

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.

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.

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:

- 1) 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.

- 2) 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.
- 3) 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.
- 4) 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
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: December 14, 2015

Jennie Dagher
JENNIE DAGHER, Clerk