

DRAFT

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

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

Also Present: See attached.

Approve Agenda

0097-15

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

Approve Consent Agenda

0098-15

Motion by Bedford, supported by Woodley, to approve the consent agenda as presented. Approval of regular meeting held November 9, 2015, approval of November 2015 bills which cover checks #22700 thru #22845 for a total amount of \$195,139.74 which includes Township payroll and bills (also includes fire air packs at \$105,120.00) and checks #2406 thru #2410 for the amount of \$2,327.31 which includes Building Department payroll and bills. The total amount of Township and Building payroll and bills for November 2015 is \$197,467.05. Motion carried, all voting aye.

Public Time:

Commissioner Eady stated that the total cost county wide to run the special election on November 3, 2015 was \$121,741.01.

Fire Department Business:

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

0099-15

Motion by Woodley, supported by Derderian to approve rehire of Tyler Bozigar to the fire department. Motion carried, all voting aye.

0100-15

Motion by Derderian, supported by Bedford to approve sending Dan Sauve to EMT School at a cost of \$800.00. Motion carried, all voting aye.

Chief Mallett went over the police report with the Board. Chief Mallett also stated that Officer Amy Timmer turned in her resignation to be effective January 1, 2016. Officer Timmer has been an employee for the Township for 19 years and we wish her the best on her retirement.

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Township Business:

Attorney Bzdok reviewed the three main elements on the proposed Gravel Master Plan and zoning amendments which were submitted to the Planning Commission Board by the MLPA. These proposed changes were approved by the Planning Commission and directed to the Township Board for their approval, which no action has been taken. Attorney Bzdok stated that they are asking the Board for action to be taken on the first and third elements and no action on the second element, the gravel overlay district at this time.

Township Attorney Mike Nolan, addressed the Board and offered information regarding the current state of the law regarding gravel mining and zoning issues, noted the blame/credit for the issues created by PA113 lies with the Michigan legislature which passed this amendment to the Zoning Enabling Act, and that as a result, advised the Board not to take action with regard to the proposed amendments offered by Mr. Bzdok at this time. To assist the Board in the analysis of the complex issues surrounding gravel mining in our community, Mr. Nolan publicly announced that the Board has retained attorney Gerry Fisher to serve as co-counsel with attorney Nolan.

Next, attorney Nolan proposed that the Board schedule a joint meeting of the Township Board and the Planning Commission at the next regularly scheduled Township Board Meeting to be held on January 11, 2016.

Attorney Gerry Fisher will address both Boards on gravel mining statutory standards, which the Township Board agreed to do.

Attorney Nolan then addressed the Board requesting that they consider the adoption of a resolution "Establishing a Moratorium on Gravel Mining Applications in Order to Consider New Statutory Standards" which follows:

0101-15

STATE OF MICHIGAN, COUNTY OF LAPEER
TOWNSHIP OF METAMORA

RESOLUTION ESTABLISHING MORATORIUM
ON GRAVEL MINING APPLICATIONS IN ORDER TO CONSIDER NEW STATUTORY STANDARDS

RECITATIONS:

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

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During the past several years, there have been very material modifications in the law relating to Township review and approval of applications seeking the right to undertake mineral mining in Michigan, including gravel mining.

Until 1982, the law on this subject had been uncertain in terms of the standard of review applicable. In that year, the Michigan Supreme Court decided *Silva v Ada Township*, 416 Mich 153 (1982), in which the Court attempted to establish a rule of law on the review of mineral mining applications. However, there was controversy on this decision. On July 15, 2010, in *Kyser v Kasson Township*, 486 Mich 514 (2010), the Michigan Supreme Court concluded that the rule of law stated in *Silva* had been improperly decided, and held that the review of mineral mining applications should not be based on the rule in *Silva*.

After the 2010 *Kyser* decision, the Michigan Legislature has on two occasions amended that part of the Michigan Zoning Enabling Act to expressly address mineral and related mining in MCL 125.3205, with amendments being effective in 2011 and 2013.

Such new law has included special legislation applicable to the review and approval of applications submitted to local governments seeking approval of gravel mining.

MCL 125.3205(3) through (5) [collectively, "Gravel Mining Standards"], created by such new legislation, specifies 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.

