

Supervisor Dave Best called the meeting to order at 7:00 p.m.

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

Also Present: See attached sign in sheet.

**0052-16**

**Motion by Bedford, supported by Woodley to approve the agenda as presented. Motion carried, all voting aye.**

**Approve Consent Agenda**

**0053-16**

**Motion by Derderian, supported by Bedford, to approve the consent agenda as presented. Approval of May 2016 bills which cover checks #23560 thru #23704 for a total amount of \$139,676.78 which includes Township payroll and bills and checks #2436 thru #2440 for the amount of \$3,204.35 which includes Building Department payroll and bills. The total amount of Township and Building payroll and bills for May 2016 is \$142,881.13. Motion carried, all voting aye.**

**Public Time:**

**Lapeer County Prosecutor Tim Turkelson introduced himself and stated that he is running for re-election for Lapeer County Prosecutor office on the August 2, 2016 Primary Election.**

**Dave Taylor a Board Member for Suncrest spoke on behalf of the millage renewal for Suncrest which will also be on the August 2, 2016 Primary Election.**

**Larry Sullivan introduced himself and stated he is running for County Commissioner and Rick Warren from Elba Township also introduced himself and stated the he is also running for County Commissioner.**

**Fire Department Business:**

Chief Eady was not able to attend the meeting, Clerk Dagher gave the Fire Report.

**Police Department Business:**

Chief Mallett went over the police report with the Board.

Chief Mallett then asked the Board for approval to hire Drew Payne as a Reserve Officer for the Metamora Township Police Dept.

**0054-16**

**Motion by Woodley, supported by Derderian to approve the Metamora Township Police Dept. to hire Drew Payne as a Reserve officer. Motion carried, all voting aye.**

**Township Business:**

Attorney Nolan introduced the amended draft of combined parts I & II changes for the Township Boards consideration and acceptance. Mr. Fisher went over the additional changes that were requested by residents, property owners, and individuals representing mining interests at the hearing and in written submissions at the Planning Commission Public Hearing held on May 11, 2016 which were added to the original draft. Mr. Fisher also stated that a savings clause will be added to the draft. Once that is done it was requested that the Clerk put the draft of the amended Proposed Zoning Ordinance Amendment for Natural Resource Extraction Planned Unit Development on

the Township Website for residents/public to be able to view. It is expected that the new ordinance amendment will be on the regular Township Board agenda for consideration and possible adoption on July 11, 2016.

**0055-16**

**MOTION TO DENY LEVY'S PETITION OBJECTING TO MORATORIUM**

**Motion by Derderian, supported by Bedford to deny petition of Levy objecting to the moratorium established on December 15, 2015, as extended, for the following reasons:**

**1. There was legitimate reason and need for a moratorium.** During past years the law applying to natural resource extraction in Michigan has changed in significant ways. In 1982, a certain rule of case law applied to the review of mineral mining applications. This was changed dramatically in July 2010, with the decision in *Kyser v Kasson Township*, 486 Mich 514 (2010). At that point, natural resource extraction was to be treated like other uses. This flip-flopping of rules changed again in 2011 with the amendment of the zoning enabling act with regard to MCL 125.3205. In the submission of its application to the Township, the party now objecting to the moratorium, Levy, itself clarified the significance of this last change in law, stating that "the enactment of PA 113 in 2011 made eligible mining activities directly and clearly protected." So there was obviously a need to update the Township zoning ordinance to take this new legislation into account. Allowing time to study needed action, and having the opportunity to enact regulations as a result of such study is the traditional function of a moratorium.

**2. Adoption of a moratorium by resolution is valid, and does not require enactment of an ordinance.** The first important point is that the moratorium does not change the zoning ordinance. All zoning provisions remain in effect as adopted. These ordinances do not specify an exact time in which the action requested in a pending application must be taken. So action must be taken within a "reasonable" time. The effect of the moratorium is only to specify under the particular circumstances what a reasonable time is. The second important point is that, in a relatively recent unpublished opinion of the Michigan Court of Appeals, a moratorium quite like the one at issue that had been created by resolution was upheld. *Dan & Jan Clark, LLC vs Charter Township of Orion*, Docket No. 284238.2009 WL 1830749 (2009)

**3. The moratorium was of general application in the Township.** The effect of the moratorium had general application in the Township. While it had most immediate impact on the petitioner, it applied to others as well, including at least one additional company that has clarified its intent to seed extraction approval in the Township. Adopting a resolution of general application in the Township does not require any form of notice. Moreover, Levy's legal counsel was present at the December meeting at which the moratorium resolution was adopted, and it was conceded at the May 9, 2016 hearing on its objection that no actions or objections would have been taken or made that are different from those now argued.

**4. There is a legal distinction between new applicants and those with existing vested rights.** It is argued that the Township is not administering the moratorium in a fair or lawful way because existing approvals have been renewed during the effective period of the moratorium. While like persons needed to be treated in similar manner, those that have existing approvals are in a classification of property owners quite distinct from the applicant. Analogous to liquor license situations, those with existing approvals are considered to have vested property rights which are protected by due process. An applicant for rezoning or special use approval is seeking a property right, but has only an expectation of an approval that does not meet the requirements of a property right.

**Roll Call Vote: Ann Derderian, aye; Dean Bedford, aye; Carolyn Woodley, aye; Dave Best, aye; Jennie Dagher, aye. 5 ayes, 0 nays. Motion carried.**

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Township of

Metamora

Jennie Dagher Page 3

Clerk

Form M-1-PT

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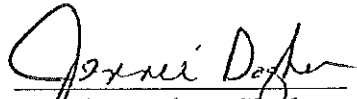
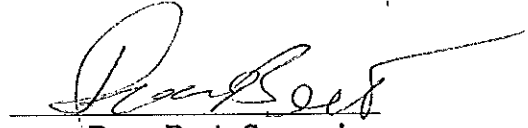
**Supervisor Time:**

Supervisor Best had nothing to report at this time.

**Adjourn:**

0056-16

Motion by Derderian, supported by Bedford to adjourn Metamora Township Board Meeting at 7:35 p.m. Motion carried, all voting aye.

Jennie Dagher, Clerk  
Recording Secretary

Dave Best, Supervisor

**CC: All Board Members**

Persons requesting same

# Metamora Township Board Meeting

## Sign up sheet

June 13, 2016

Please Print

NAME	COMPANY	ADDRESS
MATTHEW VANDERKAM	EDW. C. LEVY	"
RICK WARREN	2872 SUNSET CIRCLE, GAA TWP.	
Pat Lennon	Horigman	
RICHARD ZALOTT	EDW. C. LEVY	
Oliver M Bedford.		
GEORGE NASH		METAMORA
SUSAN JOHNSON	Butzel	
MARK BODEN	AJAX	
LARRY SULLIVAN		
Michael Hindelang	Horigman	
Steve Meiner	Levy	
Tim Turkeys	Prosecutor's Office	
Jeff Hagan	County Press	
DAVE TAYLOR	SUNCREST	
Eric Burrows	Metamora	
Anne Souwan's	Dryden	