

Michigan Township Focus

APRIL 2014

OFFICIAL PUBLICATION OF THE MICHIGAN TOWNSHIPS ASSOCIATION

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featured articles

14 Digging down into the fracking debate

The word “fracking,” scarcely known a decade ago, has become a well-known term for both residents and local government officials. What is fracking, and what should your township know if a permit for hydraulic fracturing is approved in your township?

22 A ‘priceless’ trip: White House announces \$148 million township investment

Canton Charter Township (Wayne Co.) Supervisor Phil LaJoy was invited to the White House earlier this year, where President Barack Obama announced a \$148 million investment in the township.

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mission statement

The Michigan Townships Association promotes the interests of township government by fostering strong, vibrant communities; advocating legislation to meet 21st century challenges; developing knowledgeable township officials and enthusiastic supporters of township government; and encouraging ethical practices of elected officials who uphold the traditions and unique characteristics of township government and the values of the people of Michigan.



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allied service provider index



president's round table

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A united voice, member engagement advances MTA advocacy

Considering the apparent differences among Michigan townships, one might think that the Michigan Townships Association's advocacy role must pose considerable challenges. Urban and rural, big and small, Democratic or Republican board majorities—which members' interests does MTA promote?

Fortunately, townships share fundamental similarities, and the views of township officials are more alike than they



are different. Townships share a common legal structure, and they all collect taxes, conduct elections and assess property. The shared values and goals of township officials from disparate communities enable MTA to “speak with one voice” on issues impacting townships.

While township officials don't agree on everything, MTA members support legislative positions that empower township governments to build better communities and deliver services that residents and businesses both need and want. They agree that the state budget should bear the cost of complying with local government mandates. Members expect MTA to resist new state regulations that impose more costs than benefits or fail to accommodate important local circumstances. They will support flexibility in approaches to achieve state objectives.

The MTA Government Relations Department typically engages on a dozen or so different legislative issues on a single day. Local government taxation authority, employee compensation, service sharing, collective bargaining, zoning authority—even directing where local governments buy flags—little if anything about local governments is considered off-limits for legislative scrutiny. Political gridlock is a thing of the past. Gov. Snyder and leaders in both the House and Senate are actively engaged in reinventing government, including the local level. Reacting to a multitude of legislative proposals, often introduced at the behest of other interest groups, occupies a great deal of MTA's advocacy efforts. At any given moment, MTA's legislative priorities focus on issues that impact the greatest number of our members, but narrower issues important to smaller member segments receive attention as well.

But not everything is defensive in nature, as MTA also has its own legislative agenda. There are virtually thousands of potential legislative changes that MTA could pursue. However, the Association's legislative policy platform—adopted by members at the MTA Annual Meeting held in conjunction with our Annual Educational Conference—determines the issues on which MTA will direct advocacy resources and the appropriate MTA position on other legislation. The 700 or so participants at the Annual Meeting who vote on the policy platform comprise a small subset of the entire MTA membership but, as MTA Past President Denny Olson is fond of saying, “The world is run by those who show up!” The platform includes general statements identifying broad goals as well as narrower, specific legislative positions on issues that are either currently before the Legislature or are expected to receive legislative attention.

The MTA policy platform empowers MTA to speak to lawmakers and others on behalf of the membership. When issues arise that are not addressed in the policy platform, the MTA Board of Directors clarify goals and priorities. Compromise is often expected by legislators and strict adherence to principle often results in poor legislative outcomes. MTA Board policy directs the staff to negotiate for the best possible outcomes, but the Board also reserves the right to determine when standing for an important principle is paramount. To prevail in the legislative arena, MTA—like other interest groups—must successfully frame its positions to be consistent with the legislative priorities. Current goals of legislative leaders favor positions that arguably will improve Michigan's business climate.

Successful legislative outcomes also require MTA members to actively engage with lawmakers on a regular basis. Credibility and trust are built over time as township officials develop relationships with lawmakers—and both are pivotal when members make the case for MTA's policy platform. Engaging lawmakers at MTA's upcoming Legislative Advocacy Day on May 1 also makes an important statement to legislators that township officials stand for local democracy.

Turn to page 26 for a registration form for MTA's 2014 *Legislative Advocacy Day*. This FREE event is being held in Lansing on May 1.



PART 74 REVISIONS

Changes made to state firefighter training standards

Following a committee review of the state guidelines for firefighter training and regulation standards, changes have been made to some sections of Part 74 of the Michigan Occupational Safety and Health Administration (MIOSHA) General Industry Safety Standards.

Part 74, Fire Fighting, covers everything from fire station safety and use of equipment to management of emergency operations. In terms of equipment, the recent Part 74 changes in “Personal Protective Equipment” included a clarification that, to ensure sufficient eye and face protection, nomex hoods may be used in conjunction with face shields.

In addition, a new Training Reference chart is now included in Part 74 as Appendix A, listing mandatory and non-mandatory training provisions from a number of state requirements. The chart aims to provide fire departments information on what initial and proficiency trainings are required for various specific positions, and is a guideline intended to assist department employers and employees in complying with state requirements.

Additional changes to the “Training” section of Part 74 included:

- “Training” is defined as the process of making fire service personnel proficient through instruction or hands-on practice, or both, in the operation and care of equipment expected to be used and in the performance of assigned duties.
- An employer must “provide initial and continuing training” to an employee commensurate with and specific to the duties that employee is expected to perform. The employer must also prepare and maintain a statement or written policy detailing the department’s organizational structure and establishing the type, amount and frequency of training. Training records must also be maintained. (Rule 7411)

- Rule 7412 states that an employee may only perform those duties that he or she is trained to do.
- Under Rule 7451, each fire department must establish and implement written procedures for emergency operations, including that a nationally recognized incident management system be implemented at each emergency. The procedure would include initial and annual training in the emergency operations system.

Two language clarifications were made to address previously vague requirements: Rule 7421(6) now requires a minimum distance of 10 feet from *unprotected* energized equipment or high-voltage transmission lines (the word “unprotected” was added); and under Rule 7461(1), inspection records shall be maintained for a minimum period of *24 months* for fire apparatus (previously, there was no specified time period).

Learn more on the State of Michigan’s Bureau of Fire Services Web page. Visit www.michigan.gov/lara, and search for “Bureau of Fire Services” or “Part 74.”

You can also visit MTA’s “Fire Departments and Fire Protection” Web page on the members-only portion of www.michigantownships.org. After logging in, access via the “Index of Topics” under the “Answer Center” tab. Need help logging in? Contact MTA at (517) 321-6467.

TIPS FOR SAFE DIGGING

April is National Safe Digging Month

National Safe Digging Month was designated in April to remind all Michigan residents that our land is made up of a complex underground infrastructure of pipelines, wires and cables. Townships can remind local residents and businesses that most excavation-related accidents can be avoided by calling 811—a toll-free safe digging number that connects each caller with their local One Call Center.

Here are some tips and reminders that townships can pass along to their constituents:

- From the small—installing a mailbox or a fence or planting hedges, to the large—building a pond or a deck, or installing a sprinkler system, all excavating or digging projects require a call to 811.
- Digging or excavation location and plans will be recorded and relayed to the affected utilities.
- Professional locators will come to the project location within three working days and mark all underground utilities. There is no charge for this service.
- Unless professional locators mark the underground utilities, it is impossible to tell the depth or location of an underground pipeline.



FEDERAL NEWS

Keep up-to-date with federal legislative weekly report

Stay on top of legislative happenings at the federal level with the National Association of Towns and Townships' (NATaT) weekly e-newsletter. NATaT's *Weekly Legislative Update* highlights the latest actions in Congress that affect townships and local governments.



A link to the federal update is included each week with MTA's *Township Insights*, which is emailed to all member township officials and provides state legislative and news updates.

Members can also access NATaT's *Update* on the members-only section of www.michigantownships.org. After logging in, click on "Advocacy," then "NATaT."

Not receiving Township Insights from MTA? Check your email spam filter, or email erma@michigantownships.org for assistance.

LOCAL UPDATES FROM ACROSS MICHIGAN

Township happenings

A new 40-foot steel bridge now spans Canada Creek in **Allis Township** (Presque Isle Co.), thanks to a grant from the Federal Highway Administration's Recreational Trails Program. Thanks to the new bridge, a popular portion of the 80-mile High Country Pathway that had been closed for several years has now reopened to hikers and other trail users.

