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Township Planner
 Brett Wittenberg

Recording Secretary
 Linda K. Parkinson-Gray

**PLANNING COMMISSION
 MINUTES
 MONDAY, FEBRUARY 1, 2016
 7:00 p.m.**

The regularly scheduled meeting of the Dewitt Charter Township Planning Commission meeting was called to order at 7:00 p.m. by Chairman Keilen.

The Pledge of Allegiance to the Flag was said by those present.

ROLL CALL by Secretary Lorenzen.

MEMBERS PRESENT: Zimmerman, Lorenzen, Keilen, Dailey, Fair, Bertram, Krol.

MEMBERS ABSENT: Musselman.

VACANCY: 1 (Gobbo)

OTHERS PRESENT: Township Planner Tory Niewiadomski, Township Planner Brett Wittenberg and Recording Secretary Linda Parkinson-Gray.

APPROVAL OF AGENDA: **Dailey moved to approve the Agenda, with the amendment to move Item III. under Unfinished Business (SUP 15-990005) to Item I. Supported. MOTION CARRIED.**

APPROVAL OF MINUTES **Fair moved to approve the minutes of the January 4, 2016 meeting as printed. Supported. MOTION CARRIED.**

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS:

- I. PUBLIC HEARING - Request for Special Use Permit 15-990005 (Major Amendment to SUP 13-990002) from MacKenzie Recycling Corp. and E.T. MacKenzie Co., to allow the applicant to operate a sand and gravel extraction operation to include additional land to the operation for sorting, processing and storage of aggregate materials and access to S. US 27, for property located at 1300 E. Clark Road and vacant property on S. US 27, on the south side of Clark Road, east of S. US 27, west of Boichot Road, north of Stoll Road, in the west 1/2 of Section 22 of DeWitt Charter Township, Parcels #050-022-200-010-61, #050-022-300-095-00, #050-022-300-055-61.**

- A. **Open Public Hearing. Chairman Keilen declared the Public Hearing opened at 7:05 p.m.**
- B. **Administrative Comments/Applicant Comments/Public Comments.**

Township Planner Brett Wittenberg briefly reviewed staff's memorandum dated January 26, 2016 advising that this request primarily consists of adding additional land to an existing Special Use Permit area. This would increase the overall acreage from approximately 105 acres to 144 acres. The additional land proposed to be added to the operation would allow the applicant to relocate the sorting plant, aggregate piles and truck loading activity to the south and west end of the site, away from the existing properties located on Boichot Road. This could also provide more stock pile area and could potentially expedite the extraction and rehabilitation process. Wittenberg further noted the applicant is also pursuing a permit with the Michigan Department of Transportation (MDOT) for access onto S. US 27.

The subject site is zoned A (Agricultural) and some R3 (Single Family Residential) parcels within the property. The surrounding land uses consist of residential, commercial and vacant property.

Wittenberg went on to review the details of the proposed site plan last revised on 12/10/15. He noted areas on the site where the stockpiling of materials is proposed to take place (southwestern most portion of the site). As part of this major amendment it should be noted there is no request to expand the mining and excavation operations.

With respect to public services and facilities, staff did receive comments from the Clinton County Drain Commissioner (CCDC) indicating that they had no concerns with the proposed amendment, as long as they maintain the stock pile area as a "no work" zone. New soil erosion control permits will be required.

Wittenberg further noted there were no comments from the Michigan Department of Environmental Quality (MDEQ). However, all necessary approvals will be required from MDEQ for wetland mitigation.

Wittenberg went on to review the requirements of Section 42-1143 of the Zoning Ordinance for excavation of soil and minerals as follows:

- a. *The use is harmonious and in accordance with the principles of the DeWitt Township Comprehensive Development Plan and Growth Staging Plan contained therein.*

The proposed addition of land to the existing mining activity is an allowed use in the A (Agricultural) zoning district and will allow the applicant to relocate the sorting plant, aggregate stockpiles, and truck loading activity south and west away from residents along Boichot Road as opposed to the northern portion of the site to reduce neighborhood impacts. The additional land will provide more stockpile area that could potentially expedite the extraction and rehabilitation process. If the site is rehabilitated

according to the plans, it could be developed in accordance with the Comprehensive Development Plan.

- b. The use is designed, constructed, operated, and maintained harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the area which it is proposed.*

The proposed amendment to the existing Special Use Permit includes reasonable conditions to assure that the impacts on surrounding properties will be minimal while excavation is taking place.

- c. The use not be hazardous or disturbing to existing or future uses in the general vicinity.*

The proposed amendment to the existing Special Use Permit can continue and, expand if necessary, reasonable conditions related to well protection, airborne dust, vehicle noise, hours of operation, and rehabilitation of the site to mitigate the detrimental impacts of the proposed use to the greatest extent possible.

