

MINUTES OF Planning Commission Public Hearing-Z.O. AmendmentHELD May 11, 2016 20

Township of

Metamora

Jennie Dagher

Clerk

Form M-1-PT

The People Press, Inc., Flint, Michigan

Chairman Nash called the Metamora Township Planning Commission Public Hearing to order at 7:02 p.m. at the Metamora Lions Hall located at 3790 N. Oak Street, Metamora, Michigan.

Members Present: George Nash, Phil Bellinger, Ann Derderian, Kevin Knisely, Roger Hamilton, Dan Miller and Lance Gould

Members Absent: None

Also Present: Township Planner Doug Piggott, Township Attorneys Michael Nolan and Gerry Fisher, and those persons listed on the attached sign-in sheets.

Chairman Nash announced the procedure for those persons interested in making public comments on Part II of the proposed text amendment to the Zoning Ordinance. The proposed text amendment is intended to reconcile the provisions of MCL 125.3205 (Gravel Statute) that directs that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property in the entire Township if it is demonstrated that no very serious consequences would result from the extraction of those natural resources, with the Zoning Enabling Act, MCL 125.3201, *et seq.*, as a whole; to create a new zoning classification to be known as the Transitory Extraction Use Planned Unit Development zoning classification; to establish the procedure and standards for application and approval of a Transitory Extraction Use PUD for specific properties; to specify the effect of such classification; and to repeal certain provisions of the existing Zoning Ordinance.

Chairman Nash turned the meeting over to Special Township Attorney Gerry Fisher for a brief overview of the proposed amendment. Mr. Fisher stated that combined Part I and Part II of the proposed amendment is an attempt to provide a general set of rules for the Township for all applicants. He then discussed the Zoning Enabling Act which currently has 47 sections emphasizing the act must be considered as a whole. He further stated the intent of the Zoning Enabling Act as a whole is to protect residential zoning districts and other districts. He then went on to discuss the section of the ZEA that authorizes Planned Unit Developments, which permits a consideration of combined uses within a district, with certain important conditions: "planned unit development regulations need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions." Mr. Fisher stated that he has incorporated that concept into the proposed text amendment. Mr. Fisher then commented on some written objections that the Township received in response to the proposed amendment. Mr. Fisher reviewed the standards in the proposed text amendment, indicating that all the standards are intended to be applied in determining whether an applicant has proven that "no very serious consequences" would result from the extraction, by mining, of valuable natural resources as it relates to the entire Township of Metamora.

Chairman Nash stated that written correspondence was received in response to this Notice of Public Hearing. Township Attorney Mike Nolan then stated that Metamora Township has received comments from Attorney Susan Johnson of the law firm of Butzel Long on behalf of Ajax Paving in a letter dated May 11, 2016; a 3-page letter of objections to the proposed amendments dated May 10, 2016 from Attorney Pat Lennon of law firm of Honigman Miller on behalf of Levy Co.; and suggestions for improvements of the ordinance and general support

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from Attorney Christopher Bzdok of the law firm of Olson, Bzdok & Howard on behalf of the Metamora Land Preservation Alliance in a memo dated May 11, 2016. **Motion by Member Derderian, support by Member Knisely, to include into the record the letters received from the law offices of Butzel Long, Honigman Miller, and Olson, Bzdok & Howard. All ayes, no absent. Motion carried.**

Chairman Nash then asked for comments from the audience from those persons who had filled out a Public Comment Card when they had arrived. Nick Young of 3706 Washington Drive in Elba Township expressed his concern that citizens rights are protected as they relate to businesses in a community.

Greg Boudeau of 3630 Thornville Road in Metamora stated he supports the Board in its consideration of Part I and Part II of the proposed amendment and suggested there be an aquifer and hydrogeological study, that EPA approval be required with regard to the superfund toxic dump in the Township, and questioned whether the mining might impact the north branch of the Flint River.

Isabella Kanasty of 500 Hawk High Hill Road in Metamora expressed her concern of the threat on endangered bats and other animals that live on the Boy Scout property because of gravel mining.

Mike Gaunt of 4210 Barber Road, Metamora spoke in detail in opposition to gravel mining and the consequences of the heavy truck traffic.

Chairman Nash then reminded the audience that this public hearing is to take comments regarding the proposed zoning amendment.

Edward Noble of 4267 Gardner Road, Metamora questioned the amount of money the Boy Scouts received from the Levy Company.

Mr. Nolan then reminded the audience that there will be a hearing in the future about the Levy Company's specific plan and that tonight's meeting is about the proposed zoning ordinance amendment only.

Attorney Chris Bzdok, on behalf of MLPA, briefly reviewed his May 11, 2016 memo to the Board which is a part of this record and stated his suggestions for improvements to the proposed amendment.

Harold Crosswell of 3786 Winding Pine in Metamora spoke in opposition to the gravel mine and voiced his concerns with hours of operation, traffic, dust and noise.

Sandy Vukonich of 2961 Secluded Pines Drive in Oxford questioned the meaning of "very serious consequences" and other zoning questions and Planner Piggott addressed her questions.

Carole Porretta of 365 Stock Road in Metamora stated she is a realtor and expressed her concerns of serious consequences on property values.

Randy Malone of 3103 Dryden Road in Metamora expressed concerns about trustworthiness of Boy Scouts/D Bar A Scout Ranch.

Victor Dzenowagis, of 3405 Rock Valley and owner of the White Horse Inn at 1 East High Street in Metamora, stated that from the perspective of residents, business owners and developers in this community, he and his wife support the proposed amendment.

Pat Betcher of the Village of Dryden stated he is concerned about the truck traffic and supports the proposed amendment.