(6) Subsections (3) to (5) do not limit a local unit of government's reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by part 632 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However, such regulation shall be reasonable in accommodating customary mining operations.

The Gravel Mining Standards have materially altered the review and approval of applications for gravel mining in relation to the law announced in *Kyser v Kasson Township*, 486 Mich 514 (2010), and appear to represent a legislative attempt to reverse the Michigan Supreme Court on the interpretation of law and perhaps the constitution.

During the period after the enactment of the Gravel Mining Standards by the Michigan Legislature, and until recently, the so-called "great recession" caused the reduction in the need and demand for gravel in Michigan, and the number of requests for approval of gravel mining uses has not been significant.

Accordingly, the attention of Metamora Township and many other Michigan communities has not been focused on the Gravel Mining Standards.

The Edward C. Levy Co. ("Levy") apparently believes that this period of low demand for gravel resources may be changing, and has filed with Metamora Township an application seeking approval for gravel mining on hundreds of acres of land, indicating in its application that it projects that the mining will last some 30 years, subject to market conditions.

Levy has stated to Township representatives that the Township's ordinances governing the consideration of gravel mining applications are unlawful, or contain inapplicable and invalid provisions, inconsistent with the Gravel Mining Standards.

Examination of the Township's ordinances in light of the significant swings in Michigan law relating to the review of applications for gravel mining (outlined above), and considering the enactment of the Gravel Mining Standards, the Township Board has found and determined that it would be of critical importance to the public health, safety, and welfare of the Township and its residents to study its ordinances with the view of determining whether amendment of the Township Zoning Ordinance with regard to gravel mining is necessary or appropriate.

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Accordingly, the Township Board finds that it is necessary for the Township to study the Gravel Mining

Standards and consider amending its Zoning Ordinance to accommodate such new standards and procedures, and finds that it should direct the Township Attorney to lead the effort to pursue such study and report to the Board a recommendation on amending the Zoning Ordinance within 60 days following the adoption of this Resolution.

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 draft ordinance provisions, consider the implications on nearby communities, conduct public hearings and provide members of the public with adequate opportunity to examine this issue and provide input to the Township, it is anticipated that the study and actions to consider amending the Zoning Ordinance to conform with the Gravel Mining Standards will require at least four (4) months.

The Township cannot feasibly process and review applications for gravel mining until such amendments have been prepared, considered, and enacted.

NOW, THEREFORE, IT IS RESOLVED that the Township Board of Metamora Township hereby adopts a four (4) month moratorium on all requests seeking approval of gravel mining in Metamora Township, and during this four (4) 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 Township Attorney to lead the effort to pursue a study of the need for, and best means of, conforming the Zoning Ordinance to the Gravel Mining Standards, and report the findings and recommendations from this study to the Township Board within 60 days following the adoption of this Resolution.

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:

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.

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.

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.

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.

Motion by Trustee Derderian, supported by Trustee Bedford to adopt resolution as presented.

Roll Call Vote:

Ayes: Trustee Derderian, aye; Trustee Bedford, aye; Treasurer Carolyn Woodley, aye; Supervisor Dave Best, aye; Clerk Jennie Dagher, aye.

Nays: None

Absent and Excused: None

RESOLUTION DECLARED ADOPTED THIS 14TH DAY OF DECEMBER, 2015.

By: _____
JENNIE DAGHER,

Clerk for the Township of 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 14th day of December, 2015.

Dated: _____

JENNIE DAGHER, Clerk

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Finally, attorney Nolan indicated that the correspondence received by the Township from Edw. C. Levy's attorney, Mr. Pat Lennon, of Honigman Miller Schwartz and Cohn LLP, dated December 11, 2015 and September 23, 2015, respectively, should be recognized and received into the record which are included to the minutes of this meeting in opposition to the proposed amendments to the Master Plan and Zoning Ordinances submitted to the Planning Commission and the Township Board by Mr. Bzdok which follows....

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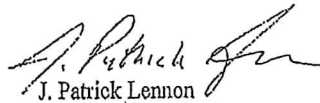
Beyond possible impacts on our client, we would also suggest that you confirm you have complied with the appropriate process. We have not had the opportunity to fully investigate these matters, but trust you will consider the possible issues that may arise as a result of the 17 month delay. There may be questions or issues about expiration of the Planning Commission approval, the rights of adjoining governmental units to new notices, and whether the Amendments must be returned to the Planning Commission. We trust the Township Board will fully analyze and confirm they are in compliance with these issues/requirements before considering and/or approving the Amendments.

