All Board Members  
Persons requesting same

April 5, 2016

Via U.S. Mail and E-Mail

Michael J. Nolan, Esq.  
Kohl, Harris, Nolan, McCarthy, Turkelson & Ogden PC  
4000 S. Oak Street  
Suite 200  
Metamora, MI 48455

**Re: *Petition Objecting to "Resolution Establishing Moratorium on Gravel Mining Applications"***

Dear Mr. Nolan:

I write in response to your April 1, 2016 letter. To ensure that there is no confusion, Edw. C. Levy Co.'s position is that the adoption of the moratorium, including its purported "administrative remedy," was void from the outset. Considering that neither notice nor public hearing was provided before the Metamora Township Board adopted the resolution, we believe the Board should annul those actions in the same fashion, without imposing on Levy the burden of going through a public hearing.

If the Board refuses to annul its prior action but maintains that the Board is the only appropriate forum for Levy's petition, then—notwithstanding Levy's position that an appeal to the same body that imposed the improper moratorium is not proper and is not truly an appeal—Levy has no choice but insist, under protest and with full reservation of its rights, on a public hearing.

Finally, your letter appears to ask whether Levy would be willing to waive its right to a properly noticed hearing on the petition and allow the petition to be heard and considered at the April 11 Township Board meeting. Please know that Levy is not willing to relinquish any rights to notice or a properly scheduled hearing. Levy will attend the meeting on April 11 and participate in discussion that relates to scheduling a hearing on Levy's petition.

I look forward to seeing you Monday. In the meantime, please feel free to contact me with any questions.

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# HONIGMAN

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Michael J. Nolan, Esq.  
April 5, 2016  
Page 2

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

  
J. Patrick Lennon

cc: Steven Weiner  
Robert Doyle  
Richard Zanotti

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OLSON, BZDOK & HOWARD

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April 11, 2016

The Board of Trustees  
Metamora Township  
730 W Dryden Rd  
Metamora, MI 48455

Via email to Township Clerk  
Jennie Dagher  
[clerk@metamoratownship.com](mailto:clerk@metamoratownship.com)

RE: Levy Petition Regarding Gravel Moratorium

ATTORNEYS

PARTNERS:

James M. Olson  
Christopher M. Bzdok  
Scott W. Howard  
Jeffrey L. Jocks  
Ross A. Hammersley  
Kate Redman

OF COUNSEL:

William Rastetter  
Michael H. Dettmer  
Lawrence I. McKay III  
Joan S. McKay

TRAVERSE CITY:

420 E. Front Street  
Traverse City  
Michigan 49686  
231.946.0044  
[cbvlaw.com](http://cbvlaw.com)

FRANKFORT:

427 Main Street  
PO Box 1782  
Frankfort  
Michigan 49635  
231.352.4412

Dear Supervisor Best and Members of the Township Board:

I write to you on behalf of the Metamora Land Preservation Alliance (MLPA), regarding a petition by the Edward Levy Company dated January 8, 2016, which objects to the Board's moratorium resolution of December 14, 2015. This letter will respond for the record to certain untrue statements contained in Levy's petition. For brevity's sake, I am only responding to statements Levy (through counsel) makes concerning MLPA. That does not mean we agree with the rest of Levy's petition – we disagree with all of it.

The first untrue statement made in the Levy petition that we respond to is that "the MLPA once again has arisen – not in response to any particular aspect of Levy's proposal, but rather in opposition to any effort to mine sand and gravel in the Township, no matter how thoughtful the proposal." To the contrary. MLPA is opposed to Levy's proposal for very specific reasons that have been summarized in the newsletter that the Levy petition mentions, as well as on the MLPA website.

These reasons will be further articulated, documented, and supported in detail at the appropriate time in the Township's review process. We are confident that the gaping factual holes in the materials submitted by Levy will be exposed in the fullness of time. We believe that if anything, the scale and severity of the potential harm this project may cause is not as widely understood now as it will be in the near future.