Roy Holden stated he owns a business in the Village of Metamora at 16 East High Street and questioned the reason for the process as the zoning ordinance currently does not allow gravel mining in a recreational zoning district. Mr. Fisher responded that one section of the statute basically says that we ignore all zoning districts and you cannot deny gravel mining if there is a

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need for it and there are no very serious consequences.

Ellen Waara of 1310 Circle Drive in Metamora expressed her concern that independent studies be done on the impact of protected species, lake levels, quality of well water, roads and traffic. Mark Frank of 4133 Barber Road in Metamora stated he supports the process of the zoning ordinance amendment and emphasized the Board consider other ordinances which he described. Mike Hindelang spoke on behalf of Levy Co. and addressed the Board with objections to the ordinance amendment stating why the Township must follow the statutes and case law and not adopt the proposed ordinance.

Chris Carey of 3755 N. Oak Street in Metamora spoke in opposition to gravel mining and encouraged the Board to delay the process.


Chairman Nash thanked everyone for their comments.

Mr. Fisher then stated that this has been an expedited procedure and that issues commented on at this public hearing will be addressed.

There being no further comments, at 8:31 p.m., Motion by Member Derderian, support by Member Bellinger, to close the public hearing. All ayes, no absent. Motion carried.

Respectfully submitted,
Darlene Wise, Recording Secretary

cc: All Board Members
Persons Requesting Same


Roger Hamilton
Planning Commission Secretary

Chairman Nash called the Metamora Township Planning Commission regular meeting to order at 8:31 p.m. at the Metamora Lions Hall located at 3790 N. Oak Street, Metamora, Michigan.

Members Present: George Nash, Phil Bellinger, Ann Derderian, Kevin Knisely, Roger Hamilton, Dan Miller and Lance Gould

Members Absent: None

Also Present: Township Planner Doug Piggott, Township Attorneys Michael Nolan and Gerry Fisher, and those persons listed on the attached sign-in sheets.

Approval of Agenda

Motion by Member Derderian, support by Member Hamilton, to approve the agenda as presented with the exception of moving the special use permit language approval for Victory Custom Trailers before the consideration of a decision on the public hearing. Motion carried, all ayes.

Approval of Meeting Minutes

Chairman Nash noted there were meeting minutes for approval from the May 4, 2016 special meeting. **Motion by Member Derderian, support by Member Knisely, to approve the minutes of the May 4, 2016 special work session meeting as presented. All ayes, no absent. Motion carried.**

Unfinished Business

A. Special Use Permit Language Approval - Victory Custom Trailers

Planner Piggott stated the Board had received the revised draft of the Special Land Use Permit. Mr. Piggott stated the applicant provided a revised site plan and the required changes have been met. **Motion by Member Derderian, support by Member Miller, to approve the language of the Special Land Use Permit for Daniel Agnew/Victory Custom Trailers-Outdoor Sales Lot as presented. All ayes, no absent. Motion carried.**

Public Comments (on items not on this Agenda)

None.

New Business

B. Consideration of a Decision of Public Hearing on proposed text amendment to the Metamora Township Zoning Ordinance No. 23.

Board discussion. **Motion by Member Derderian, support by Member Bellinger, to recommend to the Metamora Township Board Part I and Part II of the proposed text amendment to the Metamora Township Zoning Ordinance No. 23 regarding natural resources extraction in the form presented and discussed at public hearing, and to include in the recommendation the letters received into the record at this meeting and the public comments including but not limited to comments concerning the need to include in the ordinances standards for considering geological studies, ecological studies, hydrology studies, the Superfund site, surface waters which might impact ponds and lakes in this Township and also the impact on the Flint River, the aquifer, and also to include the impact on endangered species of bats and other animals and flora and the impact on**

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property values in this community.

ROLL CALL VOTE: Bellinger, aye; Derderian, aye; Gould, aye; Hamilton, aye; Nash, aye; Knisely, aye; Miller, aye. Motion carried 7 ayes, 0 nays, no absent.

Communications and/or Committee Report

Nothing at this time.

Matters for Discussion from the Commission Members

Nothing at this time.

Township Planner Report - ROWE Professional Services Company

Nothing further.

Township Planning Coordinator Report

None.

At 8:46 p.m., a Motion was made by Member Derderian, support by Member Knisely, to adjourn. Motion carried, all voting aye.

Respectfully submitted,
Darlene Wise, Recording Secretary

cc: All Board Members
Persons requesting same


Roger Hamilton
Planning Commission Secretary

Metamora Township Planning Commission

Sign In Sheet

Please Print

Date: May 11, 2016

Name	Company	Address
Jeff Hogan	The County Press	
Greg Whitman	METAMORA LIONS	
Val Jakubowski	Metamora	
Brent + Judy Addis	Metamora	
Randy Malove	Metamora	
Sharon Jones	3885 Libble Rd.	Metamora
Walter Bergen	Lapeer County B&Trust.	Metamora.
Karen Ozan	2669 E. SUTTON	metamora
Patt: Robinson	2624 E. Sutton	Metamora
Brian Robinson	2624 E. Sutton	Metamora
Mr. Van Sledright	AAOM	
Wendy Clark		Metamora
Pat Lennon	Honigman	Kalamazoo
L.S. Weiner	EC Levy Co.	8800 Dix Detroit.
MIKE GAUNT	4210 BARBER RD.	METAMORA
Christina Clark	3809 Wilbur Rd.	Metamora
Roy J. Holden	16 E. HIGH ST.	METAMORA
Mike Novak	477 Shalimar Rds	Metamora
PATRICK BETTERER	P.O. Box 101	DRYDEN
ANDY BRANDLES	1600 DAYDEN	RD.