Some 15 municipal officials took part in a ground-breaking ceremony for a new 40,000-square-foot water treatment plant located in **Bangor Charter Township** (Bay Co.). Called a "historic day at least four decades in the making," the nearly \$60 million project—which will provide high-quality water to 38,000 of the region's residents—is credited to the cooperation of the local units of government in the community, including 10 townships.

Numerous townships received funds from Michigan Department of Environmental Quality programs to help finance wastewater treatment facility improvements. **East China Charter Township** (St. Clair Co.), the **Owosso Township-Caledonia Township** (Shiawassee Co.) Utility Authority and **Waterford Charter Township** (Oakland Co.) received loan assistance from the Clean Water State Revolving and Strategic Water Quality Initiatives Funds, while **Kinross Charter Township** (Chippewa Co.), **Plainfield Charter Township** (Kent Co.), **Jamestown Charter Township** (Kent Co.) and **Worth Township** (Sanilac Co.) received funds from the S2 program.

A historic fish hatchery in **Stambaugh Township** (Iron Co.) has reopened. The county-owned Cooks Run facility, which was built in the 1930s by the Civilian Conservation Corps, is listed on the National Register of Historic Places. After sitting vacant for several years, the reopened facility will provide brook and brown trout to stock lakes across the county.

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MTA Legal Counsel Ken Sparks retires after three decades of service to Association, townships

MTA is losing decades of knowledge and experience with the retirement of a trusted legal adviser. MTA Legal Counsel Kenneth Sparks, an attorney with Bauckham, Sparks, Lohrstorfer, Thall & Seeber, PC, is retiring after more than 30 years with the firm.

Throughout his years of practice, Sparks has represented and advised townships across the state. He has represented townships in state and federal court, and has written numerous briefs on behalf of MTA on issues of statewide importance to Michigan townships.



Sparks

In addition, Sparks taught many MTA workshops and Annual Conference educational sessions, and has moderated the annual Legal Institute for Township Attorneys for years. He also serves as the parliamentarian at the MTA Annual Meeting.

“As a result of my firm’s representation of MTA, I have had the opportunity to be involved in numerous issues of statewide importance to townships both in the courts and in the Legislature,” Sparks said. “I take great pride and have much appreciation for having had the opportunity to work with MTA and its dedicated staff in advocating for the interests of Michigan townships and their citizens.”

Sparks joined the firm in 1978 with little familiarity with Michigan township law. His knowledge grew quickly as he was immediately assigned a lawsuit initiated by MTA against the Secretary of the Interior on the department’s interpretation of eligible local governments to receive federal payments in lieu of taxes. Sparks won the case, and though the law was eventually changed back to the Department of the Interior’s interpretation, it solidified his place as an effective attorney.

“Ken researches issues thoroughly, constructs his opinions carefully, and conveys his conclusions and recommendations with remarkable clarity,” MTA Executive Director Larry Merrill said. “MTA is a stronger organization because the Association could tackle challenging issues armed and confident with Ken’s excellent advice and counsel.”

mta events | april

1-30 MTA’s Spring Fever Webcast sale
(50 percent off ALL MTA webcasts!)

18 Registration deadline for MTA’s 2014 Legislative Advocacy Day, held May 1 in Lansing

profile



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“We have a well-established partnership with the Michigan Townships Association, and demonstrate our support of the Association and its work on behalf of Michigan townships through our participation in the Allied Service Provider program,” said Steve Johnson, agency principal. “Burnham & Flower Insurance Group believes in the effectiveness of local, township government and the results of elected officials and residents working together to create successful communities.”

Townships are invited to receive a no-obligation review of your township’s current insurance or employee benefits program and a proposal for comparison. For more information, please visit www.bfgroup.com or call (800) 748-0554.

Participation in the Allied Service Provider program does not constitute or imply MTA’s endorsement of the company or its products/services. For more information, see the Burnham & Flower Insurance Group’s advertisement on the inside front cover, turn to the Allied Service Provider Index on page 2 or visit www.michigantownships.org/asp.asp.

Advertorial

Robinson Scholarship available to students in your township

Help ensure that today's youth become involved in local government tomorrow! Encourage students in your community to apply for MTA's Robert R. Robinson Memorial Scholarship by May 31, 2014.



The scholarship is a one-time award determined on a competitive basis by the applicant's academic achievement, community involvement and commitment to a career in local government administration.

Applicants must be a junior, senior or graduate student enrolled in a Michigan college or university and pursuing a career in local government administration. The following materials are required to apply:

1) a letter of recommendation from a professor or instructor, 2) a copy of a resolution of support from a Michigan township board, and 3) a short essay on an important issue facing local government.

Students must submit application materials to: The Robert R. Robinson Memorial Scholarship Fund, c/o MTA, P.O. Box 80078, Lansing, MI 48908-0078.

Ensure students in your area know about the scholarship! Post a link on your township website to www.michigantownships.org/scholarship.asp. Need more information? Call (517) 321-6467.

Contributions to the scholarship fund are also accepted throughout the year. Call the MTA office for details.

WWW.MICHIGANTOWNSHIPS.ORG
FEATURED WEB PAGE

Boards & Commissions

To access this Web page, which offers an array of information on township statutory and advisory committees, visit the **members-only section** of www.michigantownships.org. Click on "Boards & Commissions" in the "Index of Topics" under the "Answer Center" tab.

To log in, click on "Member Login" in the upper right-hand corner of the www.michigantownships.org home page, and enter your username and password. Once you're logged in, click on "MTA Member Website" to the left to access a wealth of information exclusively for townships! Questions? Email website@michigantownships.org.

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APRIL

By 1 General law townships with an April 1 to March 31 fiscal year should conduct the budget public hearing and adopt the budget before April 1.

1 No later than April 1, treasurer makes final adjustment and delivery of the total amount of tax collections on hand. (MCL 211.43(3)(c))

Separate tax limitations voted after April 1 of any year are not effective until the subsequent year. (MCL 211.205i(2))

6 Last day to register for May 6 election. (MCL 168.497)

7 On or before the first Monday in April. Unless the board of review has concluded earlier, last day for the board of review to hear protests of assessed value, taxable value, property classification or percentage of qualified agricultural property exemption assigned by assessor and board of review. (MCL 211.30a)

9 Wednesday following first Monday in April. Last day for township supervisor or assessor to deliver completed assessment roll, with board of review certification, to the county equalization director. The statute requires this be done not later than the 10th day after adjournment of the board of review or by the Wednesday following the first Monday in April, whichever comes first. (MCL 211.30(6))

Assessor files Form L-4021 for real property with the county equalization department and Form L-4022 with the county equalization department and State Tax Commission (STC) immediately following the board of review's adjournment. (R 209.26(6a) and 209.26(6b))

By 15 The school district or intermediate school district shall notify the township by April 15 of the terms of the agreement to collect summer taxes that has been reached with the county treasurer, or if no agreement has been reached and the school district determines to collect its own summer taxes, the cost for the school district to collect those taxes. The township has 15 calendar days in which to exercise an option to collect the school district's

and/or intermediate school district's summer property tax levy at the same terms agreed to with the county treasurer or at the cost of collection that either school district would incur. (MCL 380.1613(3))

21 Allocation board meets and receives budgets due this day. (MCL 211.210)

22 Partisan and nonpartisan candidates (other than judicial candidates) file nominating petitions (or fees if applicable) and Affidavit of Identity for Aug. 5 primary election by 4 p.m. Withdrawal deadline elapses at 4 p.m. on April 25.

By 25 Pre-election campaign statements filed (books closed April 20).

Write-in candidates for May 6 election file Declaration of Intent forms by 4 p.m. (MCL 168.737a as amended under Public Act 87 of 2006)

By 28 Clerk forwards names and addresses of partisan and nonpartisan candidates for Aug. 5 primary election to county clerk. (MCL 168.349)

By 29 Notice of May 6 election published. One notice required. (MCL 168.653a)

Petitions to place county and local questions on Aug. 5 primary election ballot filed with county and local clerks. (If governing law sets an earlier petition filing deadline, earlier deadline must be observed.) (MCL 168.646a)

Challenges against nominating petitions filed by partisan and nonpartisan candidates submitted to filing official. (MCL 168.552)

MAY

By 1 Public accuracy test must be conducted for May 6 election. (R 168.778) Notice of test must be published at least 48 hours before test. (MCL 168.798)

1 Deadline for filing the Farmland Exemption Affidavit (Form 2599) with the local assessor if the property is not classified agricultural or if the assessor asks an owner to file it to determine whether the property includes structures that are not exempt.

