

**MINUTES
ANN ARBOR CHARTER TOWNSHIP
BOARD OF TRUSTEES SPECIAL MEETING
WEDNESDAY SEPTEMBER 6, 2023 at 1:00PM
TOWNSHIP OFFICES - 3792 PONTIAC TRAIL, ANN ARBOR, MI**

I. CALL TO ORDER, ESTABLISH QUORUM

Supervisor O’Connell called the Ann Arbor Charter Township Board of Trustees meeting to order at 1:01pm on September 6, 2023.

Present: Supervisor Diane O’Connell
Clerk Rena Basch
Treasurer Carlene Colvin-Garcia
Trustee John Allison
Trustee Michael Moran
Trustee Kristine Olsson
Trustee Rodney Smith

Absent: None

Also Present: Township Attorneys Nathan Dupes, Sinéad Redmond, Sarah Williams, Sarah Gabis
Environmental Consultant Dr. Steven Wright
Township Engineer Eric Humesky
Township Planner Sally Elmiger
Building Official & Zoning Administrator Peter Pace

II. CITIZEN PARTICIPATION

Paul Frantz, 4200 Nixon Road, referenced Mr. Wilson’s comments from Mid Michigan Materials (MMM) at the August 21 Board of Trustees meeting, regarding the decision to dewater the mine at Vella Pit. Mr. Frantz said MMM’s decision to dewater, rather than to dredge, was uninformed and led to unfair consequences. The decision was based upon a faulty assumption that the aquifer was unconfined, when instead it is confined. Mr. Wilson also said MMM’s environmental firm had not believed there would be any impact to neighboring properties, but there was negative impact. Now, knowing that their information was wrong, MMM is unwilling to stop dewatering and dredge instead. Mr. Frantz suggested that the Township work with a public relations or communications expert to help present this unfair and stupid decision to state and national representatives.

Hollis Dayton, 3909 Earhart, said she was representing her husband Tom Bartoshesky, who could not be here today. Mr. Bartoshesky is the Chair of the Ann Arbor Township Farmland and Open Space Preservation Board, who believed that renewing the CUP *“would be inconsistent with the values and expectations of Ann Arbor Township citizens. As evidence to this, 20 years ago we passed a millage to tax ourselves to preserve the rural nature of Ann Arbor Township. To date \$3.2 million of township citizens’ money has been spent to purchase development rights to*

preserve farmland and open space in the township. With matching federal, county and city greenbelt funds, more than \$10 million has been invested to protect and preserve characteristics of our township that we all value. These preservation investments have not only been successful in preserving farmland, but have also helped many new farmers start small local farms that serve our community. Without a clean source of water, much of this investment would be wasted. The voters of Ann Arbor Township passed this millage by more than 80% margin.” How many of those same voters support draining our aquifer and increasing noxious noise and dust to create profit?

Amy Olszewski, 2816 Warren, said she awoke this morning to sputtering faucets. Her pump had failed in June, and now was sputtering again. Ms. Olszewski was disappointed that a Trustee said that trucks can run on Warren Road, especially since she had been fighting this practice for some time. Now she has discovered the CUP doesn't address trucks on Earhart Road either. Since the August 21 meeting, Massey Lake is “pretty much dead,” with an iridescent material floating on top. There are no fish or vegetation in Massey Lake. The wetland is severely affected and is covered with silt. The Vella Pit discharge pipe goes 24/7, and was discharging all of Labor Day weekend, at a rate calculated by a flow engineer to be 4+ million gallons/day. Ms. Olszewski said the Board had made a mistake when they approved this CUP, and asked them to fix their mistake.

Eric Kaldjian, resident, had additional data points to add to the map of affected citizens in Ann Arbor Township. He was located on Warren Road between Earhart and Nixon, a little bit west of the north /south boundary of the of the line that goes through the Vella Pit mine. This morning they had their water levels checked. Their home well, dug in 1982 and 2.0 miles from the pit, has dropped 31', from 27' to 58'. Wells on the farm have also dropped: one well has dropped 17' from 45' to 62' and another has dropped 75' to 84'. In each case the water level impact is directly proportional to proximity to the mine. If the water removal continues, it will spread. If there has been any violation of the conditional use permit that allows revoking permission for pumping, Mr. Kaldjian urged the Board to do so before there is irreversible harm.

Mike Wilczynski, Pangea Environmental LLC, said he was here to listen.

Supervisor O'Connell acknowledged that Tanya Whelan had signed up to speak and was online, but was not unmuting herself to speak.

Supervisor O'Connell explained that the Board would adjourn to closed session, where they will discuss the legal opinion that has been presented by the township attorneys. No action will be taken in closed session, which will be of indeterminate length. Residents can stay at Township Hall or may be contacted by email and join via ZOOM when the Board returns from closed session.