Metamora Township Planning Commission

Sign In Sheet

Please Print

Date: May 11, 2016

Name	Company	Address
Peggy Ann Warner		203 Hawthorne Dr. Lapeer 48446
Judy Erlich		
Gretchen Pryke		4687 Blood Road 48455
KAREN CALLEWAERT		4600 GARDNER RD 48455
Anne Sousanis		Hough Rd Dryden
Michele Marini		369 W. SUTTON 48455
Kelly Marble		1087 Morris Rd Lapeer 48446
Porianna Simpson		3706 Washington Dr 48446
Nick York		3700 Washing ton Dr 48446
David Hisinger		2145 Hendrix Metamora MI
Flora Redman		4019 Center St. Metamora
John Katsimbaris		4131 BARBER RD, METAMORA
FRANK PORRETTA		365 STOCK RD
BRIAN BETZOLD		1302 CIRCLE DR METAMORA MI
Dorothy Frank		4173 Creeks Edge Dr Metamora
Tammi Klayman		5474 Barber Rd Metamora MI
Charles Dean		5474 Barber Rd Metamora MI
Jeanette Levene		3787 NOak Street Metamora MI
Dore Enis		3642 Meadell Lake Dr Metamora
Dan Agnew		3549 S. Lapeer Rd. Metamora

Metamora Township Planning Commission

Sign In Sheet

Please Print

Date: May 11, 2016

Name	Company	Address
BETH ANN Lynett		2302 S. FIVE LAKES RD 48455
Isabella Kanasz		500 Hawk High Hill Rd 48455
Roger Kirkpatrick		5995 Bluebird Ln. Metamora
AMELIA + WAYNE Inman		3898 Thornville Rd
Jarrell Champion		8250 Dryden Rd
Kathy Jacob		145 W Sutton Rd, Metamora
Nike Jacobs		145 W SUTTON RD METAMORA
Alex Gaska		2635 E DRYDEN RD METAMORA
May Chris Foxworthy		100 W Sutton Rd Metamora
Michael Hindlang		Honigman
DAVID Auer		2578 Sutton Rd Metamora
Heidi Mehl		5850 Hempstead
Kim Mehl		5820 Hempstead
SEAN FITZGERALDS		46 DAVISON LK RD
Chris Carey		3785 N Oak St.
Ed + Betty Noak		4267 Gardner Rd
Sandy Vu Konich		2961 Secluded Pines Dr. Oxford 48371
Wes Wickham		1177 N
Jill & Ernie Whitfield		11640 Wendree Metamora 48455
Harold + Garre Croswell		3786 Wending Pine Dr. Metamora

Metamora Township Planning Commission
Sign In Sheet

Please Print

Date: May 11, 2016

Name	Company	Address
DELYN COFIELD		2890 WILDER. 48455
DAWN KANASTY		500 HAWK HIGH HILL RD 48455
Leslie Kirkpatrick		3995 Bluebird Ln 48455
Rob Champion		2250 Dryden Rd.
VICTOR ZENOUAOS		1 EAST HIGH ST.
Gary Foxworthy		100 W. Sutton Rd
MARK HIGHTING		3680 WINDING PINE, 48455
Lanette Ann		2578 E. Sutton
GREG Boudreau		3630 TOWNVILLE RD
Joseph Maday		2851 Casey
Jeanine Carey		3755 N OAK ST
Rachelles		2851 Casey
CHRIS SMITH		2884 CASEY
James Pierce		2943 Wilcher
TONY ANZANO		2690 E BROOKER
Stephen M. Whitman		
Rachel Whitman		3897 N. Oak St
Dawn Prall	Garage Assoc.	
MARA FRANK		4133 BARBER
HAN FRANK		4133 BARBER

Metamora Township Planning Commission

Sign In Sheet

Please Print

Date: May 11, 2016

Name	Company	Address
ERIKA STIMAC	3063 DRYDEN	METAMORA
DAVID STIMAC	3063 DRYDEN	METAMORA
Stacy Joliat	423 Hawk/Horathill	" " "
Michele Joliat	423 Hawk/Horathill	" "
Susan Johnson	Butzel	
MARK BODEN	Ajax Paving	
Kandis Kosha	3749 N. OAK ST.	Metamora
Kyle Kosha	"	"
Charles Ekkfite	2840 Metamora	Metamora 48455
Judy Ekkfite	"	"
Bob Bityk	4687 Blogd Rd	Metamora
Denise Gilgwaert	4600 Gardner Rd	
LISA KINGSLEY	7301 Brocker	Metamora
CAROLE PORRETTA	365 Stock Rd	Metamora
Susan Puvico	2831 Wilder Rd	Metamora
Mark & Carole Beckett	5717 Lake George	Metamora
Julie Barlia	2634 Rock valley Rd	Metamora
Eli Barlia	2634 Rock valley Rd	Metamora
ELLEN WAARA	130 Circle	Metamora
Chad Chisholm	2100 Dryden Rd	Metamora

Metamora Township Planning Commission

Sign In Sheet

Please Print

Date: May 11, 2016

Name _____

Company

Address

BUTZEL LONG

ATTORNEYS AND COUNSELORS

a professional corporation

Susan Lynn Johnson
248 258 1307
johnsons@butzel.com

Stoneridge West
41000 Woodward Avenue
Bloomfield Hills, Michigan 48304
T: 248 258 1616 F: 248 258 1439
butzel.com

May 11, 2016

VIA ELECTRONIC MAIL

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

Mr. Gerald Fisher, Esq.
Western Michigan University
Thomas M. Cooley Law School
2630 Featherstone Rd
Auburn Hills, MI 48326-2814

Re: Proposed Zoning Ordinance Amendment for Natural Resource Extraction Planned Unit Development

Dear Messrs. Nolan and Fisher:

I am writing on behalf of and as legal counsel for Ajax Paving, who as you know, is preparing an application to the Township for development of a sand and gravel mining operation. In reviewing Part Two of the above referenced proposed Zoning Ordinance Amendment we have a number of questions we are hoping you can address as part of this evening's hearing before the Metamora Township Planning Commission. In the interest of time, and knowing there are a lot of folks who will want to be heard this evening, we thought it best to provide these questions in writing, in advance of the hearing. As Gerry noted in Monday's presentation, this is not light reading.