Deadline for filing a Principal Residence Exemption (PRE) Active Duty Military Affidavit



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to allow military personnel to retain PRE for up to three years if they rent or lease their principal residence while away on active duty. (MCL 211.7dd)

3 Electors who wish to receive an absentee voter ballot for May 6 election by mail submit application by 2 p.m. (MCL 168.759)

5 Electors qualified to obtain an absentee voter ballot for May 6 election may vote in person in clerk's office by 4 p.m. (MCL 168.761)

Deadline for filing official county board of commissioners report of county equalization (Form L-4024) with STC. (MCL 209.5) Appeal from county equalization to Michigan Tax Tribunal (MTT) must be filed within 35 days after the adoption of the county equalization report. (MCL 205.735(3))

Deadline for assessor to file tabulation of taxable valuations for each classification of property with the county equalization director on STC Form L-4025 to be used in Headlee calculations. (MCL 211.34d(2))

6 Election. Emergency absentee voting until 4 p.m. (MCL 168.759b)

By 10 Clerk forwards copies of Affidavit of Identity forms filed by candidates for county convention (precinct) delegate received prior to Jan. 1, 2014 to county clerk. (MCL 168.624) *Note: Candidates file directly with county clerk after Jan. 1, 2014, per PA 276 of 2012.*

12 Boards of county canvassers meet to canvass election. (MCL 168.821)

By 13 Ballot wording of county and local proposals to be presented at Aug. 5 primary election certified to county and local clerks; local clerks receiving ballot wording forward to county clerk within two days. (MCL 168.646a)

15 Deadline for the state to prepare the annual assessment rolls for state-assessed property, such as telephone companies and railroads. (MCL 207.9(1))

27 *Fourth Monday in May.* Final state equalization order is issued by STC. (MCL 209.4)

By 13 Boards of county canvassers complete examination of all ballot containers used in county. (MCL 168.24j)

31 Appeals of property classified as commercial real, industrial real, development real, commercial personal, industrial personal or utility personal must be made by filing a written petition with the MTT. (MCL 205.735a(6))

If, as a result of state equalization, the taxable value of property changes, the equalization director shall revise the millage reduction fractions by the Friday following the fourth Monday in May. (MCL 211.34d(2))

After May 30 and before June 4. Last day for allocation board hearing (not less than eight days or more than 12 days after issuance of preliminary order). (MCL 211.215)

Note: An incorrect date appeared in the March Township Focus Calendar. The last day to pay all forfeited 2011 delinquent property taxes, interest, penalties and fees is March 31.



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Q What is a jeopardy assessment?

A jeopardy assessment is an acceleration of the tax on personal property that is normally due on Dec. 1 of each year, and the acceleration on the creation of a lien against the personal property on which the tax is based.

Q What is a “jeopardy rate”?

A jeopardy rate is the treasurer’s estimate of the tax rate that he or she believes will be authorized by the taxing jurisdiction. This rate shall not be more than 10 percent in excess of the rate authorized in the previous year.

Q What are the reasons for undertaking a jeopardy assessment?

Among the reasons for undertaking a jeopardy assessment are that the taxpayer: has absconded, is about to abscond from the state, or is concealed within the state; has assigned, disposed of or concealed any of the personal property, or is about to do so; or has removed or is about to remove any of his/her property out of this state; or that other facts exist—any of which described situations tend to jeopardize the collectability of any personal property tax assessed and levied by the regular assessment and collection procedure.

Q How do I undertake making a jeopardy assessment?

The treasurer prepares a jeopardy assessment affidavit, which notes that the taxpayer named in the affidavit owned certain described personal property on

that tax day and the property was within the tax-collecting jurisdiction on tax day. The affidavit must provide the assessed value of the property, indicate the amount of the jeopardy rate and the tax due, and name the taxing unit on whose behalf the jeopardy assessment is made. The treasurer must include at least one of the reasons previously described on the jeopardy assessment affidavit as well as the jeopardy tax rate.

Q What do I do with the affidavit?

The affidavit must be filed with the register of deeds of the county in which the property was located on the tax day, no later than the next business day after the date on the affidavit, and the necessary filing fee must be paid. The treasurer must also mail a notice to the taxpayer of the filing of the affidavit at the address at which the personal property so taxed is located. A copy of the affidavit filed with the register of deeds should be attached to the notice.

Q What do I do if I collect the amount of the jeopardy tax?

The money should be retained in a special “jeopardy tax account” until receipt of the next regular tax roll for the township. Discharge the jeopardy tax assessment affidavit from the records of the register of deeds, and apportion the tax collected to the taxing jurisdictions entitled to it, as provided in Public Act 55 of 1956.

Hello, MTA ... ? provides general information on typical questions asked by township officials. Readers are encouraged to contact an attorney when specific legal guidance is needed. Member township officials and personnel may contact MTA Member Information Services with questions or requests from 8 a.m. to 5 p.m., weekdays, at (517) 321-6467 or fax (517) 321-8908.



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Q Our township does not have a formalized purchasing policy. Do you have any suggestions?

Your township may wish to consider adopting purchasing policies by resolution or ordinance after careful study of your current practices and future needs. Formalized purchasing policies are designed to ensure that all purchases of goods and services provide the best value for the township and that all vendors are treated fairly and impartially.

Most communities have several different methods used to select vendors:

- Competitive bidding
- Quotations
- Small purchase orders (blanket orders)

Townships must weigh the costs of developing bid specifications and administration with the benefits of the competitive bidding through a formalized process. Many communities have a high dollar threshold for purchasing through competitive bids or requests for proposals, a mid-term policy for other purchases, and a small purchase policy, where township officials, department heads and employees can accomplish small purchases through “blanket orders” (purchase orders that are awarded to vendors on an annual basis to accomplish small-dollar transactions).

Any township purchasing policies should be mindful of the fact that procurement standards for purchases of goods and services for state and federal grants usually require adherence to Office of Management and Budgeting (OMB) standards, which may differ from their own.

Q Should we centralize purchasing in a single department?

Municipal purchasing typically falls into two categories: centralized and decentralized systems. In the past, a central purchasing authority was believed to ensure purchasing integrity, fix accountability and provide for the efficient processing of the transaction. Further, a central purchasing authority was desirable to limit the power of the department and to assure professionalism of public purchasing. Many experts now believe that this “paradigm” is not in keeping with modern, more nimble governance. They believe that purchasing must be decentralized to provide more responsive support to end-users, and to empower department managers to procure what they need without impediment by a centralized organization.

Perhaps the best solution will be found in combining elements of both—user departments would develop specifications, perhaps with engineering assistance, and use a centralized process to award contracts.

Q How should check-writing procedures for townships work?

We recommend the following:

- Use three-part checks—the original copy of the warrant/check becomes a check after it’s signed by the treasurer; the other two copies are for the clerk and treasurer’s records.
- Clerk prepares the checks (which serve as the “warrant”) and presents them to the township board for approval.
- Township board approves payment.
- Clerk signs the check, which now represents a “town order” and forwards signed checks to treasurer. If using a three-part check, the clerk should retain one copy, which should be attached to the invoices or bills it pays.
- Treasurer counter-signs the check and forwards directly to vendors.

Checks should be pre-numbered, and controlled by another officer not initiating cash disbursements. For smaller townships, the treasurer could control the numeric sequence of the checks, if the clerk initiates the check-writing process. The clerk would request additional checks from the treasurer, and the treasurer could account for checks as they come back for counter-signature, noting any missing numbers and inquiring as to their disposition.

Q Our board meets monthly. What if there isn't enough time to go through this process?

The board can pre-authorize certain disbursements, such as utility bills, payroll taxes and bond payments, that have to be accomplished prior to board meetings. These authorizations should be for specific types of transactions, and are then subject to ratification at the next meeting.

Information provided in *Financial Forum* should not be considered legal advice, and readers are encouraged to contact their township auditor and/or attorney for advice specific to their situation.



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Additional funding for road maintenance, projects

The state will have an additional \$215 million to spend on roads after an especially brutal winter under Public Act 34 of 2014, sponsored by Sen. Roger Kahn (R-Saginaw Chtr. Twp.).

All of the dollars are coming from the General Fund, with \$100 million to be used for road maintenance and \$115 million for road projects this fiscal year. The \$100 million will be distributed through the PA 51 formula to assist state and local road agencies with road maintenance. The measure also includes language ensuring that any leftover money from priority road projects will go into the PA 51 formula for distribution if not obligated by July 1, 2014.



Originally, the Senate approved spending \$100 million on road maintenance, including salt, sand and pothole expenditures. When the bill moved to the House, it was amended to include \$215 million for roads, with \$115 million coming from the Roads and Risks Reserve Fund for road projects.