III. Closed Session

- A. Discuss a written legal opinion from Township Attorneys which is exempt from discussion or disclosure by state or federal statute because the information is protected by attorney-client privilege (exemption under FOIA, MCL 15.268(1)(h)), in connection with the Mid Michigan Materials Vella**

Gravel Pit Conditional Use Permit and Site Plan.

The following motion was made at 1:19pm.

MOTION by Basch, support by Colvin-Garcia, that the Board adjourn to closed session in order to discuss written legal opinion memos from our township attorneys, which are exempt from discussion or disclosure by state or federal statute, because the information is protected by attorney client privilege. This exemption is under FOIA, which is the Freedom of Information Act MCL 15.268(1)(h). The memos pertain to the Mid Michigan Materials Vella Pit Conditional Use Permit and Site Plan.

Roll call vote:

Smith	yes
Moran	yes
Allison	yes
Olsson	yes
Basch	yes
O'Connell	yes
Colvin-Garcia	yes

Motion passed 7-0.

The Board of Trustees moved into closed session at 1:20pm, and left the Township meeting room.

IV. Open Session

At 3:49pm the Board re-entered the Township meeting room and the following motion was offered:

MOTION by Olsson, support by Allison, that closed session be adjourned.

Roll call vote:

Smith	yes
Moran	yes
Allison	yes
Olsson	yes
Basch	yes
O'Connell	yes
Colvin-Garcia	yes

Motion passed 7-0.

At 3:50pm the following motion was offered:

MOTION by Olsson, support by Allison, that the Board move into open session.

Roll call vote:

Smith	yes
Moran	yes
Allison	yes
Olsson	yes
Basch	yes
O'Connell	yes
Colvin-Garcia	yes

Motion passed 7-0.

Supervisor O'Connell explained that the Board will discuss some of the consequences and impacts of the Mid Michigan Materials Vella Pit mining operation. The Township was notified about issues concerning the wells in the late spring by the County Health Department. Issues included wells that were dewatered or where the static water levels had significantly decreased. At that same time during contact with EGLE, the Township discovered that MMM had made application for a surface water withdrawal permit of up to 4.8 million gallons a day.

As time has gone on, and as the Township has been working on this issue, it has been discovered that other wells have been either dewatered or have a significant drawdown with static water levels going down sometimes below the pumps, effectively making those wells inoperative.

EGLE provided a map that showed the possible southerly direction of the dewatered wells, but as work continued, the Township heard of additional wells to the west that may have been impacted. The Township will be trying to gather additional information to see what is occurring with those wells.

Supervisor O'Connell opened the meeting to Board discussion.

Clerk Basch gave an update regarding the Soil Erosion Control Permit. Township Engineer Humesky reported today that soil erosion inspectors have been out to the site, where they discovered soil erosion occurring from the exterior of the northern berms, due to stormwater, and they have issued a citation to MMM as being in violation of their Soil Erosion Control Permit, which permit runs with the land and site plan. The Township Engineer will visit the site tomorrow to see if the situation has been rectified, such as by putting up silt fences, etc.

Trustee Smith said he had not attended the last Board meeting, but had watched the recording of it. He was impressed by the community engagement regarding this very serious situation. It was clear the Township was in an emergency situation that could not continue.

Trustee Allison said that at the August 21 meeting Mr. Wilson of MMM presented a lot of testimony, including the fact that the water discharge pipe was not on the site plan, and that Mr. Wilson agreed that their operation was impacting wells in the area. Trustee Allison agreed this was an emergency situation that needs to be resolved.

Trustee Allison continued that Mr. Wilson gave no assurance that there would not be future well impacts, and indeed from public comments this afternoon it was possible a few more wells had been impacted. It was a deeply concerning situation.

Trustee Allison said that by implementing a water processing system with dewatering of the mining site, a water discharge outlet structure and offsite discharge of water into wetlands and Fleming Creek tributary, MMM has sufficiently changed the mining uses and site plan that they constitute major, unauthorized changes to the Conditional Use Permit. These unauthorized changes are having significant impacts to neighboring wells and potentially to surrounding natural features. They are in violation of the following sections of the CUP, Development Agreement and Township Ordinances as follows:

1. CUP Resolution, II – Standards and findings, sentence 1: CUP shall remain unchanged except upon mutual consent of board and landowner.

The Township knew nothing of these changes until July, and learned of them from EGLE, not the owner.

2. CUP Resolution, II – Standards and findings, second paragraph: CUP is conditioned upon adherence to all performance standards set forth in 74-594.

MMM is in violation of the performance standards.

3. CUP Resolution Condition 3: Applicant shall not revise or modify the Site Plan without prior written notice to and approval by the township.