1. How exactly will this work in terms of the application process? There are two (2) Parts to the ordinance, and an applicant only proceeds to the second part after making a successful demonstration on the first. What all must the applicant turn in initially? That is, does the applicant simply request a "need determination" under Part I without providing any of the other documentation necessary as part of the Part Two PUD application? Has the application form been prepared for Part I yet?

Messrs. Nolan and Fisher
May 11, 2016

2. Is there a certain time frame in which a successful applicant under Part I must turn in its Part II application, assuming the response to the question above is that the application is, in fact, bifurcated?
3. With respect to the Transitory Extraction Use Plan, is it your intent that the detailed plan must show and provide all of the listed information for all properties and buildings along the proposed haul route? (See page 4 of DRAFT OF PART II - FOR STUDY BY PLANNING COMMISSION ON MAY 4, 2016(3)).
4. Is it your intent that "no very serious consequences" is equated to "no unreasonable or inequitable results"? Can you explain what you mean by "shall not produce unreasonable or inequitable results"?
5. With respect to the specific standards, in (b) "Property Values", is it your intent that any "injury" to property values in the vicinity of other property in the neighborhood is a bar to the proposed use? Can you explain your definition of "injury"? How is this different than (b) 3 which speaks to unreasonably or inequitably affecting the value of properties? Can you explain what you mean by "inequitably" affecting the value of property?
6. Has a form for the Part II application been developed yet?
7. At the end of the Transitory Extraction Use you have indicated "[u]ntil such time as a new zoning district classification of the property has become effective, no development or operations shall be undertaken or permits for development issued." Is it your intent that the property not revert to the zoning classification previously existing prior to the PUD approval? Is it your intent that no use of the property is authorized whatsoever at the end of the Transitory Extraction Use? Subsection I(b) also states that "[t]he Township may initiate a new Rezoning of the property to a reasonable district classification in accordance with the procedure provided by law for rezoning in townships". How then can an applicant design an end use/reclamation plan if future land designation use is uncertain? Will the PUD agreement authorize an end use?
8. Is there a draft of the "separate Township ordinance established for the regulation of extraction use operations" referenced in Section I of the DRAFT OF PART II - FOR STUDY BY PLANNING COMMISSION ON MAY 4, 2016(3)? If not, when can we expect to see that?
9. Can you be more specific on all of the other zoning ordinance sections superseded and repealed? It looks like just Section 1429, Mining of Earth Materials is repealed?

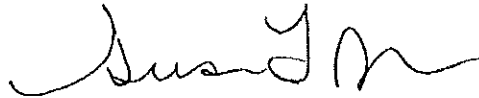
BUTZEL LONG

Messrs. Nolan and Fisher
May 11, 2016

We would appreciate any light you can shed on these questions and believe the answers are also important for the Planning Commission to understand as part of their deliberation of the proposed Part II. Thank you in advance for your consideration in this regard.

Very truly yours,

BUTZEL LONG
a professional corporation

A handwritten signature in black ink, appearing to read "Susan Lynn Johnson", written over the printed name.

Susan Lynn Johnson

SLJ/kvg

cc: Metamora Township Planning Commission
Mr. Mark Boden

BUTZEL LONG

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

J. Patrick Lennon

(269) 337-7712
Fax: (269) 337-7713
Lennon@honigman.com

May 10, 2016

Via E-mail – Clerk@metamoratownship.com

Mr. David Best, Township Supervisor
Ms. Jennie Dagher, Township Clerk

Re: Objections to Proposed Amendments to Metamora Township Gravel Mining Ordinance

Mr. Best and Ms. Dagher:

As you know, this Firm represents Edw. C. Levy Co. and its related affiliates, including American Aggregates of Michigan, Inc. (together, "Levy"). We are writing to formally notify Metamora Township (the "Township") of Levy's objections to the proposed amendments to Part II of the Township gravel mining ordinances (the "Proposed Amendments") and to urge the Township to reject them. Please include this objection letter as part of the record of the Township Planning Commission and Township Board meetings that occur in connection with the Proposed Amendments.

The Proposed Amendments should be rejected. As with Part I of the Proposed Amendments, these amendments emanate from an improper moratorium that was part of the Township's reaction to Levy's application to mine in the Township, and represent the latest efforts to prevent Levy from mining. Levy incorporates the objections in its letter of April 12, 2016 as part of this objection. The Proposed Amendments should be rejected for several additional reasons beyond those set forth in Levy's April 12, 2016 letter.

The Proposed Amendments Are Unsupported By Michigan Law

Throughout the Proposed Amendments, the Township takes positions which are either unsupported by the authority identified in the Proposed Amendments, or which are directly in violation of well-established Michigan law. By way of example, the Township gives itself the authority to both identify and address "issues" it claims to have identified with the actions of both the Michigan Legislature and the Courts. This is directly contrary to law. The Township's disagreement with the merits of statutes duly passed by the Legislature is not a legal basis for the Proposed Amendments. Moreover, the Proposed Amendments usurp the authority of both the Legislature which passed the governing statutes and the Courts which interpret that statutory language.