MTA was one of the first organizations to call for supplemental funding for road maintenance. In January, MTA issued a statewide statement urging the Legislature and the governor to address Michigan's chronic underfunding of road maintenance with budget surplus dollars. MTA appreciates the Legislature's action on this issue as well as the efforts of members urging support for road maintenance funding. While the additional funding does not solve the long-term solution needed, it will provide some much-needed immediate assistance for Michigan's crumbling roads.

Delinquent property tax interest bill becomes law

Public Act 33 of 2014, sponsored by Rep. Cindy Denby (R-Handy Twp.), allows a change in the amount of interest counties can charge other taxing units for delinquent taxes.

Previously, the General Property Tax Act allowed county treasurers to charge a flat "1 percent" monthly interest rate to taxing units with delinquent property taxes.

The new law, which is now in effect, allows county treasurers to charge "up to 1 percent." MTA supported this bill as it provides a cost savings to local units.

Final passage given to telecommunications bill

After being put on hold since December, the Legislature approved a bill that allows telecommunication companies to more easily discontinue landline service.

Senate Bill 636, sponsored by Sen. Mike Nofs (R-Battle Creek), will eliminate, beginning Jan. 1, 2017, a law prohibiting local exchange or toll service providers from discontinuing coverage unless comparable service is offered by alternative providers. Providers must submit an application to the Federal Communications Commission (FCC) and receive approval before they may discontinue service. A customer whose provider is ending landline service or an interconnecting telecommunication provider can also request that the Public Service Commission (PSC) investigate the availability of comparable service.

The PSC may declare an emergency exists based on its investigation, and also investigate the availability of a willing provider to offer comparable voice service with access to 911 and emergency services in the area. If no other provider can be found, the PSC shall issue an order requiring the current provider to continue the voice service, either through a landline or alternative reliable technology, until another willing provider can be found.



Diverted waste bill signed into law

A bill that sets new guidelines for business and household hazardous waste collection sites is now law. Public Act 24 of 2014, sponsored by Rep. Andrea LaFontaine (R-Columbus Twp.), was signed by Gov. Rick Snyder. The new law, which has immediate effect, will allow communities to hold clean-up programs without violating state law.

Many collection sites for this type of waste were previously in violation of solid waste disposal regulations because they are not recognized as transfer facilities. Prior to PA 24, the law permitted only transfer facilities to manage diverted waste. PA 24 exempts these facilities from solid waste regulations and sets new guidelines for diverted waste collection and storage.

Under the new law, "diverted waste" refers to waste that is generated by households, businesses or governmental entities; can legally be disposed of at a licensed landfill or municipal solid waste incinerator; is separated from other waste; and is hazardous material, including liquid waste, medicines, electronics; devices containing elemental mercury; and

other waste approved by the Department of Environmental Quality.

To qualify as a waste diversion center, facilities must meet several requirements, including 90 percent of the material collected consisting of diverted waste to be managed at that center, being operated by personnel who are knowledgeable about safe management of diverted waste, and managing the waste in a way that prevents its release into the environment.

MTA supported this bill as it eliminates potential violations for communities that have clean-up programs.

Some assisted living residents may claim PRE with house for sale

A new law allows residents of assisted living or nursing home facilities to keep a principal residence exemption (PRE) on their home if they plan to eventually return, even if their house is for sale.

Public Act 40 of 2014, sponsored by Rep. Dave Pagel (R-Oronoko Twp.), amends the General Property Tax Act, which allows individuals to claim an exemption for a principal residence from the tax levied by a school



district for operating purposes. Previously, assisted living or nursing home residents could keep their PRE as long as they 1) continue to own the property, 2) have not established a new principal residence, 3) maintain or provide for the maintenance of the property, and 4) the property is not for sale, occupied, leased or used for any business or commercial purpose.

The new law deletes the restriction of the property not being for sale. The language has immediate effect and applies retroactively to taxes levied after Dec. 31, 2012.

Attached plates not required for some historic military vehicles

Certain historic military vehicles are no longer required to have attached registration plates. Public Act 26 of 2014, sponsored by Sen. Bruce Caswell (R-Adams Twp.), would allow these vehicles to keep their plates inside the vehicle and make them available to police officers.

Previously, the Vehicle Code required the registration plate issued for a vehicle to be attached to the rear of the vehicle, except for truck tractors and road tractors, which must attach the plate to the vehicle's front. PA 26 exempts military vehicles that are authorized to operate on the road from this requirement. This exemption only applies if the vehicle was not manufactured with lighting and mounting provisions for a registration plate.

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Drilling down into the fracking debate

Eight months ago, some **Conway Township** (Livingston Co.) residents had never heard of the word “fracking.” They weren’t worried about their community’s water supply, and they didn’t give much thought to the minerals that might lie under the fields where their cows grazed.

Everything changed in September 2013, when an oil and gas company received permission to drill for natural gas in the township. Suddenly, the township board found itself in the middle of a fracking controversy. News of the permit spread so rapidly through the central Michigan farming community that when the township board held its regular meeting, 100 people showed up instead of the usual three-person crowd.

Some residents believed drilling for oil and natural gas was a good thing, while others were strongly opposed. A third group of residents weren’t sure what to think. Everyone had questions for the township board, and officials, including Clerk **Cindy Dickerson**, didn’t have answers.

“With this being the first one in Livingston County, people weren’t sure how to handle it,” Dickerson said.

Fracking, or hydraulic fracturing, has come to the forefront of public discussion in recent years. As a mid-level producer of oil and natural gas, Michigan’s shale and carbonate rock formations have attracted companies to drill throughout the state, especially in the northern and southeastern regions.

The oil and gas industry, as well as state agencies such as the Department of Environmental Quality (DEQ), say that fracking is a safe, time-tested technology that produces much-needed fuel for heating homes. They add that the process is helping the U.S. to become less reliant on foreign oil and gas while causing no major incidents in Michigan. Our state also has some of the most stringent requirements and restrictions to keep the industry in check.

At the same time, environmentalists and citizens worry about the possible effects on the water supply. They're concerned that an accident may contaminate a community's wells and aquifers, and that fracking operations may use so much water that they put unnecessary stress on the supply. Groups such as the Michigan Environmental Council (MEC) argue that as fracking technology changes, the DEQ's rules should also be adapted and toughened.

Townships, which under MCL 125.3205 are not allowed to adopt zoning ordinances that regulate oil and gas drilling operations, are meanwhile becoming the subject of more fracking debates. As citizens demand that their townships take action, officials are left unsure of what the law allows them to do.

Before the DEQ issued a permit in her township, Dickerson never imagined that an oil and gas company would want to drill there. Now, she knows any township in Michigan could one day face the same issue. She wishes she would have familiarized herself with all sides of the issue in advance and been ready when residents peppered her with questions. Other townships, however, have the chance to do so before fracking comes to their backyards.

"I think very strongly that everybody needs to know what is going on and educate themselves on all sides," she said.

What is fracking?

Hydraulic fracturing, known as fracking, is the process in which high-pressured fluid made up of water, sand and chemicals is injected into deep wells. The pressure creates cracks in tight rock formations that are then held open with sand, allowing oil and natural gas to seep out.

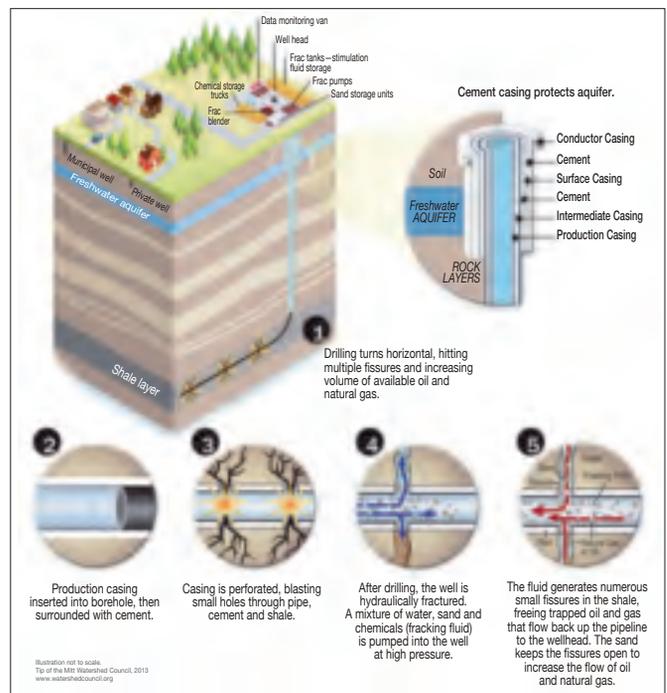
Shale rock under the earth's surface contains carbon that with time, temperature and pressure creates oil and natural gas. Over time, these fossil fuels move into other rocks and become trapped. Fracking allows oil and gas companies to crack open rock formations and release the fuel.