We hope the foregoing discussion and the enclosed letter are of assistance. We look forward to participating in the Township Board meeting and further sharing our thoughts. In the meantime, we understand this and the attached letter will be included in the record and provided to the members of the Township Board. Please let me know as soon as possible if that will not be the case.

As always, thank you for your consideration of the positions set forth herein. We are happy to answer any questions and look forward to seeing you on Monday evening.

Sincerely,

HONIGMAN MILLER SCHWARTZ AND COHN LLP


J. Patrick Lennon

Enclosure

cc: Michael Nolan (w/ enc via e-mail)
L. Steven Weiner
Richard Zanotti
Bob Doyle

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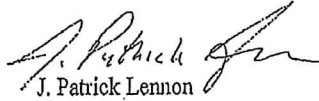
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As always, thank you for your consideration of the positions set forth herein. We are happy to answer any questions and look forward to seeing you on Monday evening.

Sincerely,

HONIGMAN MILLER SCHWARTZ AND COHN LLP



J. Patrick Lennon

Enclosure

cc: Michael Nolan (w/ enc via e-mail)
L. Steven Weiner
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Bob Doyle

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rezoning to the Overlay District and obtaining a special land use approval) also violates the exclusionary zoning provision, other provisions of the Michigan Zoning Enabling Act and other applicable laws.

The idea that the Amendments (or more particularly the ordinances) would not exclude mining because they grant Gravel Overlay District status to existing mines is legally meaningless and can be better explained as an attempt to disguise complete exclusion. See e.g. *Eveline Twp v H & D Trucking Co*, 181 Mich App 25 (1989). The approach ignores the fact that existing mines would be entitled to legal non-conforming use status even if they were not part of a Gravel Overlay District. As such, their so-called "inclusion" is nugatory and does not protect the Amendments (or any ordinances enacted pursuant thereto) from PA 113, prohibitions against exclusionary zoning or other challenges.

The Planning Process Should be based on the Location of Minerals and Should Include Input from Mining Professionals

The planning approach that the Township has used to this point in the process is flawed. As we pointed out in our recent meeting, customary mining related land planning typically begins with an analysis of where the minerals are located, after which zoning districts and specific mining ordinances are tailored to the designated locations. This approach enables land owners, neighbors and others to plan, invest and develop reasonable expectations regarding present and future uses. Unfortunately, the customary location based planning approach has not been used to this point. Instead, the Amendments ignore the location of the minerals and bestow Township leaders with the discretion to approve or deny any future mines through their power to grant or deny a proposed Overlay District. Even when viewed in its most favorable light, this approach creates uncertainty, has the potential for inconsistency (and mischief), eliminates planning opportunities and excludes new mines in the Township. When viewed in a more skeptical light, the approach can be seen as total exclusion of mining that attempts to veil itself as planning. As discussed at our recent meeting, whatever flaws may have occurred to date, the Township still has the opportunity to (1) determine where the minerals are located, (2) tailor the Amendments (and any ordinances) to the identified locations, and (3) develop a plan that balances interests, conforms to applicable law and that can be relied on by landowners, neighbors and the community at large.

In addition to failing to consider the location of the minerals in its planning process, it also appears that the Township has received disproportionate input, participation and influence from anti-mining interests and virtually no input or participation from mining professionals. We have learned that the self-titled Metamora Land Preservation Alliance ("MLPA") has been the driving force behind imposition of the Amendments. The MLPA, an organization that is openly opposed to mining, even produced a Memo to Metamora Township dated August 24, 2012 which proposed the language for the Amendments and the zoning ordinances that would carry them out. We note that the substance of the current Amendments is essentially the same as the MLPA's desired language. The Memo also openly targeted limitations on mining

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and brazenly (and inaccurately) suggested approaches directly intended to circumvent PA 113 under the guise of complying with it. In addition, one member of the planning commission expressly understood that the true intent of the Memo was to ban mining. See March 13, 2013 Planning Commission Minutes p. 2. Beyond its Memo to the Township, the MLPA has circulated communications and letters that also contain inaccurate information, misstate the law and lack credibility. Given the MLPA's stated goals, the Township would be unwise to rely on information or legal positions the MLPA "offers" in support of the Amendments.