HONIGMAN

Michael Nolan
May 10, 2016
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Further, the Proposed Amendments assert that the language of MCL 125.3205 is somehow invalid until it is adjudicated by the Courts. Again, that is directly contrary to law – the Township is not a Court which can invalidate a statute, and the Township simply cannot pick and choose those statutes with which it will comply. In fact, the Proposed Amendments go so far as to expressly disregard the literal language of the applicable statute in favor of the Township's interpretation of the Michigan Zoning Enabling Act, MCL 125.3201, et seq. ("MZEA") "as a whole." This is yet another impermissible attempt by the Township to sit as a reviewing court, and is not authorized by Michigan law.

The Proposed Amendments Are Overbroad and Ambiguous

The Proposed Amendments, throughout their text, create various burdens on applicants that not only lack any legal basis, but also are so overbroad and ambiguous as to be impossible to satisfy. They also ignore the fact that the Township's authority to enact and amend zoning ordinances depends solely on the power that the State has delegated to it under the MZEA. The Proposed Amendments disregard the statutory constraints on the Township's zoning power by adding the ultra vires standard of no "unreasonable or inequitable results." The Legislature has provided the only standard for reviewing mining applications - - the well-known "very serious consequences" test. The Township lacks any power to adopt its vague, overbroad and arbitrary standards as a measure to determine whether a mining applicant has met the requirements for a special land use approval, Transitory Extraction Use Planned Development, or any other classification the Township might apply.

The Proposed Amendments Create Burdens Which Are Impossible To Meet

The Proposed Amendments create several other standards that are not only overbroad and ambiguous, but are impossible to satisfy, no matter how beneficial to the community or *de minimis* a proposed use might be. For example, an applicant is required to establish that certain persons will not be "effectively required to ... alter their activities." That is a facially impossible burden for an applicant to meet and one that has no place in any zoning ordinance. Basic planning principles recognize that the externalities of any land use can be moderated through proper site design and other controls that promote public health, safety and welfare. A standard that requires assurance that a land use will not alter a particular person's activity is the perfect example of an "arbitrary fiat" and "whimsical *ipse dixit*" that is unreasonable on its face. Compounding this issue, the Proposed Amendments functionally pre-determine the

HONIGMAN

Michael Nolan
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outcome of any application, as they create a presumption of denial for any mining application.

The Proposed Amendments Single Out Levy

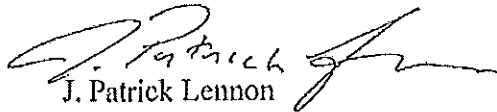
Finally, the Proposed Amendments, as further described in our letter of April 12, 2016, are directed squarely at Levy, and impact Levy in a way that is different from any other party. Levy is the only entity with a pending application for gravel mining, and the Township singled out Levy by illegally imposing a moratorium, and using that time to prepare Proposed Amendments transparently and specifically designed to prevent Levy from mining in the Township. This disparate treatment of Levy, under color of law, is not only improper, but also illegal.

Conclusion

The Proposed Amendments are facially improper and violate Levy's rights to due process and equal protection. They are also beyond the Township's statutory power to enact. They effectively prohibit mining activity in Metamora Township, give unfettered discretion to the Township, usurp the authority of the Legislature and Courts, disregard black-letter Michigan law, and are directed squarely at Levy. As discussed above, we urge the Township to reject the Proposed Amendments. We look forward to supplementing the record and our submission as part of the public hearing process with respect to the Proposed Amendments.

Sincerely,

HONIGMAN MILLER SCHWARTZ AND COHN LLP


J. Patrick Lennon

c; Michael Nolan Esq. (via e-mail)
Gerald Fisher, Esq. (via e-mail)

Memo

To: Metamora Township Planning Commission, copy to Township Counsel
From: Christopher Bzdok, on behalf of the Metamora Land Preservation Alliance
Date: May 11, 2016
Re: Comments on Part 2 Zoning Ordinance Amendments for Gravel Mining

Introduction

The Metamora Land Preservation Alliance (MLPA) submits these comments on the draft Part 2 zoning amendments for natural resource extraction. MLPA requests that the Metamora Township Planning Commission include these comments in the record of tonight's public hearing.

MLPA supports the Township's effort to update and improve its zoning regulations that deal with gravel mining. MLPA believes that the draft Part 2 amendments treat this activity with the seriousness and rigor that it requires. MLPA also supports the draft's use of a planned unit development approach for gravel-related land uses. MLPA also supports the draft's thorough articulation of standards by which the impacts of proposed mining activities will be evaluated.

This memo addresses five key areas in which MLPA has suggestions regarding the draft Part 2 amendments. These comments are offered for Township's consideration as potential improvements to the proposal. The five key areas are:

1. Noise
2. Environment
3. Economic Development and Place-making
4. Master Plan
5. Interpretations of Public Act 113 of 2011 in the Draft Ordinance

In order to keep the process moving, MLPA recommends that our suggested improvements be considered for adoption as amendments when the draft returns to the Township Board after the 30-day County review.

1. Noise

The draft amendments reference noise as a form of very serious consequence on pages 9 and 10, at Sections B(4)(d)(3) and (11):

3. The proposed Transitory Extraction Use, including haul route, shall not unreasonably or inequitably impact upon surrounding property in terms of noise, dust, fumes, smoke, air, water, odor, light, and/or vibration.

...