This technology was developed in the 1940s and has been used in Michigan for 50 years to drill more than 12,000 wells. According to DEQ statistics, fracking has been used in 78 percent of Michigan's wells in recent years. However, with the decline of activity in the Antrim Shale formation, located in the northern area of the Lower Peninsula, most Michigan wells are drilled conventionally today.

Jim Peters, a spokesman for Michigan Oil and Gas Producers Education Foundation, says fracking is crucial to meeting the demand for natural gas. About 80 percent of Michigan homes are heated with natural gas, according to industry estimates.

"It really is embedded in how we live in colder climates to have a very inexpensive heating source," Peters said.

A University of Michigan (U-M) study calls Michigan a mid-level producer of oil and natural gas. Of the 12,000 wells that have been hydraulically fractured since 1952, about 10,000 were located in the Antrim Shale formation. Natural gas production peaked in 1996, when levels reached about 300 billion cubic feet a year. Most of these somewhat shallow



The above graphic illustrates the hydraulic fracturing process.

wells are still in production today. Since 1996, however, production has leveled off to about half of the peak amount.

Low natural gas prices have slowed the demand for fracking. The process is so costly that companies will not drill unless they can produce enough natural gas to at least cover the expense of drilling. Mark Snow of the DEQ Office of Oil, Gas and Minerals said more than 100 wells were drilled and completed in Michigan last year. However, the majority of those wells involved conventional drilling, and only 10 were hydraulically fractured.

Today, much of the recent interest involving fracking is targeting the Utica-Collingwood deep shale formation in the northern Lower Peninsula, and in the A-1 carbonate formation in southwest Michigan. Four Utica-Collingwood wells are in production, and activity is concentrated in Kalkaska, Crawford, Missaukee and Roscommon counties, where 14 permits were issued in 2013. To date, fracking has not resulted in producing wells in the A-1 carbonate within Muskegon, Oceana and Sanilac counties, where five permits were issued last year.

How it works

The fracking process is completed in stages, beginning with steel piping being placed in a drilled hole, called a wellbore, and encased in cement to prevent the rock and soil from caving in. Segments of the pipe are perforated, and a mixture that is 99.5 percent water and sand, and 0.5 percent chemicals, is pumped at a high pressure, creating cracks in the rocks. The sand in the mixture holds the cracks open and allows natural gas to flow more freely to the wellbore.

cover story

“It’s been American ingenuity that has unlocked these resources,” Peters said.

Once fracking is complete, about 10 to 25 percent of the fluid, called flowback, returns to the surface. This fluid is a contaminant and must be held in steel tanks until it can be taken to disposal wells, where the flowback is injected deep into rock layers that are far from fresh water supplies.

Until about 20 years ago, fracking worked by drilling a vertical hole until crews reached a natural gas reservoir. New technology has allowed drills to turn once they reach the reservoir and continue drilling horizontally for up to two miles. This process uses up to 20 million gallons of water to hydraulically fracture the equivalent of 10 to 20 vertical wells. Vertical drilling uses less water, but it can only access a small part of a gas formation.

About 0.5 percent of fracking fluid is made up of chemicals, though in some cases the percentage can be as much as 3 percent. This small percentage becomes more significant for horizontally drilled wells that use higher volumes of water. In some cases, as much as 250,000 gallons of chemicals are pumped into those wells.

Each chemical serves a specific purpose in easing the fracking process, Peters explained. For example, stabilizing chemicals help to condition the rock surface and keep the clay from shrinking and expanding. Surfactants such as soap reduce surface tension, allowing fluid to penetrate and flow back more easily. A friction reducer is added to reduce the amount of horsepower required to pump the water or other carrying fluid into the well. In addition, pH-adjusting agents help to maintain the effectiveness of the other chemicals.

In all, oil and gas companies choose one to three dozen chemicals from among about 760 possible choices of chemicals, Peters said. Many companies list these chemicals at <http://fracfocus.org>, where anyone in the public can search for wells in their county and find out which chemicals were used.

Most of the chemicals used in fracking are not known to be carcinogenic or toxic at the concentration levels they’re used. However, what happens to those chemicals when they interact with the makeup of underground formations is still unknown. The flowback water containing these chemicals then contains not only the chemicals, but potentially other chemicals from the rock formation. The water’s high saline content also leaves conventional water treatment out of the question.

Potential impacts cause concern

For some environmental groups, fracking is a concern because of its potential for accidents, and the extent of damage that those accidents could cause.

Hugh McDiarmid, MEC communications director, said the organization isn’t trying to ban fracking. Instead, it



Hydraulic fracturing, known as fracking, is the process in which high-pressured fluid made up of water, sand and chemicals is injected into deep wells. The pressure creates cracks in tight rock formations that are then held open with sand, allowing oil and natural gas to seep out.

aims to strengthen rules and regulations in order to prevent accidents. Anything that could put the water supply or public health at risk should have proper regulations in order to take a proactive approach.

“We are the epicenter of the Great Lakes,” McDiarmid said. “We have a really unique stewardship role to protect our freshwater resources. There’s no place like Michigan on the planet.”

One aspect of fracking with the highest probability for an accident is the removal and transport of fracking fluid, McDiarmid said. This fluid that contains chemicals and other unknown substances from underground must be extracted from fracking wells and put into tanks. Workers moving the fluid risk exposure. Then, those tanks are hauled away by trucks to be stored in disposal wells. If those trucks were to crash, the fluid could spill.

Accidents could also occur if fracking chemicals were mishandled prior to drilling, or if well casings were to fail. The risk of an accident emphasizes the importance of companies disclosing the types of chemicals they use in their fracking fluid, McDiarmid said. First responders who would clean up the fluid need to know what they’re dealing with when they arrive, both for efficiency and for their own safety.

Environmentalists have also frequently voiced the concern of possible drinking water contamination. They fear that fracking chemicals as well as gases such as methane could seep into wells and aquifers through cracks created by fracking, or if a drilled well is poorly constructed.

A U-M study notes that gases can naturally migrate into water aquifers because of the low viscosity of the gases. Baseline testing of water before drilling is necessary to confirm if aquifers were impacted because of fracking, or whether the impact happened naturally.

McDiarmid said the risk of drinking water contamination may be low, but the effects would be disastrous. Not only would it have an effect on the environment, but it could also pose a serious threat to public health.

“The one time that it malfunctions could really have devastating impacts,” McDiarmid said.

Other environmental concerns include air quality due to cases of leaking gas from wells and exhaust from construction equipment and trucks. Citizens near fracking operations have also taken issue with the truck traffic that could damage local roads, as well as the noise and lights 24 hours a day when drilling is taking place.

Peters said that though there are risks of accidents that could hurt the environment, the risk is minimized by quality equipment and the training of workers. He points out that in the history of fracking in Michigan, there have been no accidents.

Rules and regulations

All fracking operations are regulated under state authority. Both the oil and gas industry as well as the DEQ consider Michigan’s rules for fracking some of the strictest in the country.

The DEQ’s involvement begins after a fracking company secures a land lease and applies to begin drilling. Degreeed geologists work with the company through the permit process and discuss regulations on everything from the drilling unit and the target depth to how the well will be built and the plan for plugging the well if no natural gas is found.

A DEQ representative inspects the proposed location to search for any potential sensitive ecosystems, including endangered species, streams, fisheries and other issues. For activities on state land, the Department of Natural Resources standard lease requires well sites to be located at least 1,320 feet from the nearest lake or stream.

In addition, wells that are expected to use more than 100,000 gallons of water are considered large-volume water withdrawals and are subject to further regulations. Operators that plan to withdraw large volumes of water are required to turn in relevant information and be cleared through a tool called the Water Withdrawal Assessment Tool. This assessment studies the impact that a large water withdrawal could have on rivers and streams nearby. About 2,000 other entities that use massive quantities of water, such as farmers who irrigate their fields, must also use the tool, even though they’re not related to oil and gas. The DEQ will not approve water withdrawals if it is determined that they may create an adverse impact on water resources.