- d. The use be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.*

The proposed Special Use Permit could include adequate conditions to assure that the requirements of all public agencies will be met during the duration of the operation. Reviews by public agencies to date have not indicated any barriers to approving this amendment to the existing Special Use Permit.

- e. The use not involve uses, activities, processes, materials, and equipment or conditions that will be detrimental to any persons, property or general welfare by reason of excessive traffic, noise, smoke, fumes, glare, or odor.*

As was noted under condition c), reasonable conditions have been and can be placed on the Special Use Permit to address the adverse impacts associated with the proposed use.

- f. The use conserves and protects natural resources and energy and promotes the social and economic well-being of those who will use the land or activity under consideration.*

The use is proposed to be conducted in accordance with applicable regulations and will be monitored by the Township on an annual basis.

Wittenberg advised that staff sent out approximately 90 notification letters for this Public Hearing. One written response was received from Greg Shierbeek on behalf of King Court, LLC in support of the request. There were no verbal responses received.

In closing, Wittenberg noted the first paragraph of the SUP document should be amended to read “previously approved as SUP 13-990002”. He also noted that the

expanded financial guarantee amount will total \$256,500.00. The applicant currently has a financial guarantee in the amount of \$92,948.00.

Chairman Keilen invited Commissioner questions or comments.

There were no Commissioner questions or comments.

Chairman Keilen invited the applicant to speak.

Ron Clark, representing the applicant, E.T. MacKenzie Co., 4248 W. Saginaw Highway, Grand Ledge, MI 48837, thanked staff for their report. He would like to add that the Stoll Road excavation site is virtually closed out. The only remaining issue is there is still a surety bond in the amount of \$171,653.00 for that property still being held by the Township. If this major amendment is approved, they intend to consolidate the bonds.

Clark further stated the main reason for this request is due to the fact that the property line on the west side of the site continues to become narrow as extraction continues. Currently that is where the sorting plant and stock pile area is located. As previously mentioned, the applicant would like to move these operations to the southwestern portion of the site. This would be further away from the existing residential area. It is also proposed that the trucks would enter from S. US 27 and move north on the site so that they could exit onto Clark Road. Currently, the trucks enter and exit through the Clark Road drive. Clark noted MDOT has no issues with the access onto S. US 27.

Brief discussion followed regarding the location of the access onto S. US 27.

Bertram stated his only concern with the S. US 27 drive would be keeping the roadway clear of dirt and the amount of traffic that travels along there. He questioned if the applicant intends to try to access the site during heavy traffic hours.

Clark advised that the current Special Use Permit has the condition that no equipment is to be running before 7:00 am and after 5:00 pm. This should avoid heavy traffic times.

Keilen noted that this extraction operation has been operating for many years. He questioned if the applicant could provide a timeframe for when the operation would end and the property would be totally reclaimed.

Clark stated it is hard to guess. At this point it could be seven to ten years. Of course this would depend upon the state of the economy.

Chairman Keilen invited public comments.

Cheryl Poole, 14574 Boichot Road, Lansing, MI 48906, stated her property backs up to the site. She would like to say that the reclaimed area just north of Stoll Road is very beautiful. However, she has not been able to enjoy her back yard for several years (16) due to the noise generated from the excavation operation. Many people's lives have

been disrupted and they do not feel contacting the Township will do any good. The most disturbing noise that is coming from the site is the pounding.

Lois Baumer, 14420 Boichot Road, Lansing, MI 48906, stated she purchased her property in 1953 and was told at that time the operation would last 6 to 7 years. She stated she also is unable to enjoy her backyard. She would just like to know that at some point there would be a reprieve from the excessive dust and noise associated with the excavation operation.

Ken Pung, 14780 Boichot Road, Lansing, MI 48906, stated he moved into his home in 1991. In 1996 the Township approved SUP 07-990005 for the Stoll Road excavation operation (Kazenko property). He would like to say that whatever was agreed upon in that SUP was not carried out. The condition related to final grade was blatantly disregarded in September 2013. Upon his request, staff and the applicant visited the site to better understand his concerns. Mr. Pung met with the Township Manager in June of 2014 to discuss how his concerns could be addressed. Although the grade was changed, it still did not meet the approved plans. The berm behind his home is dust and weeds. He does not feel the applicant held up to the conditions of approval for the Special Use Permit.

Dailey questioned if Mr. Pung sees this request for amendment as a positive thing.

Pung stated it would not have any impact on him as his home is not located near the site.

Bertram stated he recalls discussion at a previous meeting related to dust control for this site. He believes there was supposed to be a water tanker on site. He questioned if the dust situation has improved.