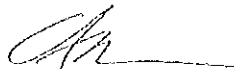
Board of Trustees  
Metamora Township  
Page 2  
April 11, 2016

The second untrue statement or implication in the Levy petition is that the purpose of the moratorium was to provide MLPA with "additional time to mount an opposition to Levy's application." To the extent Levy (or its counsel) are stating or implying that the moratorium was enacted in coordination with MLPA, or that its purpose was to assist MLPA, such a statement or implication is false and potentially reckless.

To set the record straight: MLPA supports the moratorium. We also support extension of the moratorium for another three months, as the Township is contemplating. But neither MLPA nor myself had any role in developing it; nor any participation in or review of it; and we neither suggested it to the Township nor requested that the Township enact it.

Thank you for this opportunity to clear the record. I look forward to seeing you Monday night.

Sincerely,



Christopher M. Bzdok  
[chris@envlaw.com](mailto:chris@envlaw.com)

xc via email: Doug Piggott  
Mike Nolan  
Gerald Fisher  
MLPA

**MEMORANDUM PROVIDING PARTIAL  
RESPONSE TO LEVY LETTER OF APRIL 12, 2016  
OBJECTING TO PART I OF ZONING ORDINANCE AMENDMENT**

**TO: METAMORA TOWNSHIP BOARD & PLANNING COMMISSION**

**FROM : MICHAEL J. NOLAN, TOWNSHIP ATTORNEY  
GERALD A. FISHER, TOWNSHIP SPECIAL LEGAL COUNSEL**

**DATED : APRIL 13, 2016**

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This memorandum is intended to provide a partial response on one day's notice to the letter of the Edward C. Levy Co dated April 12, 2016, objecting to the proposed terms of Part I of a proposed zoning ordinance amendment to align the Township's ordinance with MCL 125.3205 (the Gravel Statute").

For purposes of this Memorandum the relevant language of the Gravel Statute reads 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. (Emphasis supplied)

It was deemed necessary to respond to at least certain portions of the Levy letter, recognizing that the Township reserves all rights to respond further in the fullness of time. A limited response to the Levy letter follows:

**Attack on Special Legal Counsel**

When an advocate does not have a strong argument on the merits, he or she often reverts to attacking messengers. The Levy letter incorrectly states that Gerald Fisher, retained as special legal counsel for the Township based on his knowledge of this particular subject matter, is an opponent to sand and gravel mining efforts in Michigan. In fact, Mr. Fisher has successfully negotiated approvals of mining applications on behalf of municipalities, e.g., Independence Township and Oakland Township (involving a Levy Company). Certainly, assisting the Michigan Supreme Court in *Kyser v Kasson Township* in its analysis leading to the conclusion



that a prior decision of the Supreme Court violated the Michigan Constitution cannot serve as evidence of being an opponent to gravel mining. The Township has certainly not suggested that the actions of Levy should be viewed with suspicion because its legal counsel has a long and successful history and reputation for representing developers.

### **Separating Ordinance Amendment into Two Phases**

An attempt is being made by the Township to expedite the amendment of its zoning ordinance to align with the Gravel Statute. In spite of statements to the contrary in the Levy letter, this subject matter is complex. It involves constitutional direction being given to the courts by the legislature, a mandate that appears to obliterate master planning, and the use of a phrase (“no very serious consequences”) that is foreign to what planning commissioners and township board members see as a general matter in deliberations on the enactment and administration of planning and zoning in the Township. Making an attempt to expedite the process, and to present materials that the Gravel Statute itself allocates separate treatment, is viewed as rational and in the interest of achieving understanding of this subject matter.