11. The proposed Transitory Extraction Use, including haul route, shall not cause unreasonable diesel fumes, dust, truck noise or physical/mental health issues, including along the haul route, and including within the historic downtown of Metamora Village, which is a part of the Township.¹

Noise associated with gravel trucks passing through the Village of Metamora, and passing by homes in close proximity to the road in areas of the Township on either side of the Village, will be a major impact of any new gravel mining project. Noise associated with mining and crushing activities in the rural residential areas of the Township is also a substantial impact requiring careful consideration.

While the proposed Part 2 draft references noise in the places quoted above, the draft does not set specific standards for noise. That said, there are specific noise standards elsewhere in the zoning ordinance that would apply. These standards are contained in the "Performance Standards" in Section 1517 of the zoning ordinance. These standards state that they apply to all uses in all districts. The Performance Standards include noise standards. The relevant standards are:

Agricultural or Residential zoning	60 decibels in the daytime
Office or Business zoning	70 decibels in the daytime

The allowed noise levels are lower in the evenings, but gravel operations would all take place in the daytime as the ordinance defines it (6 am to 9 pm).

The Village of Metamora has similar performance standards in its zoning ordinance, found in Section 10.18:

Residential zoning	60 decibels in the daytime
Commercial zoning	70 decibels in the daytime

¹ There is an additional reference to noise in c(3), but that appears to be in the context of traffic safety.

MLPA believes these standards represent noise levels that are too high for the community to have to accept for industrial activity like mining, crushing, and hauling. Modern, protective noise ordinances in suburban or rural residential areas use levels of 45-50 decibels in residential areas in the daytime. Further, a limit of 70 decibels is representative of noise levels in a major commercial area. It is not consistent with the Village's character or place-making goals, and will undermine those goals.²

In addition, low frequency noise – which includes heavy truck related noise – raises additional concerns because it penetrates into the interior of homes and buildings in a way that mid and high frequency noise does not. Again, current protective noise ordinances will account for this variation, and it is essential that noise requirements in Metamora do the same.

MLPA stands ready to work with the Township and the Village in any way possible to update noise requirements so that this issue can be carefully analyzed and addressed prior to any long-term decisions on new gravel mining. We understand that such efforts will need to be coordinated with the Village, but we believe the Village has every bit as much interest in protecting the community as the Township does. Updating noise requirements is essential in conjunction with the gravel mining amendments.

2. Environment

MLPA also suggests that the draft amendments include more robust attention to environmental impacts. Protection of the environment is one of the primary objectives of the Master Plan, which states at page 3-3: "Protect and enhance the environmental assets in the Township, including clean air, water, and soils, as well as woodlands, wetlands, lakes, wildlife, and viewsheds."

The draft mentions environmental impact only as a matter to balance the public interest in mineral extraction against. (See Section B(4)(e)(4) on page 10.) However, given the treatment of environmental protection in the Master Plan, we believe that environmental impacts should be included among the "impacts to other identifiable health, safety, and welfare interests in the local unit of government" that qualify as very serious consequences under Public Act 113 of 2011 (PA 113, which the draft refers to as the "Gravel Statute").

At a minimum, MLPA suggests the addition of a standard or standards in Section B(4)(d) that would require consideration of the following matters in evaluating whether very serious consequences would result from a mining proposal:

² Each 10 decibel increase represents a tenfold increase in intensity: 60 decibels is ten times as powerful as 50 decibels, and 70 decibels is ten times as powerful as 60 decibels.

- a. Net loss of wetlands
- b. Impacts to groundwater, including but not limited to:
 - o Risk of contamination to groundwater, especially drinking water, or of exacerbating existing contamination, based upon findings by environmental agencies or independent evidence;
 - o Adverse effects on the depth, volume or flow of any drinking water aquifer; and
 - o Adverse effects on groundwater feeding or recharge of streams, ponds, lakes, creeks, tributaries, or wetlands.
- c. Impacts to endangered species
- d. Air pollution
- e. Net deforestation
- f. Cumulative environmental impacts.

3. Economic Development and Place-making

Section B(4)(d)(4) of the draft amendments addresses economic development and place-making:

The proposed Transitory Extraction Use, including haul route, shall not have an adverse impact on economic development and 'placemaking' in the historic Village of Metamora, which is a part of the Township, or in other areas within a reasonable proximity.

MLPA agrees that economic development and place-making are vital considerations to address under the part of PA 113 covering other identifiable health, safety, and welfare interests in the local unit of government. We make two suggestions for potential improvement here. First, the geographic scope of this requirement should include the Township too, not just the Village. We believe that a regional plan for these issues, perhaps taking in Dryden Township and the Village of Dryden as well, is central to the future of the entire community.

The second suggestion, related to the first, is to specifically address plans and potential for future economic development that could be stifled by a mining project. We believe that the residents and business owners in this community should have control over planning its future, not a gravel mining company or companies who have only one interest at stake here.

MLPA's suggested new language for this standard would be:

The proposed Transitory Extraction Use, including haul route, shall not have an adverse impact on present or future potential economic

development and place-making in the historic Village of Metamora, Metamora Township, or in neighboring units of government.

4. Master Plan

MLPA believes it is critical to include a standard that specifically recognizes interference with the land use and development objectives of the Master Plan as a very serious consequence. The legal basis for such a standard is found in Section 5(e) of PA 113, which refers to “the impact on other identifiable health, safety, and welfare interests in the local unit of government.” The Master Plan identifies the various health, safety, and welfare interests of Metamora Township. Therefore, a standard along these lines should be added to Section B(4)(d) of the draft.

In addition, the Township should again consider changes to the Master Plan to further articulate and reinforce the inconsistency between large-scale gravel mining and the Township’s other land use goals and objectives. These changes could only bolster the Township’s defensive position should its gravel zoning amendments be subject to future court challenge. These changes should include:

- Adding a section to Chapter 3 – Goals and Objectives that includes language like the following:

GOAL: Lessen the impact of additional mineral extraction activity on Metamora Township’s other community development goals.