Pung stated he is not home during the day so he is not certain if the dust issue has improved. However, he feels the Township should stop granting approvals and say "enough is enough".

Keilen noted the Township cannot just deny a request without a valid reason. It is part of the State Law that if minerals are present the property owner does have the right to excavate them. Should the Township deny that right it could cause a very costly litigation process.

Ken Bancroft, 14585 Boichot Road, Lansing, MI 48906, stated he has resided on Boichot Road for approximately 29 years. He expressed concerns with excessive noise and dust. He questioned how much longer this will go on.

Bruce Omundson, 1052 Wild Turkey Lane, Lansing, MI 48906, stated his residence is east of Boichot Road. He expressed concerns with excessive noise and dust that the residents on Boichot Road are subjected to. The endless extensions granted by the Township are unconscionable.

Faye Hagy, 1745 E. Clark Road, Lansing, MI 48906, stated although she does not live on Boichot Road she can hear the noise of the mining operation from her home. She

questioned if this proposed expansion is getting closer to the vicinity of the existing residential homes.

Keilen advised the expansion will be further away from the residences.

Ron Clark, representing the applicant, stated there is a water tank truck on site at all times to mitigate the dust that is created. They are required to keep a log of the complaints that come in. He stated that he has not received any phone calls. It would actually be helpful if people would call with their complaints. He noted that Township staff did receive a noise complaint last summer. Staff visited the site and measured the noise levels. The readings were within a normal range therefore staff did not contact E.T. MacKenzie. In fact, the levels were very similar to the vehicle traffic on S. US 27. In closing, Clark stated they will continue to do the best that they can to mitigate the noise and dust. He will also visit Mr. Pung's property to see if there are erosion gullies that need to be taken care of in the spring.

Clark went on to state that the Township would not grant anymore extensions for the Stoll Road pit behind Mr. Pung's house. Therefore, they left 200,000 yards of material on the site and they began the reclamation process to close down the operation. This is part of the reason the berm on Mr. Pung's property is a little higher than originally intended. He noted the existing berm does meet the specifications of the consent judgment reached between the Township and E.T. MacKenzie Company.

Brief discussion followed regarding how complaints related to this site are to be made. The process set up in 2013 involved providing the residents who were noticed of this public hearing with contact information for the operators of the mining operation.

Bertram suggested the Township and the applicant be notified immediately when there is a complaint.

The Commission was in agreement that a letter should be sent to the residents who were notified of this Public Hearing advising them to contact the Township should there be any issues related to operations on the property. The Township will then contact E.T. Mackenzie to address any concerns expressed.

Fair questioned if the applicant could predict when this operation would come to an end.

Clark stated it is very hard to predict. The current permit expires in 2018. At that point he believes much of the material would be extracted. Perhaps five more years is a realistic expectation for the operation to come to an end. Of course this depends upon the economy.

Cheryl Poole, 14574 Boichot Road, Lansing, MI 48906, expressed concern with extensions being approved. The point is not so much the noise and dust but how long it will have to be endured by the surrounding residents.

Ken Pung, 14780 Boichot Road, Lansing, MI 48906, stated although the applicant has their property rights, he questioned at what point do the surrounding residents get their rights back to be able to enjoy their property?

Lorenzen clarified that there seems to be two separate issues being discussed tonight. The request before the Planning Commission tonight is for the expansion of land and the complaints expressed seem to be related to the extension of time that has been granted. She questioned if any of the public has an issue with the addition of land. The duration of the Special Use Permit cannot be addressed at this time.

Cheryl Poole, 14574 Boichot Road, Lansing, MI 48906, stated she does feel bad for the residents close to the proposed expansion area.

Brad Throop, 14545 Boichot Road, Lansing, MI 48906, stated the hours of operation are annoying. He further stated he would prefer to contact the Township when operations begin before the 7:00 am start time.

There were no further comments or questions.

C. Close Public Hearing.

Fair moved to close the Public Hearing at 8:16 p.m. Supported. MOTION CARRIED.

D. Discussion and possible action by Planning Commission.

Lorenzen questioned what would be an acceptable noise level for a residential area.

Township Planner Brett Wittenberg advised when an industrial use abuts a residential use the acceptable decibel level is 55. When staff visited the site in response to noise complaint last summer the decibel level was at 50.

Brief discussion followed regarding the fact that noise levels most likely vary depending on the time of day.

Niewiadomski stated that staff would like to respond to any complaints as quickly as possible and contact the operator if needed.

