



## **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

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### **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.<sup>1</sup>

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

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<sup>1</sup> There is an additional reference to noise in c(3), but that appears to be in the context of treaffic 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.<sup>2</sup>

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:

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<sup>2</sup> 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.