4. CUP Resolution Condition 14: Use of property shall be in accordance with this resolution and applicable ordinances.

5. Development Agreement 1: Failure to comply with standards, findings and conditions is a breach of the agreement, etc.

It is clear that MMM does not comply with those standards, findings and conditions that were part of the CUP.

6. Development Agreement 8: Development. The Project and Property shall be constructed, used and maintained by the Applicant in a manner consistent with the Final Site Plan, the Resolutions and permits issued by Township.

7. Development Agreement 10: Use. The project shall be developed and used for the Mining Activity as shown on the Final Site plan and in accordance with the applicable zoning regulations.

8. Zoning Ordinance 74-136 (2): A Conditional Use is required to be compatible with the natural environment and existing and future land uses in the vicinity.

In terms of the existing land uses, these impacts on the wells are not compatible.

9. Zoning Ordinance 74-136(5) A CUP is required to be not detrimental, hazardous or disturbing to existing or future neighboring uses, persons, property or public welfare.
10. Zoning Ordinance 74-175 requires that a preliminary site plan must identify any on-site or adjacent natural features, including wetlands, it must provide a Natural Resources Impact Statement and must also provide a site analysis describing the site's relationship to natural features.

The off-site discharge was not on the site plan.

11. Zoning Ordinance 74-592 Mineral Mining (a) *Conditional use permit standards*: Prohibits the issuance of a permit if very serious consequences would occur.
12. Zoning Ordinance 74-592 Mineral Mining (c)(7): Such removal shall not be conducted so as to "c. Alter the drainage pattern of surface or subsurface waters on adjacent property."
13. Zoning Ordinance 74-594 Performance Standards: Prohibits any use that creates any "dangerous, injurious, noxious, or otherwise objectionable element or condition so as to adversely affect the surrounding area or adjoining premises."

Trustee Olsson added:

14. MMM operations are within the 20' buffer of the wetland. The Board was never able to look at or go over a Natural Features Permit for this location.

Supervisor O'Connell confirmed that any surface water changes from the increased discharged sediment load into Massey Lake was included in violation 13, above.

Treasurer Colvin-Garcia confirmed that any objectional elements of traffic impacts, traffic operations, and time of operations were included in violation 13, above.

Clerk Basch added that Mid Michigan Materials was not operating in compliance with its own application materials, which stated regarding the subsurface waters: "*Activities at this site will not alter drainage patterns at the surface or subsurface waters in adjacent properties.*" Clerk Basch pointed out that MMM asserted in multiple places in their application that they would be doing a closed loop system, such that all water would be retained on site. However, there are multiple instances where evidence shows this is not the case. MMM stated in their materials that they would not be altering drainage patterns at the surface or subsurface. They have done both of those things.

Supervisor O'Connell reiterated that the dewatering and drawdown of wells is a very serious concern for the Township. It was very difficult to know exactly what area would be impacted next.

Clerk Basch said that at the August 21, 2023 meeting Mid Michigan Materials, in their own presentation, said their hydrologists could not commit that future impacts would not happen.

This emergency is really just beginning. At that same meeting, in answer to a question from Dr. Wright, MMM said they had not looked into the effects of what will happen when they continue with their mining plan, which is to move the mining to the more western portion of the site.

Clerk Basch continued that on August 21 MMM confirmed they did not include on the site plan the discharge pipe that is going into the wetlands on the north side of the property. Even when MMM applied for a permit, they did it from EGLE, and did not notify the Township which, as noted in Planning Commission materials, they were required to do. MMM applied for the permit April 2022, giving them plenty of time to notify the Township.

Trustee Moran said that he was supervisor when Mid Michigan Materials came to the Township and discussed their desire to purchase an existing mining operation and expand it. The Township discussed this with MMM including the requirement to obtain a Conditional Use Permit through the usual process of Planning Commission and Board meetings, including what would be required by the Township to provide an expanded and safe operation without serious effects on Township residents.

Trustee Moran said it was clear, and frankly admitted by Mid Michigan Materials, that MMM is in substantial violation of the most important parts of the Conditional Use Permit and the Development Agreement. Most importantly, MMM said they were going to contain all water on site; they were not going to discharge it off site. But they are discharging it off site, and MMM acknowledged that they did this. There have been serious consequences, and the Township did not have any other option than to take immediate legal action to halt these violations. Trustee Moran said it was very distressing that these conditions, which were so carefully worked out, were not just violated, but ignored, with the violations hidden from the Township. The result is an emergency, and he urged the Board to move forward and take immediate legal action.