Fair moved that the Planning Commission recommend the Township Board to approve request for Special Use Permit 15-990005 (Major Amendment to Special Use Permit 13-990002) for the Clark Road property to allow the expansion of excavation of soil and minerals pursuant to Section 42-1143 of the DeWitt Charter Township Zoning Ordinance. Approval is recommended on the following basis:

- 1. That the proposed expansion of excavation of soil and minerals will be operated in accordance with the requirements of Section 42-1143 of the Zoning Ordinance.**

2. **That the proposed expansion of excavation of soil and minerals will continue to meet the requirements of existing Special Use Permit 13-990002 for the property.**
3. **That the Basis for Determination for Special Use Permits listed in Section 42-1067 of the Zoning Ordinance have been met.**
4. **That the application meets the permit requirements of the Michigan Department of Environmental Quality for the expansion of the water surface and wetland mitigation.**
5. **That the applicant meets the permit requirements of the Michigan Department of Transportation for access onto Old US 27.**
6. **That the applicant meets the Clinton County Drain Commissioner's requirements for soil erosion and sedimentation control.**
7. **That the applicant provide the required expanded financial guarantee in the amount of \$256,500.00 to assure that the site will be restored in accordance with approved plans for the site.**

Supported.

ROLL CALL vote on motion:

AYES: 7 NAYS: 0 ABSENT: 1 (Musselman)

VACANCY: 1 (Gobbo)

MOTION CARRIED.

- II. Proposed Ordinance Amendment 42.7 – Wireless Communications Towers and Appurtenances, to amend the DeWitt Charter Township Zoning Ordinance Article IV – Exceptions, Supplementary Regulations and Special Conditions and Uses Specifically Prohibited to be consistent with the Michigan Zoning Enabling Act regarding wireless communication equipment, to address collocation of equipment, to address uses permitted by Special Use Permit, to establish timelines for Special Use Permit approval; the repeal ordinances in conflict herewith; and to establish an effective date hereof. Postponed at the January 4, 2016 meeting.**

Niewiadomski briefly reviewed staff's memorandum dated January 26, 2016 and the revised Ordinance Amendment reflecting suggested changes from the discussion at the January 4, 2016 meeting.

Lorenzen moved that the Planning Commission recommend that the Township Board of Trustees approve Ordinance Amendment 42.7 based on the finding that the proposed amendment complies with the process for amending the Zoning Ordinance. Supported.

ROLL CALL vote on motion:

AYES: 7 NAYES: 0 ABSENT: 1 (Musselman)

VACANCY: 1 (Gobbo)

MOTION CARRIED.

- III. Proposed Ordinance Amendment 42.8 – Mining Operations, an ordinance to amend the Dewitt Charter Township Zoning Ordinance Article V – Site Plan Review and Special Use Permits to be**

consistent with the Michigan Zoning Enabling Act regarding the extraction of natural resources, to require an anticipated final grade elevation plan, to establish when rehabilitation of abandoned or completed areas, to establish criteria for the determination of financial guarantees; to repeal ordinances in conflict herewith; and to establish an effective date hereof. **Postponed at the January 4, 2016 meeting.**

Wittenberg briefly reviewed staff's memorandum dated January 22, 2016 and the revised Ordinance Amendment reflecting suggested changes from the discussion at the January 4, 2016 meeting.

Dailey moved that the Planning Commission recommend that the Township Board of Trustees approve Ordinance Amendment 42.8 based on the finding that the proposed amendment complies with the process for amending the Zoning Ordinance. Supported.

ROLL CALL vote on motion:

AYES: 7 NAYS: 0 ABSENT: 1 (Musselman)

VACANCY: 1 (Gobbo)

MOTION CARRIED.

EXTENDED PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

REPORTS:

I. Trustee:

Trustee Balzer gave a brief report of business conducted and action taken at the Board of Trustees meetings held on January 11, 2016 and January 25, 2016.

II. Zoning Board of Appeals: No meeting in January.

III. Committees: None.

IV. Staff:

Proposed Ordinance Amendment 42.9 – Shooting Ranges – Discussion

Niewiadomski stated staff has provided the Township Attorney with a few questions to look into regarding what are reasonable regulations for the indoor and outdoor shooting ranges. At some point staff would like to have the Township Police Chief attend a Planning Commission meeting to provide a question and answer session.

Niewiadomski thanked the Planning Commissioners for all of their contributions on the Ordinance Amendments staff have been working on. Redline versions of the amendments will continue to be provided to the Commission throughout the entire process. The goal is to have discussions focused on intent and purpose of the changes. Any grammatical or spelling errors can be given to staff before or after the meetings.

DISCUSSION: None.

ADJOURNMENT: Fair moved to adjourn the meeting at 8:42 p.m. Supported. MOTION CARRIED.

Linda K. Parkinson-Gray
Linda K. Parkinson-Gray, Recording Secretary

Abby N. Lorenzen
Abby Lorenzen, Secretary