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Metamora sues gravel applicant

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LAPEER — Many close to the gravel mine proposal in Metamora Township thought it was just a matter of time before a lawsuit was filed. But what happened last week caught many off guard, because rather than the Levy Co. filing suit against the township as some had expected for throwing repeated speed bumps in front of its application it was the other way around.

In a surprise move, legal counsel for Metamora Township on Tuesday filed suit in Lapeer County Circuit Court against the company that seeks to mine gravel from the D-bar-A Boy Scout Ranch on the grounds that a state law by which the firm has made its application under is unconstitutional and usurps local authority.

Mike Nolan, attorney for Metamora Township, and counsel for American Aggregates of Michigan (AAOM is a subsidiary of the Levy Co.), will appear before Judge Nick Holowka on Aug. 15 for a show cause hearing at which time the merits of the challenge will be discussed.

Metamora Township officials have twice issued moratoriums on new gravel mine applications — originally for four months and the other for three months. AAOM (Levy)

filed its application with the township in November 2015. The most recent moratorium was suspended July 14. Two weeks ago the township board also amended its zoning ordinance to reflect changes meant to make it more difficult for companies to win approval.

AAOM challenged the validity of the moratoriums as well as its action to amend its local zoning after its application was submitted.

Metamora Township has filed a complaint with the court seeking a declaratory judgement with regard to the validity of the so-called gravel statute that allows gravel operators to mine gravel in the community, in their opinion, without regard to local objections and local zoning. If the court doesn't issue a judgement against AAOM, said Nolan, the township will be required to spend a lot of money it doesn't have in review of the company's application representing as much as 25 percent of the township's annual general fund resulting in the loss of services to the public.

"All along we've argued it's not fair that the state law would allow Levy (parent company of AAOM) and other companies to be able to come in and disrupt our community and there's nothing we can do about it," said Nolan. "That's what we're challenging."

Michael Hindelang, an attorney representing AAOM (Levy), described the township's lawsuit as "extraordinary" and "extremely unusual."

He told *The County Press*, "This is not a lawsuit alleging any sort of wrongdoing by AAOM. Instead, the township has taken the extraordinary step of suing one of its taxpayers for following township ordinances."

AAOM maintains a lease-hold interest for nearly 500 acres in the D-bar-A property as well as an adjoining property to the south of the Scout ranch.

"The suit alleges that it would be too expensive for the township to review AAOM's mining application. However, AAOM has done nothing more than submit the application that the township itself required. It is the township that established the review process, and it is the township that created this problem by adopting overbroad new mining ordinances that increased the cost of that review," Hindelang continued.

"Put differently," Hindelang said, "AAOM followed the rules set by the township, and now has been sued because the township does not want to follow its own rules."

Metamora Township's total annual budget is approximately \$750,000, said Nolan in documents submitted to the court. "The main township service provided to the public is to protect and promote the public health, safety and welfare and to the extent of money

that would be required to be expended to respond to defendants' application, services will be diminished.”

Said Nolan, “The township has already canceled a program estimated to cost \$75,000 for the graveling of roads in the township. As a result roads will deteriorate more quickly and become less safe for travel, cause property damage to vehicles and create danger to drivers and passengers.”

Hindelang said the township's lawsuit is actually a challenge to the constitutionality of a state statute enacted by the legislature years ago. After asserting for months at public meetings that its new ordinances were required to comply with state law, the township “is now spending tax dollars to challenge that same law — and doing so by suing its own taxpayer.”

AAOM's legal counsel continued, “This lawsuit should be of great concern to every resident of Metamora Township. The township has sued a taxpayer solely for following the law, forcing AAOM to incur legal fees to defend itself. If this can happen to AAOM, then the township can sue any taxpayer who makes any sort of application to the township, no matter how meritorious, if the township does not want to consider it.”

The township has argued should AAOM's 30-year gravel mine application be improved as many as 100 gravel trains per day would come and go from the site, using Dryden Road as its haul route taking trucks through the historic downtown Metamora as well as through the rural community.

The applicant's traffic study indicates an intent to carry approximately 1 million tons of gravel and sand each year during the 8.5- month operating season.

“The township has been informed, and believes, that along with the village's character, the structural integrity of the historic buildings would be in jeopardy as a result of the volume, weight, noise, fumes, appearance and vibration of the numerous ultra-heavy tandem gravel trucks,” wrote Nolan in his petition to the court.

Hindelang and his client are evaluating the lawsuit and are exploring their options.

“We believe that the lawsuit is not supported by law, and are disappointed that the township has chosen to commence litigation rather than evaluate — under its own rules — the application by a taxpayer to make use of its property,” said Hindelang.

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