Township Attorney Dupes summarized that various board members had identified violations, and their investigation is ongoing. Attorney Dupes' office has been asked to provide available options to address the violations, and the Board has been presented 3 options:

- 1) Approach Mid Michigan and attempt to negotiate changes in the conditions of the conditional use permit. That would be satisfactory if it can be done to resolve the violations that have been noted. Any such changing conditions would need to be made in public at a public hearing; or
- 2) Under the development agreement, issue a violation notice to Mid Michigan and provide a reasonable opportunity to cure, with the understanding that if a cure is not made timely, the next step would be formal proceedings to revoke the Conditional Use Permit, which would entail, among other things, a hearing in front of the Planning Commission; or
- 3) Commence legal action against Mid Michigan seeking redress for the violations based on the understanding that the situation warrants immediate action, as opposed to the process of the other options that have been outlined.

Trustee Smith supported taking immediate action. He could not see any necessary modifications in the CUP, which already made the Township's position very clear. Any modifications would

make things worse, and not better. The second option of giving notice with a chance to cure in effect had already taken place. While no formal notice has been given, the neighborhood has been talking with MMM, and MMM has made no effort to try to cure the situation other than to put in wells and continue to violate the CUP. Trustee Smith did not think MMM was going to offer to correct this by voluntarily returning to the original CUP conditions. The Township was going to have to force them to do that, and legal action was the right thing to do.

Commissioner Allison agreed with Trustees Smith and Moran. Option 2 could potentially take a very long time, and MMM has not chosen to move forward with a cure voluntarily. This is an emergency situation and wells are going dry “as we speak.” Immediate legal action is the right approach.

Clerk Basch agreed. Options 1 and 2 would take too long, when the protection of the aquifer was urgent. She favored immediate legal action via the path outlined by the township attorneys.

Supervisor O’Connell agreed. Aquifer recovery was not certain under any kind of cure, and the aquifer needed to be protected, especially as it was unknown what the other impacts are going to be. She agreed this was an emergency and the Township should commence action.

Trustee Colvin-Garcia agreed as well. Options 1 and 2 will take too long. The Board is responsible to their residents and constituents, and the Board needed to respond now.

After discussion and amendment, the following motion was offered:

MOTION by Basch, support by Allison, that the Ann Arbor Township Board of Trustees authorize the Township Attorneys to take legal action to seek redress for the CUP violations, Development Agreement violations, and Township Ordinance violations by Mid Michigan Materials and/or its affiliates at the Vella Pit, and to authorize the Township Supervisor to sign any complaint or legal documents necessary.

Motion discussion:

Trustee Allison said that given the urgency of the situation, this is the appropriate action.

Trustee Smith said that the Board did a really good job of defining things in the CUP, and MMM blatantly disregarded that agreement and decided to do whatever they wanted to do. This action is the thing that the Board now has to do.

Trustee Allison acknowledged the many comments and notifications from the residents, which have brought this matter to the Board’s attention. This was not something that the Board would have found otherwise, and Trustee Allison had received many good insights from those emails and comments.

Supervisor O’Connell agreed with Trustee Allison. The eyes and ears on the ground had been critical in this matter.

Clerk Basch added that Township staff, as well as residents, had also brought this matter forward.

Roll call vote:

Smith	yes
Moran	yes
Allison	yes
Olsson	yes
Basch	yes
O’Connell	yes
Colvin-Garcia	yes

Motion passed 7-0.

V. Non-Agenda Items
None.

VI. Public Comment

Eric Kaldjian said he was deeply grateful and impressed with the unanimous decision made this afternoon. Mr. Kaldjian also thanked his colleagues in the MMM neighbors’ group, who had come together over this extremely important matter. Mr. Kaldjian said he stood with the Board and their actions relative to the action taken.

Tanya Whelan thanked the Board for supporting the residents, and for their diligence.

Michael Watts agreed and thanked the Board for their action. He noted that this issue had brought the community together in unexpected ways.

Paul Frantz also thanked the Board for their diligence, and for representing the residents. Mr. Frantz was troubled by MMM’s statements at the August 21 meeting when they said they were able to drill at a property before the “customer” was out of water, as if this was a benefit. It was not a benefit, residents were not MMM customers, and this action did not cast MMM in a favorable light. Such comments normalized this situation, when in truth the residents were victims of an entity that was taking their water, based upon a faulty assumption that led to an unintended outcome. MMM is not replacing water – they are offering a downgrade to existing water that does not now need to be treated.

Sarah Spratt thanked the Board for the action taken today.

Supervisor O’Connell acknowledged online participant Hollis Dayton, whose ZOOM hand was raised but who did not unmute. Supervisor O’Connell encouraged emailed comments if Ms. Dayton so desired.

Amy Olszewski thanked the Board, and asked them to communicate clearly about actions relative to what is and isn’t happening.

VII. Adjourn

As no other public indicated they wished to speak, the following motion was offered at 4:30pm:

MOTION by Colvin-Garcia, support by Olsson, to adjourn the meeting.

Motion passed by voice vote.