OBJECTIVE: Manage future gravel extraction requests so as to minimize conflicts between that use and continued rural residential and agricultural development in the agricultural zones.

- Adding language to Chapter 4 – Land Use Plan that recognizes the need to take action to protect the Township against the impacts of large scale mining operations:

PLANNING FOR FUTURE GRAVEL PROCESSING AND HAULING

As mentioned in the section above on Viewshed Preservation and Open Space Development, Map 4-1 designates most of the land area in Metamora Township as Equestrian Estates or Country Estates. Both of these designations are intended to accommodate low density residential uses that reflect the Township’s rural and equestrian character. Most of the areas designated Equestrian Estates or Country Estates are currently zoned agricultural, and gravel mining operations are currently permitted as a special use in these districts. Therefore, the same areas designated for rural residential uses with agricultural elements are also eligible for gravel mines and gravel

processing facilities. These areas represent over half the land in the Township.

Some impacts of mining on rural residential uses can be mitigated, and some are unavoidable. The unavoidable impacts include:

- Increased heavy-truck traffic on local roads, many of which have limited capacities and sight distances, narrow bridges, skewed and offset intersections, and potential for conflicts between school buses and gravel trucks;
- Potential for decreases in property values in the vicinity of a mining operation and along the haul route;
- Potential for vibrational impacts on buildings;
- Noise and dust;
- Present and future potential economic development and place-making; and
- Uncertainty among property owners and developers about the location of future gravel mining, given the large area eligible for this use.

Such a section should go on to explain the basis for a planned unit development approach to this land use, perhaps borrowing from some of the discussion in Section A of the draft zoning amendments.

5. Interpretations of PA 113

Section A of the Part 2 draft is a detailed discussion of PA 113. The discussion of PA 113 provides the basis for treating gravel mining as a planned unit development zoning classification, which again MLPA supports.

That said, there are certain interpretive statements in Section A that MLPA believes would be prudent to phrase differently. Some of these statements support not only the basis for the planned unit development approach, but also seem to offer reasons why PA 113 is bad policy or should be overturned. MLPA believes that is a legitimate discussion to have. However, we also believe that for purposes of the ordinance, it is prudent to focus the discussion of PA 113 on how best to apply that law, unless and until the law is overturned in court.

The primary areas in Section A where we would offer suggested changes are:

- Section (1) on page 2 states: “Whether there are ‘very serious consequences’ is a question ambiguous on its face.”

- We suggest it would be prudent to state instead: “Whether there are ‘very serious consequences’ is a question that requires interpretation and judgment based on local conditions and experience.”
- The reason for the change is that we believe the relatively general language of PA 113 should be viewed as a delegation of authority to the local unit of government to interpret and give meaning to the law’s very general language based on local knowledge of what is best for the community.
- Section 2(b) on page 2 states: “The Gravel Statute, read literally, authorizes approval for Transitory Extraction Use within any zoning district, even though the general rule applicable to the exercise of zoning authority is to *separate* uses based on use district classifications.”
 - We suggest it would be prudent to state instead: “The Gravel Statute authorizes approval for Transitory Extraction Use independent of zoning district, if and only if the applicant can demonstrate that no very serious consequences will result from the mining and related activities.”
 - The reason for the change is that even though it is true that PA 113 does not make gravel zoning decisions directly dependent on zoning districts, the question of whether very serious consequences will result is still locational. That is, a proposed gravel mine bordered by residential uses is more likely to result in very serious consequences – and require denial – than a proposed gravel mine bordered by industrial uses.
- Section 2(b) on page 2 goes on to state: “This literal reading of the Gravel Statute creates particular issues in cases in which a heavy industrial use (such as Transitory Extraction Use) would be approved by a court within a residential or other district, due to the direct conflict with achieving the objectives specified in the ZEA...”
 - We suggest it would be prudent to state instead: “This reading of the Gravel Statute creates particular issues in cases in which a heavy industrial use (such as Transitory Extraction Use) would be approved within a residential or other district, due to the direct conflict with achieving the objectives specified in the ZEA...”
 - The reason for the change is that we do not believe that the ordinance should suggest or imply that a court is the only entity who can make this decision. We believe that PA 113 should be interpreted to vest decisions regarding very serious consequences in the local unit of government. The applicant has a right of review in court, but that review is subject to customary judicial deference to

the fact-finding by township board and planning commission members who have knowledge of local conditions.

- The reasons for this interpretation are as follows:
 - While Section (4) of PA 113 refers to the applicant's burden in court, Section (3) does not – it just says that an ordinance shall not prevent extraction unless very serious consequences will result. Section (5) – which sets out the very serious consequences standard – applies to both Sections (3) and (4).
 - Also, crucially, nowhere does PA 113 impose a de novo standard of review. The statute specifically references the *Silva* case, which states that “Zoning regulations are presumed to be reasonable and a person challenging zoning has the burden of proving otherwise.”
- For these reasons, we think all references to a court making these decisions should be removed. This comment also includes the language about the Michigan legislative branch directing the Michigan judicial branch in Section B(3)(b) on page 5. Metamora Township will make these decisions, with a right to review in court, subject to the same deference to the community's decision that is applied in all zoning cases.
- Section 2(d) on page 3 states: “Authorization and operation of a heavy industrial Transitory Extraction Use operation in residential or other zoning districts creates an impossible regulatory challenge for the Township, particularly in comparison with the authorization of nearly any other use considering the distinct impacts of the Transitory Extraction Use on the immediate surrounding area, as well as the area along the haul route utilized by the Transitory Extraction Use.”
 - We suggest it would be prudent to state instead: “Authorization and operation of a heavy industrial Transitory Extraction Use operation in residential or other zoning districts poses a challenge for the Township, considering the distinct impacts of the Transitory Extraction Use on the immediate surrounding area, as well as the area along the haul route utilized by the Transitory Extraction Use.”
 - The reasons for the change are outlined in the discussion of the other changes noted above: the determination of whether very serious consequences will result is still vested in the local authorities; the question of whether those consequences will occur is still locational; etc.

