

[Logout](#) [Profile](#) [Get News Updates](#) [Subscribe](#) [Calendar of Events Submission](#) [Contact Us](#) [Contest Rules](#) [View PDF Edition](#)

mihomepaper.com

The County Press

Locally Owned – Locally Connected – Locally Committed

VIEW Newspapers

Choose your paper to read now ▾

810-664-0811

2016-08-31 / Front Page

Judge affirms Metamora Twp. assertion that it had authority to file suit against AAOM

BY JEFF HOGAN

810-452-2640 • j

hogan@mihomepaper.com

LAPEER — On Monday Metamora Township won a couple of legal battles in its effort to block additional large-scale gravel mining in the community, though the war is far from over and there are more skirmishes on the horizon.

Attorneys for American Aggregates of Michigan (AAOM) that seeks to mine gravel from the D-bar-A Boy Scout Ranch in Metamora Township had two motions before 40th Circuit Court Judge Nick Holowka. He denied both, yet AAOM counsel said this week's rulings have no impact on the company's suit moving forward and that they will ultimately prevail.

AAOM attorney Michael Hindelang had asked the court to consider a summary disposition and reject a lawsuit filed by Metamora Township on July 26, claiming the township didn't have the authority to challenge the merits of the so-called "gravel statute" that AAOM says allows the company and the Boy Scouts of America to proceed with an application to mine sand and gravel.

Judge Holowka also knocked down Hindelang's assertion that AAOM was immune from litigation by the township in its quest to win approval to mine gravel from the D-bar-A site for the next 30 years. Holowka also maintained an earlier issued status quo order — meaning everything remains as is until the next court hearing on Sept. 12. As a result, AAOM and Ajax Paving — also interested in obtaining a permit for a gravel operation in the township — cannot proceed with plans to submit a gravel mine application.

Ajax Paving has expressed an interest to join and support AAOM's suit and assertion that Metamora Township is out of its league and doesn't have the authority to block a state law the companies believe gives them the green light to mine gravel from the D-bar-A property. Judge Holowka in two weeks will consider that request by Ajax Paving as well as a show-cause hearing as the case moves forward.

"I'm very happy. This is a very good ruling for the township," said Metamora Township attorney Mike Nolan. "The court did a thorough job in its review of case law and we're very pleased."

Hindelang, while also complimentary of Judge Holowka's review and grasp of the complex nature of the case history, was disappointed by his conclusion.

"What he did today has nothing to do with the merits of the case. We're confident that the law supports our case," said Hindelang afterward.

Nolan argued that Hindelang's citations of case law supporting his claim were irrelevant and did not apply to the specifics regarding the township's assertion in its legal challenge to protect the community from the adverse effects 200 gravel trains per day through Metamora Township will have on the community.

Hindelang and AAOM said the township had no legal precedent and it lacked standing to be before the court.

Yet Judge Holowka cited extensively from previous cases, including from the Michigan Supreme Court, that Metamora Township is a municipal corporation and a subdivision of state government and therefore has the authority to challenge the Michigan gravel statute.

Township legal counsel including an expert in gravel mine law in Michigan, Gerald Fisher, have contested that the township is at the whim of a state law they argue was written by and for the advantage of gravel and paving companies over the jurisdictions of local municipalities who may oppose such operations in their communities.

A look back

AAOM, along with the Boy Scouts' Michigan Crossroads Council, applied for a zoning change that would allow gravel mining at the Boy Scout ranch about a mile from the intersection of Oak and High streets in historic Metamora. AAOM proposes to mine 30 million tons of sand and gravel from a 497-acre parcel on the Scout property, and use an access drive that would put upwards of 200 gravel trains per day onto Dryden Road.

To allow it more time so it could study the issue, Metamora Township officials initially imposed a four-month moratorium on new gravel mine applications in the community. The Village of Metamora, as well as Dryden Township, supported the township's moratorium that was authorized for a second extension.

The township has four gravel mines currently in operation, including the busy John R Sand & Gravel pit located off Dryden Road — not far from where AAOM seeks to develop a mine site.

The Scouts and AAOM compiled more than 1,000 pages of studies whose conclusions were posted online to show the gravel mine application meets state and federal guidelines to protect the local environment.

The mining controversy is not new to Metamora Township. In 1984 the Scouts first approached the township to remove gravel from the D-bar-A Ranch for what it said would be a lake. They hired Ajax Paving at that time to remove the gravel.

The township turned that request down, which resulted in a federal lawsuit filed by the Scouts. They reached an agreement with the township after they appealed the decision. The agreement made in 1991 between the township and the Scouts stated there would be no gravel mining at the site for 20 years.

The Scouts came back to the township board in 2005 with another gravel player — Liberty Sand & Gravel Co., which, like AAOM, is a subsidiary of the Edw. C. Levy Co. The Scouts again wanted to change the zoning of their camp from recreational to agricultural, which would allow a 283-acre mine proposed at the time. That proposal prodded the formation of the Metamora Land Preservation Alliance. The citizens group, still active today, distributed a petition against it that received 1,200 signatures.

The township rejected the proposed mine for the second time and the Boy Scouts again filed suit in Lapeer County Circuit Court.

The court sided with the township but, after the Scouts filed an appeal, the Michigan Court of Appeals remanded the case back to the lower court in 2009. The Scouts

allowed the case to lapse after the Great Recession killed demand for large volumes of sand and gravel necessary in road and building construction.

With a rebound in the economy, the Scouts and AAOM returned to Metamora Township in November 2015 for another bid to mine gravel from the D-bar-A property.

[Return to top](#)

Copyright © 2009-2016 The County Press, All Rights Reserved