The apparent influence of the MLPA is exacerbated by the lack of input and participation from those that represent mining interests (at least prior to Levy's recent involvement). To this point, there has been no counter-balance to the anti-mining positions of the MLPA and no "check" on its legal positions or the credibility of its information. This "vacuum" has resulted in a process that has taken the Amendments well beyond compliance with applicable laws. Fortunately, the Township still has an opportunity to address the shortcomings and involve mining professionals in the process. Mining professionals have the most current and complete information, the most at stake and can identify the location of the mineral resources. All of this information and input can be used to develop the most effective and balanced plans. The failure to consider these perspectives and use this information would not only lead to an inferior plan (and Amendments) but also could raise questions about the legality of the process and jeopardize its results. As discussed further herein, we hope the Township will consider information produced by mining interests (just as it considered the Memo and other information produced by the MLPA) and will modify the Amendments (and zoning ordinances) in a way that balances the interests and conforms to applicable law.

Ongoing Litigation and Specific Impact on Levy's Current Interests in Metamora Township

The Amendments, and all of the Township discussion related to them, have also overlooked a very important fact: Levy and the Township remain parties to ongoing litigation related to the denial of Levy's rezoning application of a portion of the so-called "Boy Scouts Property."¹ The Township is advised that the litigation is active and considers its application to rezone the Boy Scouts Property to be pending (albeit presently confined within the jurisdiction of the Circuit Court). Levy expects the Township to comply with the direction from the Michigan Court of Appeals holding which overturned the dismissal and confirmed Levy's right to proceed with the litigation. In the interim, none of the Amendments should apply to either Levy or the Boy Scouts Properties. The application to rezone the Boy Scouts Property was submitted long before the Amendments were contemplated and that application remains the subject of ongoing litigation. Indeed, the MLPA's proposed Master Plan Amendments directly reference the Boy Scout's 2005 application as a driving force for the Amendments.

¹ See Edward C. Levy Company v Metamora Township Lapeer Circuit Court Case No. 06-037672-CZ

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If approved, the Amendments (and any zoning ordinance modifications) would also essentially eliminate Levy's existing right to mine (as a special land use) the parcel known as the "Guy Property." If the Amendments (and zoning ordinance modifications) are imposed, the special land use rights would be revoked, the property would be rezoned (as discussed in detail above) and Levy would be required to attempt to zone the property back and obtain a special land use permit in order to mine it. The problems and issues inherent in re-zoning to Gravel Overlay District are also discussed in detail above.

In addition to the failures to comply with PA 113, violations of law prohibiting exclusionary zoning and failure to comply with proper administrative processes, the Township should be aware of other potential infringements that could trigger legal rights. For example, the elimination/revocation of a permitted use (such as mining even if only by special land use) can amount to a taking of property which would require compensation. Michigan law makes clear that a government action which interferes with a land-owner's distinct investment-backed expectations (among other factors) can be treated as a taking. In this particular case, the damages that could arise from such a taking could be extraordinary. In addition, the imposition of the Amendments (and amendments to the zoning ordinance), under these circumstances could form the basis for claims under Michigan and Federal constitutions including damages under 42 USC 1983 for the violation of federal constitutional rights. The specific circumstances and conduct that form the basis for any such claims might also justify claims for financial damages from the Township. We obviously hope to avoid all claims of any kind and would prefer to focus on ways the parties can work together.

**The Amendments Should be Modified to Conform to Applicable Laws
and to Balance the Interests of the Stakeholders**

At the end of the day, Levy genuinely hopes to avoid litigation (and any conflict for that matter) with the Township and/or the MLPA. At the same time, the Amendments threaten Levy's business interests and legal rights. The Township should receive input from mining professionals and make modifications to the Amendments (and any ordinances that carry them out) that would conform them to applicable laws and also balance the interests of the stakeholders.