- Section 2(e) on page 3 states: “Approval of a heavy industrial Transitory Extraction Use operation in residential or other zoning districts is directed by a literal reading of the Gravel Statute without expressly stated regard for, and in conflict with, a community’s Master Plan in accordance with which zoning is to be established.”
 - We suggest it would be prudent to omit this provision.
 - There are two reasons for the suggested change:
 - First, we believe that the Master Plan can play an important role under Section 5(e) of PA 113, for reasons discussed in the Master Plan section of this memo, above.
 - Second, the referenced statement seems unnecessary as a basis for treating gravel extraction activities as a planned unit development use under the zoning amendments.

Conclusion

MLPA appreciates the opportunity to provide comments on the draft zoning amendments. We support what the Township is attempting to do, and offer these comments as an effort to improve on what is already a very substantial draft. We reiterate the offer – and desire – to work with the Township on amendments to address these suggestions during the 30-day County review, for consideration by the Township Board upon the conclusion of that period.

METAMORA TOWNSHIP
PLANNING COMMISSION

NOTICE OF PUBLIC HEARING ON
PROPOSED ZONING ORDINANCE TEXT AMENDMENT

PLEASE TAKE NOTICE that the Metamora Township Planning Commission will hold a public hearing on Wednesday, May 11, 2016, beginning at 7:00 PM, at the Metamora Lions Club Hall, 3790 N. Oak Street, Metamora, MI 48455. The purpose of the hearing will be to receive comments on a proposed text amendment to the Metamora Township Zoning Ordinance, Ordinance No. 23. The proposed text amendment is intended to reconcile the provisions of MCL 125.3205, (Gravel Statute), that directs that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property in the entire Township if it is demonstrated that no very serious consequences would result from the extraction of those natural resources, with the Zoning Enabling Act, MCL 125.3201, *et seq.*, as a whole; to create a new zoning classification to be known as the Transitory Extraction Use Planned Unit Development zoning classification ("Transitory Extraction Use PUD"); to establish the procedure and standards for application and approval of a Transitory Extraction Use PUD for specific properties; to specify the effect of such classification; and to repeal certain provisions of the existing Zoning Ordinance.

A complete copy of the text of the proposed text amendments may be examined at the office of the Township Clerk, Monday through Thursday except holidays, during regular Township Business hours. Written comments may be sent to the Planning Commission, at the address above, prior to the hearing. Oral comments will be taken during the hearing.

Metamora Township will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed material being considered at the meeting, to individuals with disabilities at the meeting upon a seven day notice. Individuals with disabilities requiring auxiliary aids or services should contact the Metamora Township Clerk's Office at the address above or by calling 810.678.2237.

This notice is published pursuant to the requirements of Michigan Public Act 110 of 2006, as amended.

Jennie Dagher, Clerk Township of Metamora

METAMORA TOWNSHIP
PLANNING COMMISSION AGENDA
11 MAY 2016 7:00 PM
METAMORA LIONS CLUB HALL
3790 N. Oak Street, Metamora, MI 48455

Pledge of Allegiance

Roll Call

Hearings:

A: Public Hearing on a proposed text amendment to the Metamora Township Zoning Ordinance, Ordinance No. 23. The purpose of the hearing will be to receive comments on a proposed text amendment to the Metamora Township Zoning Ordinance, Ordinance No. 23. The proposed text amendment is intended to reconcile the provisions of MCL 125.3205, (Gravel Statute), that directs that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property in the entire Township if it is demonstrated that no very serious consequences would result from the extraction of those natural resources, with the Zoning Enabling Act, MCL 125.3201, *et seq.*, as a whole; to create a new zoning classification to be known as the Transitory Extraction Use Planned Unit Development zoning classification ("Transitory Extraction Use PUD"); to establish the procedure and standards for application and approval of a Transitory Extraction Use PUD for specific properties; to specify the effect of such classification; and to repeal certain provisions of the existing Zoning Ordinance.

Approval of Agenda

Approval of Minutes

Public Comments (on items not scheduled on this agenda)

New Business:

A: Consideration of a decision of public hearing on the purpose of the hearing will be to receive comments on a proposed text amendment to the Metamora Township Zoning Ordinance, Ordinance No. 23. The proposed text amendment is intended to reconcile the provisions of MCL 125.3205, (Gravel Statute), that directs that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property in the entire Township if it is demonstrated that no very serious consequences would result from the extraction of those natural resources, with the Zoning Enabling Act, MCL 125.3201, *et seq.*, as a whole; to create a new zoning classification to be known as the Transitory Extraction Use Planned Unit Development zoning classification ("Transitory Extraction Use PUD"); to establish the procedure and standards for application and approval of a Transitory Extraction Use PUD for specific properties; to specify the effect of such classification; and to repeal certain provisions of the existing Zoning Ordinance.

Unfinished Business:

A: Special Use Permit Language Approval – Victory Custom Trailers

Communications and / or committee report

Matters for discussion from the commission members

Township Planners Report – Doug Piggott/Rowe Professional Services
Township Planning Coordinator Report -

Adjournment