

## **PRESENTATION FOR 7-10-25**

By Gerald A. Fisher

We are in the thick of a very important decision-making process on Levy/Burroughs mining application.

This process brings to center stage the relationship between the officials of Springfield Township and the citizens of Springfield Township.

A key question is: what is the best process for getting to the best outcome on this mining application for Protecting Our Township Both Legally and Practically

In answering this question, I make two assumptions:

1. The citizens of the Township are acting in good faith; AND
2. The officials of the Township, who put in their time day-in and day-out, are also citizens of the Township, and love the Twp as much as anyone else here, are also acting in good faith

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### 1. **The Law Sets the Rules.** This is not simply a Process of Personal Preferences

As many of you know, the rules that govern all of our work on this application have been written by the Michigan Legislature's Act 113 of 2011.

This law controls how communities must evaluate sand and gravel mining applications, and takes precedence over local zoning ordinances

the words of the legislature are clear: *"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"*

It is also important to recognize that the Township Board, and its officials, will not appear at the Planning Commission meetings, and will not weigh-in during the Planning Commission review process. There are two simple reasons for this. First, the Board must await all of the evidence to be presented to the Planning Commission, and for the Planning Commission recommendation to be made. The Township Board appoints members of the Planning Commission, and the Courts have consistently frowned on any attempt on the part of Board members to act in a manner that directly or indirectly exerts influence on Planning Commission decisions. In addition, until the work of the Planning Commission is completed, the Township Board will not be presented with the application. Thus, the Township Board is not able to comment, and does not have the

factual background and information that could serve as a basis for providing a meaningful response to questions that may arise.

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## 2. Let's talk about the possible outcomes in terms of Township decision making:

The special land use ordinance provision allows the Township to:

- Approve the application
- Deny the application, or
- Approve the application with conditions

But this is not necessarily the end of the decision-making process:

Court to review of the Township's decision is a clear possibility:

- some have said that the township doesn't need to go any further – that the township should just say “no” right now.

this would be a bad strategy!!

If an application is denied without a thorough process and evidence, the applicant will go to court,

Then, the control shifts from the Township to the Court, and the Court has these choices – with broad decision-making power:

- Approve the Township's denial – which in my experience is extremely unlikely if it is clear that a full analysis has not been allowed and made. OR
- Send the case back to the Township with a set of instructions, such as an instruction to make more findings on a particular point the Court finds to be troubling. OR
- Completely disapprove the Township's denial, and approve the application with absolutely no conditions.

⇒ It is this last alternative that would be the worst nightmare for all of us.

⇒ Yet, if the court senses that a decision has been made without the township even following its own procedures, and w/o considering all evidence, this could easily be the outcome.

Stated in another way: If the Township denies the application without building a solid legal record based on Act 113's standards, we place the Township at the whim of the Circuit Court.

It would be equally bad:

- If the township says ‘no’ to the application without a full set of reasons under Act 113, or
  - If the township approves without imposing carefully crafted conditions.
- ⇒ If a denial can be made for the right reasons, many here tonight will be happy, and everyone knows why you would feel this way.
- ⇒ But, as compared to giving the Court full control, we need to do a full analysis required under Act 113, and if an approval is required by following all of the evidence, we can:
- Impose conditions to protect the groundwater and other important environmental protections determined to be important here, AND
  - Impose conditions on truck traffic and haul routes, AND
  - Impose conditions to protect school zones and residential neighborhoods, AND
  - Impose conditions on the limits on the hours of operation, dust, and noise, AND
  - Identify and have input on issues relating to site restoration and long-term community impact plans,
- It is clear that we need to make a full analysis under Act 113, and if we act without a full analysis, we risk losing the local control needed to protect our own residents.

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### 3. By following Act 113:

- We retain the authority to set conditions that protect nearby homes, children, roads, and the environment.
- We build a legally defensible case, whether we approve with conditions or deny.
- And we preserve the right of Springfield Township to regulate and minimize the whim of the courts.

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### **Conclusion:** Protecting Springfield Requires Patience and Process

We can't just DENY WITHOUT GOING THROUGH THE PROCESS - This puts everything at risk.

The smartest, strongest way to protect Springfield is to follow the process, apply the law, and ensure that any decision, approval or denial, is fully supported by facts and enforceable protections.

That's what keeps control in our hands, not the court's.

The best way to go would be for the Township and its citizens to work together to get all the facts on the table.