High-volume operations must also conduct additional water-level monitoring if at least one freshwater well is within a quarter-mile of the water withdrawal well. The

DEQ requires these operators to monitor, record and report injection rates and pressure data, as well as turn in Material Safety Data Sheets (MSDS) disclosing the total chemical volumes and additives.

“The Office of Oil, Gas and Minerals regulations ... have evolved over decades, and there are many safeguards in place to ensure that the surrounding environment is protected from oil and gas drilling and production activity,” Snow said.

Stricter rules are proposed

As technology changes, the DEQ is in the process of updating its rules guiding fracking operations. A major change would be a new requirement that all fracking operations must disclose the chemicals used in their fluid. Some chemicals are protected as a trade secret, much like a restaurant’s secret recipe. However, companies would still be told to list the chemical family and trade name.

To make sure the fracking activities aren’t contaminating water, operators would be required to test samples from up to 10 water supply wells within 1,320 feet. These samples must be collected no later than six months after drilling begins.

If adopted, the new rules would put into code the requirement for water withdrawal assessment and monitoring. High-volume hydraulic fracturing operations would need to turn in separate applications, and they must state in their application whether they expect to use the fracking process in their wells. The proposed rules also say operators must notify the DEQ at least 48 hours before starting a fracking operation, and they must monitor and report fluid pressures and volumes for all high-volume operations.

Another significant change that has already been approved is the notification process. Until recently, the permit applicant was only required to notify county clerks of a fracking permit application in their jurisdiction, and townships were notified only if they had a population of 70,000 people or more. Thanks to negotiations with MTA, however, this requirement has changed. The DEQ Office of Oil, Gas and Minerals has a new policy to notify township supervisors when permit applications are filed in their area. Supervisors who are notified will be given a copy of the permit application cover page, and they’ll be asked to respond if they have any questions, concerns or comments.

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Peters said many operators already make a habit of contacting a local unit's governing body before drilling begins. Notifying local officials of their plans is an important part of raising awareness and educating the public, he said.

Some want even stricter rules

While the proposed rules and recent changes are an improvement, the MEC says they don't go far enough. McDiarmid said the advances in technology, the increased well depths and the massive quantities of water being used necessitate rules that address these changes. He compared the issue to a street that has a 25 miles-per-hour speed limit. The speed limit may work well, but if the number of cars traveling that street rapidly increases, the speed limit would have to be reviewed, he said.

"We don't think the state has updated the rules to reflect the modern fracking operations," McDiarmid said.

One of the biggest issues is the chemical disclosure requirement. According to the proposed rules, well operators wouldn't be required to post the chemicals they use until 30 days after the operation is complete. That's too late to for area property owners to conduct a baseline test on their water for the chemicals being used nearby. A baseline test is necessary to prove that the chemicals in the water appeared after the fracking operation began and weren't present beforehand.

The MEC also believes that all communities, regardless of their size, should be notified if anyone applies for a fracking permit in their area. McDiarmid said that oil and gas developers should be required to work with communities to avoid potential conflicts with other users.

Though low gas prices have slowed fracking activity, McDiarmid envisions a day when demand for fracking is high. Stricter rules will help to protect water resources and public health, he said.



Some environmental groups feel that anything that could put the water supply or public health at risk should have proper regulations in order to take a proactive approach.

"This is the point where we do need stricter rules," McDiarmid said. "... The game has changed dramatically, but the rules are essentially the same as they were decades ago. That's why we need to update the rules now."

What can townships do?

When a fracking permit is granted in a township, officials may find themselves flooded with questions and demands from residents. Citizens may point to other local units that have adopted moratoriums on fracking and ask their township officials to do the same. Officials, however, may wonder if such an action is legal, or if it would even have any power.

MTA Legal Counsel Catherine Kaufman, attorney at Bauckham, Sparks, Lohrstorfer, Thall and Seeber PC, says townships must first remember that the law specifically preempts them from enacting any zoning ordinances that attempt to regulate fracking. According to the law, "a county or township shall not regulate or control the drilling, completion or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation or abandonment of such wells." (MCL 125.3205)

Kaufman said her firm believes this law also applies to ancillary activities, such as building roads to a fracking operation or constructing an accessory building. It is her firm's opinion that these activities can't be regulated through zoning.

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Instead, townships can regulate some of these activities through the adoption of a police power ordinance. For example, townships could adopt a truck route ordinance stating that trucks are not allowed to drive on certain roads and streets. Officials should keep in mind that these ordinances would apply to all trucks, not just those associated with the fracking operation. They must also be careful not to conflict with the DEQ Supervisor of Wells administrative rules, which include guidelines on noise and other issues.

Though the concept of adopting a fracking moratorium is becoming more popular, Kaufman said townships do not have specific authority to put fracking on hold. A moratorium would not stop a permit application from being granted since townships do not grant permission to drill. The only effect it might have is to hold up approvals for certain ancillary activities.

Some townships may still wish to pursue a moratorium, Kaufman said. However, townships considering taking this step should conduct a cost-benefit analysis of the time they would spend studying the issue during a moratorium compared to the possible cost of being sued.

If a moratorium is adopted, it should be for a short period of time and must be used for studying fracking, Kaufman said. "Doing a moratorium can't be a subterfuge for discouraging or stopping fracking," Kaufman added. "There has to be some legitimate studying and review going on."

Several bills were introduced in the Michigan Legislature last year that, if enacted, would change the legal landscape of fracking. Most importantly, the zoning preemption would be amended so that it would not apply to fracking, giving townships and counties the authority to regulate fracking through zoning ordinances. Language in the bills—House Bills 4061, 4070, and 4899-4905—would require a public hearing upon a local unit's request before the DEQ grants a permit application, among several other changes. However, these bills have not seen movement since they were first introduced in July 2013.

Under the current law, Kaufman said her firm advises taking a cautious approach to fracking regulations. She recommends that all townships consult with their municipal attorney before taking any kind of action. Officials should educate themselves and fully understand the risk before adopting an ordinance.



Bethany Mauger, MTA Staff Writer

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MTA regional meetings prepare townships for future challenges

MTA travels throughout the state this spring for our *MTA On The Road* regional meeting series. These one-day events are a great opportunity to connect with fellow township officials, get the inside scoop on issues impacting townships, and visit with MTA staff and vendors all at one location.

Dates and locations are:

May 28: Treetops Resort, Gaylord

May 29: Sanctuary Inn, Alpena

May 30: Forwards Conference Center, West Branch

June 10: Holiday Inn, Big Rapids

June 11: Fetzer Center at WMU, Kalamazoo

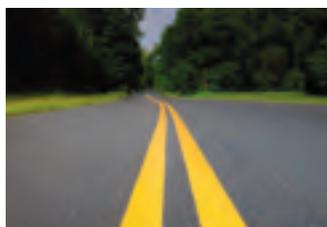
June 16: Bavarian Inn Lodge, Frankenmuth

June 17: Holiday Inn near the University, Ann Arbor

June 24: Holiday Inn, Marquette

June 25: Magnusson Franklin Inn, Houghton

June 26: Little Bear East Arena, St. Ignace



As Michigan approaches another gubernatorial election, Gov. Rick Snyder and incumbent lawmakers will be running on their records, including their pledges to “reinvent government.” How have local governments—and townships in particular—been treated? What

is likely in store for townships going forward? MTA’s Executive Director Larry Merrill will present his near-future predictions, including the inside story of the repeal of the personal property tax, the ongoing fight for payments in lieu of taxes, revenue sharing, local government consolidation, and maintaining local control over township programs and services.

This year’s tour also features breakout sessions offering insight into everyday ethical dilemmas, making your board more powerful, keeping your township dollars safe, and proposed changes to Generally Accepted Agricultural and Management Practices (GAAMPs). Don’t miss this opportunity to solve your township’s thorniest issues.

Download the registration brochure or register online at www.michigantownships.org.



Attendance at an MTA On The Road event is worth four elective credits in MTA’s Township Governance Academy.

We’ve got ‘Spring Fever’

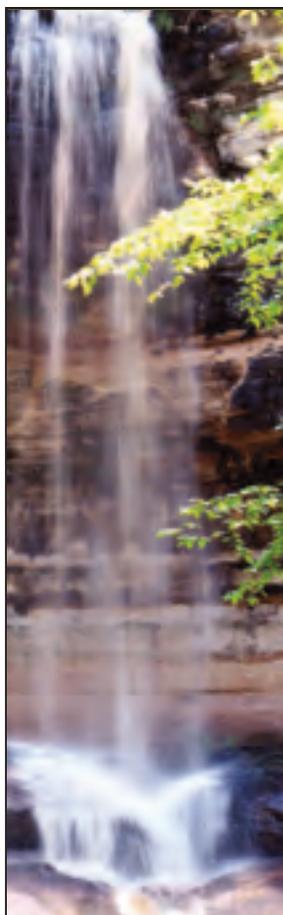
MTA’s eLearning library offers dozens of online learning opportunities, covering a wide variety of topics—from assessing to taxation. We’re ushering in spring with a “Spring Fever” extravaganza—offering member township officials 50 percent off ANY MTA webcast during the month of April.