As discussed, Levy is comfortable reaching out to MLPA leaders and other stakeholders in an attempt to establish consensus as to certain modifications to the Amendments. We look forward to undertaking these efforts and will do so in good faith and with the best intentions. At the same time, we are well aware of the MLPA's stated goals, the approach it has taken to date (which previously excluded mining interests), its erroneous interpretation of applicable law and the strident positions taken in its Memo. Given the circumstances, we would be surprised if the MLPA changes course proves to be sensitive to mining interests or the requirements of applicable law. Nonetheless, we genuinely hope we can find common ground on certain issues

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that lead to reasonable modifications to the Amendments that resolve our differences. We look forward to the next steps in the process and will keep you informed as it moves forward.

If these efforts prove futile, the Township is reminded that it must still consider the impact of its decisions on all of the landowners in the Township, the requirements of applicable law and Levy's specific legal rights. We expect the Township to give appropriate weight to the credible information that is being (or will be) provided by mining professionals and to make its determinations accordingly. We hope we can reach consensus on these matters with all of the stakeholders, but even if that is not possible, we trust that the Township will address the deficiencies in the current form of the Amendments and develop modifications that would balance the interests of the stakeholders and comply with applicable law.

Once again, we appreciate your time and participation in our recent meeting. We also appreciate your consideration and attention to the thoughts and positions set forth herein. We trust that this information will be provided to the Township and included in the record. As always, please do not hesitate to contact us with any questions.

Sincerely,

HONIGMAN MILLER SCHWARTZ AND COHN LLP


J. Patrick Lennon

cc: L. Steven Weiner
Susan K. Friedlander.

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Following the movement of the Resolution by Trustee Derderian and the support of the Resolution by Trustee Bedford, attorney Lennon was recognized from the floor to allow him to state his formal objection the Resolution presented.

Supervisor Business:
Nothing at this time.

Adjourn:
0102-15

Motion by Derderian, supported by Bedford to adjourn Metamora Township Board Meeting at 7:26 p.m. Motion carried, all voting aye.

Jennie Dagher, Clerk
Recording Secretary

Dave Best, Supervisor

CC: All Board Members
Persons requesting same

DRAFT

Metamora Township Board Meeting

Sign up sheet

December 14, 2015

Please Print

NAME	COMPANY	ADDRESS
Dave (PA) Fire/County		3648 Merritt Lake Dr. Metamora
GEORGE NASH		3488 METAMORA RD METAMORA
Pgt Lennon Hongman		350 E Mich Ave Kalamazoo MI
Sarah Somes Levy		51445 w. 12 mile rd., Wixom, MI
Wes WICKHAM		2517 CLARK ROAD LAPEER
Beal FALBOM	LEVY	
Bob Doyle		201 Depot Ann Arbor 48104
OLIVE BEDFORD		Metamora
Kathy Jacob		145 W SUTTON RD, Metamora
MIKE JACOB		145 W SUTTON RD, METAMORA
DEMIS CALLEWAERT		4600 GARDNER, METAMORA
Sarah Champion		2250 Dryden Rd "
Rob Champion		" "
ANDREW BRANDERS		1600 E. DRYDEN RD.
David Horington		2145 Hendrie
Linda Egeland		1 East High Street Metamora
Ed Smau		4267 Gardner Rd Metamora

Metamora Township Board Meeting

Sign up sheet

②

December 14, 2015

Please Print

NAME	COMPANY	ADDRESS
<i>[Signature]</i>		412650 Lakewood MET.
Bob Bityk		4687 Blood Rd
Gretchen Bityk		4687 Blood Rd
LINDA BLAIR		217 STOCK ROAD 48455
CRAIG SIZEMORE		3386 METAMORA RD
Emory & Christina Clark		3809 Wilber Rd.
Don Blair		217 STOCK RD
<i>[Signature]</i>		2890 Wilber. 48455
WINDY MOORE		2389 OLDS
David Mallett		M.T.P.D.
Keith Kanasty		500 Hawk High Hill
Gymn Bentes		3879 Baldwin
Mike Novak		477 Shalimar Rdg
Kathleen Whitmer		3897 N. Oak
Peter Gilles		2851 Casey
LORI BLAKER		4590 Barber

Metamora Township Board Meeting Sign up sheet

December 14, 2015

Please Print

NAME

COMPANY

ADDRESS

Lucy Coole Dougherty		Metamora
David Eddy		7409 Metamora Rd
Davey Warner		
Robert Kahley		4111 Blood Rd
Arac Forster		365 Stock Rd
Jane Schade	1466 Sutton	Metamora