



December 9, 2015

The Board of Trustees
Metamora Township
730 W Dryden Rd
Metamora, MI 48455

Via email to Township Clerk Jennie Dagher:
clerk@metamoratownship.com

RE: Gravel Master Plan and Zoning Amendments

ATTORNEYS

PARTNERS:

James M. Olson
Christopher M. Bzdok
Scott W. Howard
Jeffrey L. Jocks
Ross A. Hammersley
Kate Redman

OF COUNSEL:

William Rastetter
Michael H. Dettmer
Lawrence I. McKay III
Joan S. McKay

TRAVERSE CITY:

420 E. Front Street
Traverse City
Michigan 49686
231.946.0044
envlaw.com

FRANKFORT:

427 Main Street
PO Box 1782
Frankfort
Michigan 49635
231.352.4412

Dear Supervisor Best and Members of the Township Board:

I write to you on behalf of the Metamora Land Preservation Alliance (MLPA), to reintroduce master plan and zoning changes we proposed a couple years ago. Some of those changes are even more important now that the Edward Levy Company has once again applied to mine the Boy Scout property. Therefore, MLPA urges you take at least some of our proposals up again, prior to making a decision on the Levy application. We look forward to discussing these items at your December 14th meeting.

First, a brief history. In August of 2012, at the invitation of the Planning Commission, MLPA submitted proposed changes to the Township Master Plan and Zoning Ordinance. The intent of the changes was to better regulate gravel mining, and to bring the Township's zoning ordinance up to date with Public Act 113 of 2011 (PA 113). The proposed changes had three main elements:

- First, MLPA proposed to strengthen the Master Plan by more specifically describing the potential impact of increased mining on other Township planning goals.
- Second, MLPA proposed to create a specific gravel overlay district where mining would be allowed, instead of allowing it on all property in the Agricultural zoning districts.
- Third, MLPA proposed to incorporate the standards of PA 113 into the Township Zoning Ordinance, to be used when deciding a request to rezone property for mining or a request for a Special Land Use Permit to mine.

At the advice of the Township Planner, the Planning Commission decided to take up the Master Plan amendments first, then the zoning amendments. In July of 2013, the Planning Commission approved the Master Plan amendments. Those amendments went to the Township Board next, but the Board has never taken action on them.

We urge you to take action on the Master Plan amendments now, and to ask the Planning Commission to take action on some of the zoning amendments. Specific to the zoning amendments, we urge you to incorporate the standards of PA 113 into the process for deciding requests to rezone property for gravel mining and requests for special land use permits for mining.

Incorporating the PA 113 standards into your ordinance better protects the Township. PA 113 does not say that its standards may only be evaluated by a court – and not by a local unit of government acting under its zoning code. If the Township Planning Commission and Board apply standards in your ordinance to decide whether very serious consequences would result from the proposed mining operation under PA 113, it is more likely that a court would defer to the Township’s judgment on those questions in a subsequent legal challenge. This interpretation is supported by the Michigan Supreme Court’s decision in the *Kyser v. Kasson Twp.* case that led to the passage of PA 113:

[T]he no very serious consequences rule requires courts to engage in an expansive and detailed analysis of land-use considerations as to which they have no particular expertise. To assess the myriad factors that are relevant to land-use planning in hundreds of communities across this state requires a decision-making process for which the judicial branch is the least well-equipped among the branches of government. . . . As this case demonstrates, the no very serious consequences rule unavoidably requires a trial court to arrogate unto itself responsibilities akin to that of a super-zoning commission.

* * *

It is the role of the Legislature to establish natural resources policy, and the role of local legislative bodies to plan for and regulate land use in their communities in accordance with the directions of the Legislature. Because the “no very serious consequences” rule compels the judiciary to interject itself inappropriately by second-guessing these legislative decisions, we believe that this rule is incompatible with the constitutional separation of powers.¹

While the Legislature may have gone back to the standards of the *Silva v. Ada Twp.* case in PA 113, the Legislature did not overrule the Michigan Supreme Court’s interpretation of the constitutional separation of powers as it relates to zoning. Courts read statutes to be constitutional where possible. Under the Michigan Supreme Court’s interpretation, it is unlikely that PA 113 would be interpreted to require a court to apply the very serious consequences standards without any

¹ *Kyser v. Kasson Twp.*, 486 Mich. 514, 535-538 (2010).

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deference to the judgment of the local government. If the Township adopts the PA 113 standards into the zoning ordinance, it is more likely that courts will apply the same deference to the local government's judgment that it applies to other zoning decisions.

The importance of adopting the standards of PA 113 into your zoning ordinance is demonstrated by Levy's application. In Submittal Document I.C, Levy takes the radical legal position that the company does not need rezoning or SLUP approval to mine the properties at all, and is only applying for Township approval "for administrative convenience." Levy offers no legal precedent to support its position, and such an interpretation is clearly at odds with the Michigan Supreme Court's separation of powers opinion described above. But the fact that Levy is taking such a radical position shows the importance of strengthening your Master Plan and adopting the PA 113 standards into your ordinance now.

My last comment is that there is still time to do this. Levy has just filed its application. The Planning Commission already approved the Master Plan amendments back in 2013. Michigan law states that in the absence of bad faith, vested rights, or unjustifiable delay, the rules that apply to a zoning decision are the ones in effect at the time of the decision on an application, not the ones in effect when the application is submitted.² It is common practice across the state for local government to make revisions to zoning in order to better review and decide a pending application for zoning approval.

In summary, we urge you to finish what you started in 2013: adopt the changes in the Master Plan; incorporate the PA 113 standards into your zoning ordinance; and thereby put the Township in the strongest possible position moving forward. The concept of a Gravel Overlay District can be revisited later. Thank you for your consideration. I look forward to seeing you next Monday night.

Sincerely,



Christopher M. Bzdok

xc via email: Doug Piggott
Mike Nolan
Chair of the Planning Commission
MLPA

² See e.g. *Landon Holdings Inc v Grattan Twp* 257 Mich App 154 (2003)