Detailed descriptions of each webcast are available online; visit MTA’s Online Learning Portal at www.michigantownships.org by selecting “webcasts” under the Training tab or go directly to <http://eo2.commpartners.com/users/mta>.

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Watch Township Focus or visit www.michigantownships.org for updated information, including registration details and session descriptions.

upcoming MTA workshops

REGISTRATION INFORMATION

May workshops tackle pressing issues

At three workshops this month, MTA will offer insights into the elements of investments, demonstrate best practices for obtaining and utilizing legal counsel, and dissect the role of your zoning board of appeals. Join us for any—or all!—of the sessions, offering a day-long educational experience for your township. Register for more than one session and receive a discount! (*Separate individuals from your township attending different sessions will qualify for the discount—must register via mail or fax.*)

What is Your Investment IQ?

9 a.m. to Noon (includes continental breakfast)

Get an overview of investment types allowable under Public Act 20 of 1943, assessing the levels of risk, liquidity and return those options represent. Review best practices for designing and implementing your township's investment policy and quarterly investment report. Geared toward those new to public investing, this session offers information and concepts your township must have to be successful when investing township funds.

Presented by: Keith Sawdon, Finance Director, City of Rochester Hills



Legal Matters

1 to 4 p.m. (includes lunch served at noon)

Townships operate in a world of laws. As litigation costs increase, so does the need to limit liability before problems occur. De-mystify your township's relationship with its legal counsel, from why you need a township attorney to how to select one. Delve into attorney compensation scenarios, including what "retainer" means and whether you need to establish one. Learn how and when to utilize your legal counsel to create a township that is operated lawfully and in a fiscally responsible manner. Explore issues specific to townships, including how an attorney can help your township craft policies and procedures and avoid unnecessary legal risks.

Presented by: MTA Legal Counsel Roxanne Seeber, Attorney, Bauckham, Sparks, Lohrstorfer, Thall and Seeber, PC



ABCs of ZBAs

5 to 8 p.m. (includes dinner served at 4 p.m.)

Whether you've been a member of your township's zoning board of appeals (ZBA) for many years or were recently appointed, this session will assist you in carrying out your responsibilities. Elected officials can attend to learn more about the role of the ZBA and the relationship it has with the board. Explore the ZBA's authority, duties and roles, including use of alternates and when a conflict of interest might exist. Dig into ZBA review standards, variances, appeals of administrative decisions and interpretations, and hear about other duties that may be assigned to ZBAs.

Presented by: MTA Legal Counsel Catherine Kaufman, Attorney, Bauckham, Sparks, Lohrstorfer, Thall and Seeber, PC

MTA's Township Planning & Zoning Decision-making book is available at a discounted rate! Use the form below to pre-purchase this handbook, which includes tips on how to reach defensible, effective decisions and build a strong community. Books will be distributed at check-in.

Cancellations & Substitutions Written cancellation requests received at the MTA office by April 22 will receive a full refund. No refunds will be issued thereafter. You may substitute another individual from your township for your registration at any time without incurring a charge; please notify MTA of the change.

Registration Form

Please check the location and session(s) each individual will attend:

- May 6:** Holiday Inn, Big Rapids
- May 7:** Treetops Resort, Gaylord
- May 9:** Bavarian Inn Lodge, Frankenmuth
- May 20:** Holiday Inn, Battle Creek

	Registration Rate	Discounted Rate
	After April 22	By April 22
What is Your Investment IQ?	\$ 99/attendee	\$ 79/attendee
Legal Matters	\$ 99/attendee	\$ 79/attendee
ABCs of ZBAs	\$ 99/attendee	\$ 79/attendee

_____ (# registered) x \$ _____ (rate*) = \$ _____

_____ (# of ZBA books) x (\$28.80/book*) = \$ _____

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Send your completed registration form with payment to MTA, P.O. Box 80078, Lansing, MI 48908-0078; fax: (517) 321-8908. Or register online at www.michigantownships.org.



A 'priceless' trip

White House announces \$148M township investment

A last-minute plane ticket to Washington, D.C., cost \$700 for **Canton Charter Township** (Wayne Co.) Supervisor **Phil LaJoy**. Once he arrived in the nation's capital, the cab ride cost another \$20.

But hearing President Barack Obama announce him in the White House East Room?

"That was priceless," LaJoy said.

LaJoy was recently invited to attend a major announcement at the White House, where Obama unveiled a \$148 million investment in Canton Charter Township that's expected to bring 10,000 jobs to the region. LaJoy met the president in the Blue Room and even had the opportunity to shake his hand and take a photo together.

"It was pretty cool," LaJoy said.

In late February, LaJoy learned that Canton Charter Township was selected as one of just two sites across the

country to host a new education and research manufacturing facility funded by the federal government. The other facility is planned for Chicago, Ill.

The new facility, called the Modern Lightweight Materials Manufacturing Institute, is charged with developing lightweight yet strong metals and materials for automobiles, rail, tanks, ships and airplanes.

Once open, the facility will partner with research institutes from the University of Michigan (U-M), Michigan State University, Michigan Tech, Wayne State University and other institutes to turn blueprints for this type of material into a reality that will make transportation more efficient.

The initiative will be led by U-M as well as Ohio manufacturing technology nonprofit EWI and U-M rival Ohio State University. Most of the jobs are expected to be located primarily in Michigan and Ohio.

‘It could be huge’

LaJoy believes Canton Charter Township was chosen largely because of its prime location. Not only is the township close to U-M, but it’s also located in Wayne County and has easy access to airports and interstate highways.

The impact this investment will have on the township remains to be seen, but LaJoy has high expectations.

Already, Canton Charter Township has received invaluable publicity and marketing as news of the institute spread throughout the state and nation. LaJoy believes that with the facility in place, more manufacturers will consider southeast Michigan when they decide to open new factories and plants. In time, new manufacturing jobs could move into the state, replacing the jobs that were lost during the recession.

An investment of this magnitude will be a major benefit to the township and southeast Michigan, as well as the state as a whole, LaJoy said.

“We think it could be huge,” LaJoy said.

‘Canton’s going to do great’

The announcement itself was nothing short of surreal. LaJoy was actively involved in submitting a request for proposal for this project. He received word from the White House just days before the announcement was scheduled, with no details about Canton Charter Township’s award. When he told reporters at the time that he didn’t have any information, it was the truth.

LaJoy traveled to Washington, D.C., where he was one of several invited guests that included Illinois Gov. Pat Quinn and Chicago Mayor Rahm Emmanuel. Before the ceremony, he and about four other people gathered in the Blue Room, stood in a line and, one by one, met the president.

He told the president that Canton Charter Township was honored to be selected, and that he looked forward to being a good partner.

“[Obama] said, ‘Canton’s going to do great with this thing.’ And then he moved along,” LaJoy said.

It was a moment LaJoy will always remember, and one that he hopes will positively impact the future of his township and state.

Share your township’s story!

At *Township Focus*, one of the biggest (and best!) parts of our job is to tell your township’s story—your successes, your innovations, your solutions to overcoming challenges. Your experiences can help your fellow township officials learn and grow as they endeavor to best serve their communities. Got a story you’d like us to share with *Focus* readers? Let us know! Contact Editor Jenn Fiedler at jenn@michigantownships.org or call (517) 321-6467. We’re waiting to hear from you!

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Township rezoning not a regulatory taking

Grand/Sakwa of Northfield, LLC v. Township of Northfield, ___ Mich. App. ___, Feb. 4, 2014—[Condensed with edits from opinion; citations omitted:] In January 2002, Grand/Sakwa executed an agreement to purchase four parcels of land totaling approximately 220 acres in **Northfield Township** (Washtenaw Co.) zoned AR Agricultural for \$30,000 per acre and paid a nonrefundable deposit of \$25,000. In 2003, plaintiffs applied to rezone the property from AR to SR-1 single family residential. SR-1 zoning allows up to four dwellings per acre with sewer service, or one per acre without sewer service. On Nov. 18, 2003, the township board approved the rezoning, limited to 450 homes. A successful referendum, held May 18, 2004, overturned the board's decision, leaving the property zoned AR. After the referendum, the Northfield Township Zoning Board of Appeals denied plaintiffs' requests for use or dimensional zoning variances.