### **The Terms of the Gravel Statute Are Not ‘Simple and Clear’**

The Levy letter suggests that the proposed ordinance expands and redefines terms in the Gravel Statute, claiming that the terms of the statute are simple and clear. While the terms of the statute might be simple and clear to Levy’s highly skilled legal counsel, the letter completely ignores the point that the terms used in the statute must be administered in the first instance by officials who were not appointed and elected in the community based on their skills to act as lawyers. Thus, the language of the proposed ordinance is not intended to “redefine” terms, but rather to provide meaning for the officials charged with administration. For example, standing alone, what is the meaning of the language of the Gravel Statute referring to “need for the natural resources by the person or in the market served by the person?” It can hardly be said that such meaning is “simple and clear.” While the Levy letter apparently assumes that officials will read, analyze, and understand the *Sylva* decision, as well as later decisions following *Sylva*, in the interpretation of the Township zoning ordinance, such an assumption is unrealistic and unreasonable. Therefore, some effort to assist officials as they attempt to do the right thing is appropriate – and needed (excuse the pun). It is quite customary to provide clarification by ordinance for statutory terms that have not been otherwise defined. Thus, attempting to assist Township officials address the issues of “need,” and “market,” are sensible. A comparison can be made to the section of the zoning enabling act that governs the grant and denial of a “variance” by the zoning board of appeals. Routinely, zoning ordinances in Michigan provide supplemental explanations of the requirements an applicant must demonstrate in order to be entitled to the grant of variance relief.

### **Should an Applicant Have a Heavy Burden**

Issue is taken with the burden of proof the ordinance describes. However, this burden is consistent with zoning law, and of equal importance is very commensurate with the concept of requiring an applicant to demonstrate why it should be granted the right to establish a nuisance-type heavy industrial use in residential and other zoning districts, contrary to the very essence of the purpose and intent of zoning.

The *Sylva* opinion, relied on by the Gravel Statute, specifies that “Our reaffirmance of the “very serious consequences” rule does not imply that zoning which prevents the extraction of natural resources is unreasonable. **Zoning regulations are presumed to be reasonable and a person challenging zoning has the burden of proving otherwise.**” Overcoming this presumption so as to allow a proposed use has been characterized by the courts as a ‘heavy burden.’ *Tandy Corp. v. City of Livonia*, 81 F.Supp.2d 800, fn 6 (1999). And rightly so. The purport of the Gravel Statute is to allow this one specific type of use – and a nuisance-type heavy industrial use at that – to be established anywhere in the Township. This contradicts the foundations of zoning that calls for uses to be assigned to uniform districts based on a comprehensive plan. Zoning law has not been approved to destroy harmony and compatibility. Allowing this nuisance-type intrusion must require a strong showing of a need to do so.

### **The Kyser Case Has Not Been “Nullified”**

It is cavalierly stated in the Levy letter that the decision in *Kyser* has been “nullified.” For this statement to be true, it would mean that the Gravel Statute has the effect of ‘nullifying’ the full course of zoning history in Michigan and elsewhere.

The simple point is that, building on the pronouncements of the Court dating back more than a half-century, the *Kyser* case explains very clearly that the Zoning Enabling Act charges local officials with the authority and responsibility of governing the growth and life of a community. Indeed, we were reminded of the **key attribute of zoning** by U.S. Supreme Court Justice Marshall in a 1970s dissenting opinion, as follows:

It may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life. I therefore continue to adhere to the principle of *Village of Euclid v Ambler Realty Co*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed.303 (1926), that deference should be given to governmental judgments concerning proper land-use allocation.

### **CONCLUSION**

The provisions of the Township’s proposed zoning ordinance amendment are designed to provide clarity and context for words of the Gravel Statute that were cobbled together by the Michigan legislature in 16 days and enacted with almost no debate by stakeholders.

The ordinance is needed for the purpose of allowing meaningful review under the terms dictated by one difficult-to-understand section of the Zoning Enabling Act.

STATE OF MICHIGAN, COUNTY OF LAPEER

TOWNSHIP OF METAMORA

**RESOLUTION EXTENDING MORATORIUM  
ON GRAVEL MINING APPLICATIONS IN ORDER TO COMPLETE  
ZONING AND PLANNING AMENDMENTS**

**RECITATIONS:**

Metamora Township (“Township”) has a zoning ordinance enacted in accordance with the Michigan Zoning Enabling Act, MCL 125.3101, and following sections.