Plaintiffs filed suit in October 2004, alleging that any zoning classification more restrictive than SR-1 constituted a regulatory taking. Shortly after the lawsuit was filed, a new township board took office and rezoned the property from AR to LR low-density residential (LR). The LR classification itself was amended to allow only one home per two acres, instead of the previously allowed one home per acre.

At the time of the bench trial, the property was zoned LR. Plaintiffs argued that whether or not a regulatory taking existed should be determined by evaluating the AR zoning that existed at the time the lawsuit was filed. The trial court ruled that the relevant zoning ordinance was the one then in place, i.e., LR zoning. After the full trial, the court held in the township's favor on all of plaintiffs' claims, finding no constitutional violation. Plaintiffs appealed.

Plaintiffs first argued that the trial court erred by ruling

that the LR zoning classification in place at the time the court made its decision applied, rather than the AR classification in place when the lawsuit was filed. The court disagreed, stating that "the general rule is that the law to be applied is that which was in effect at the time of decision by the trial court. Thus, if a zoning ordinance has been amended after suit was filed ... a court will give effect to the amendment."

This general rule is subject to two narrow exceptions, where 1) the amendment would destroy a vested property interest acquired before its enactment, or 2) the amendment was enacted in bad faith and with unjustified delay. The court found there was never any vested right to develop the property under any zoning classification other than AR, because at the time of the sale, the property was zoned AR and remained so until the amendment rezoning it LR was adopted.

The second exception applies if the trial court finds that the newer classification was enacted simply to manufacture a defense. The court deferred to the trial court's finding that obtaining a litigation advantage was not the predominate reason for the ordinance change.

Plaintiffs also argued that the LR zoning constituted an unconstitutional governmental taking. Both the U.S. and Michigan Constitutions prohibit the government from taking private property for public use without just compensation. A taking may be caused by overly burdensome regulations in two situations: if the regulation does not advance a legitimate state interest or if the regulation denies an owner economically viable use of his land.

Where a regulation does not deny the owner of *all* economically beneficial or productive use of land, a regulatory taking may be found on the basis of the traditional balancing test established in *Penn Central Transp. Co. v. New York City*, 438 US 104 (1978).

The *Penn Central* test has three factors: 1) the character of the government's action, 2) the economic effect of the

regulation on the property, and 3) the extent by which the regulation has interfered with distinct, investment-backed expectations.

The *Penn Central* court cited zoning ordinances as generally permissible, providing that the “government may execute laws or programs that adversely affect recognized economic values,” and that a regulatory taking will not be found where a state tribunal reasonably concludes that the land-use limitation is in the general welfare, even if it “destroys or adversely affects recognized real property interests.” The court held that the first prong of the *Penn Central* test weighed in the township’s favor.

In *Penn Central*, the court agreed that the regulation in question diminished the value of the plaintiff’s property, but did not interfere in any way with the present uses of the property. The court found the same to be true here. The LR zoning classification allows a much more valuable use of the property than does AR zoning in effect when plaintiffs entered into the purchase agreement.

And although the restriction imposed in *Penn Central* was quite significant, the court held that it was not a taking because the plaintiff was not “denied all use of even those pre-existing property rights.” In this case, no rights existing under the AR zoning were denied under the LR zoning, which substantially expands plaintiffs’ land use rights, allowing residential development to occur.

Plaintiffs next argued that the trial court erred by excluding testimony from lay witnesses regarding the value of the

property under SR-1 zoning. The court stated that relevant case law provides that even a large diminution of value does not, standing alone, constitute a taking (noting that the U.S. Supreme Court refused to find takings in cases involving 75 percent and even 87.5 percent diminution of value).

Regarding the role of investment-backed expectations, the court noted that, “A claimant who purchases land that is subject to zoning limitations with the intent to seek a modification of those limitations accepts the business risk that the limitations will remain in place or be only partially modified.”

The court stated, “In sum, Grand/Sakwa chose to purchase AR-zoned property upon which, according to its own arguments and expert testimony, it could not build an economically viable development. It made efforts to get the zoning changed and failed. Contrary to plaintiffs’ claim, we are unaware of any case law that provides that monies expended in pursuit of a zoning change are, in themselves, grounds to claim a taking.”

The court also ruled against the plaintiffs on due process and equal protection claims. The court concluded, “The township’s goals of controlling growth and maintaining open space were legitimate, the method chosen was not arbitrary or capricious, and plaintiffs’ property was not improperly singled out under the circumstances. Moreover, following the referendum denial of the SR-1 zoning, the township acted to provide plaintiffs with a more economically viable zoning classification than AR.”



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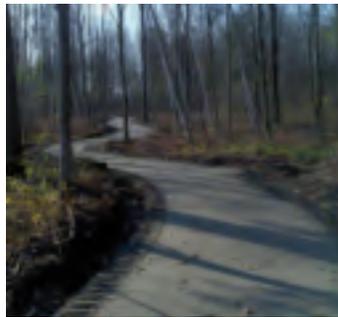
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*Look for details in Township Insights and other
MTA publications, and on MTA's website.*

aroundthestate

townships in the spotlight



Thomas Township

Thomas Township, located in northwestern Saginaw County, was incorporated in 1855 and became the third township organized within the county. While incorporation may have been in 1855, the Chippewa Indians had called this area home since the mid-1700s, enjoying the unique resources provided by the Tittabawassee River, the eastern border of Thomas Township.

Today, Thomas Township is a full-service township, providing its 11,985 residents with a mixture of beautiful residential developments, generational agricultural farms and planned commercial development, complete with a downtown development authority. It is home to the world headquarters of Hemlock Semiconductor Inc., which produces about one-third of the world's silicon, used in wafers for electronic devices and computers. Dow Corning's



Healthcare Industries Materials site is also located in Thomas Township, as well as the Great Lakes Tech Park, a 240-acre, shovel-ready site devoted to the research, development and production of alternative energies with an emphasis on solar energy. Thomas Township provides water service to about 95 percent of its residents, and sewer service to about 60 percent of its residents. The township also has its own police department with 24/7 coverage and a very progressive fire department with access to a confined rescue team and a water rescue team.

Recreational opportunities are abundant in Thomas Township. Besides the five public golf courses in the township, the municipal recreational program abounds with five different parks, each one with its own unique offerings—from soccer and softball fields to a community pool, a 16-gauge working train, a bandshell that is home to the summer “Picnic in the Park” Concert Series, and various walking trails. The newest addition to the township's park offerings is the Thomas Township Trail, which provides 2.3 miles of non-motorized fun. The trail connects to the Saginaw County Rail Trail, with the options of traveling east to **Saginaw Charter Township** (Saginaw Co.) or west to the St. Charles area. Thomas Township officials say that their area offers something for everyone.



How do you, as a public official, **stay connected** with your constituency?

By writing newsletters, encouraging attendance at board meetings and encouraging phone calls—just keeping the lines of communication open.

—**Debbi Thomas**, Supervisor
Klacking Township
(Ogemaw Co.)



I just try to be available and responsive. I'm involved in our community in many venues and work at being approachable. I don't shy away from questions and will get back to people if I have to find an answer. I don't always get it right, but I am open and honest.

—**John Gaudette**, Trustee
Breitung Charter Township
(Dickinson Co.)



We provide a newsletter, update our website, and share dates and information through press releases with newspapers. I try to attend school board and village meetings whenever possible, and am personally active in several community groups, which allows me contact with constituents on a regular basis. I attempt to attend as many "public" functions as possible. The design of our township office allows residents and visitors to see each office from the counter/public area—so they can feel free to ask to speak to myself, Clerk **Tere Onica** or Treasurer **Ann Marie Moore** if they need information or have questions.

Atlas Township is a small community—residents may show up at your door! I have received telephone calls as early as 5 a.m. and as late as midnight. I believe if you are visible and active in the community and approachable, constituents will feel comfortable contacting you for information related to issues or concerns they may have.

—**Shirley Kautman-Jones**, Supervisor
Atlas Township (Genesee Co.)

Want to take part in MTA's Township Talk panel? It's easy! Email your interest to jenn@michigantownships.org, or call MTA Knowledge Center Communications Director Jenn Fiedler at (517) 321-6467 to get signed up. Participants will be asked Township Talk questions, via email, one to two times per year.



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