For the reasons stated in the Township Board’s Resolution of the 14<sup>th</sup> day of December, 2015, entitled Resolution Establishing Moratorium on Gravel Mining Applications in Order to Consider New Statutory Standards (“Resolution”), the Township has studied the Gravel Mining Standards in MCL 125.3205, and has begun the process of amending its Zoning Ordinance to conform to such new standards and procedures. The Resolution is scheduled to expire on or about April 14, 2016. It is clear that the subject matter of the amendment will have substantial impact on numerous properties and property owners, and should not be passed without careful study and review. Thus, the Township Board finds that the process of amendment requires additional time for sufficient analysis and preparation, and for compliance with state law for zoning ordinance amendment.

Considering the complexity of this subject matter, the magnitude of the departure of the Gravel Mining Standards from customary planning and zoning, and the requirements to prepare and review ordinance provisions, and considering the implications on numerous interested parties and nearby communities, it has been determined that conducting public hearings and providing members of the public with an adequate opportunity to examine this issue and provide input to the Township is critical, and the Township Board has estimated that three (3) months of

additional time will be required to complete the amendment process, and that an extension of the Resolution for that period is necessary and appropriate.

The Planning Commission and Township consultants have diligently pursued the process of amending the Zoning Ordinance to comply with applicable law. However, the Township cannot feasibly process and review applications for gravel mining until such amendments have been completed, considered, and enacted.

**NOW, THEREFORE, IT IS RESOLVED** that the Township Board of Metamora Township hereby extends for three (3) months the moratorium adopted in the Resolution, applicable to all requests seeking approval of gravel mining in Metamora Township, and during this three (3) month period, neither the Planning Commission nor the Township Board, nor any administrative official or consultant of the Township, shall process or consider requests seeking approval of gravel mining in Metamora Township.

**IT IS FURTHER RESOLVED** that the Township Board directs the consultants and Planning Commission to continue their expedited pursuit of the review and recommendation to the Township Board of ordinance and other amendments found to be necessary and appropriate under the law to comply with, and best make provision for, Michigan law.

**IT IS FURTHER RESOLVED** that, in the event any private property owner in the Township alleges to be aggrieved by this moratorium based on the Due Process Clause, Takings Clause, or other provision of state or federal constitution or law (“Aggrieved Party”), the administrative remedy for such party shall be as follows:

- 1) The Aggrieved Party shall present a petition seeking relief to the Township Board, which shall include all of the following: a detailed statement of all grounds on which the party alleges to be aggrieved; the facts giving rise to the Aggrieved Party’s claim;

the opinion of one or more relevant experts, made under oath, supporting each and every conclusion supporting the Aggrieved Party's claim.

- 2) Upon receipt of such a petition, the Township Board shall seek such analysis of the claims by its consultants and experts as may be required to respond to the petition, and shall thereafter notice and conduct a public hearing on the allegations made in the petition.
- 3) After the public hearing, the Township Board shall review the materials submitted, consider the evidence presented at hearing, and have such evidence reviewed by its experts if found to be necessary by the Township Board, with the view of determining whether the claims of the Aggrieved Party are valid.
- 4) At the conclusion of its review, the Township Board shall either fashion a remedy which will obviate any violation of constitution or law found to exist, or deny the petition.

Ayes: 5

Nays: 0

Absent and Excused: 0

*Motion by Deedman / Supported by Bedford*

RESOLUTION DECLARED ADOPTED THIS 11<sup>th</sup> DAY OF APRIL, 2016.

By: *Jennie Dagher*  
JENNIE DAGHER,  
Clerk for the Township of ~~Kasson~~  
*Metamora*

**CERTIFICATE**

I, JENNIE DAGHER, Clerk of the Township of Metamora, do hereby certify that the above is a true and correct copy of a Resolution duly adopted by the Township Board of the Township of Metamora on the 11th day of April, 2016.

*Jennie Dagher*  
JENNIE DAGHER, Clerk