

DeWITT CHARTER TOWNSHIP
1401 W. Herbison Road, DeWitt, MI 48820
November 23, 2015 Board Minutes

The Regular Meeting of the DeWitt Charter Township Board was called to order by Supervisor Galardi at 7:00 pm with the Pledge of Allegiance.

MEMBERS PRESENT: Supervisor Rick Galardi, Clerk Diane Mosier, and Trustees Johanna Balzer and Stephen Musselman, Brian Ross, and David Seeger

MEMBERS ABSENT: Treasurer Phyllis Daggy

ALSO PRESENT Manager Rodney Taylor, and several citizens.

AGENDA **Seeger moved, Musselman seconded, to approve the Agenda, adding Chief Building Official to New Business. Motion voted and carried.**

CONSENT AGENDA **Balzer moved, Seeger seconded, to approve the Consent Agenda, which included approval of General Operating Fund Vouchers 65393 – 65462 and Tax Fund Vouchers 8250 - 8256; approval of Township Board Minutes of November 9, 2015 and Executive Session Minutes of November 9, 2015, and to receive and place on file the draft minutes of the Planning Commission meeting of November 2, 2015. Motion voted and carried.**

PUBLIC COMMENT None

COUNTY

COMMISSIONER None present.

CORRESPONDENCE Correspondence included the following: Citizens Guild to Local Unit Finances; Clinton County Sheriff October Statistics; Activity Report; Legislative Update from Representative Leonard.

UNFINISHED
BUSINESS None

NEW BUSINESS Planner Wittenberg reviewed his staff report detailing the renewal request for SUP 15-990004
SUP 15-990004 Kesler (Kesler) and the Planning Commission consideration/recommendation for the application for the
Properties LLC Kesler Howe Road mining operation. He noted that the properties included in the original SUP
have changed. He explained that the major issue discussed by staff, the Planning Commission,
and the applicant, was the amount of the financial guarantee that is required per Township
Ordinance.

Planner Wittenberg explained that the applicant believes that the land that will be underwater should not be used in the calculation for the financial guarantee. He noted that the Planning Commission discussed that the project could be phased, and amended as the operation progresses and the site is rehabilitated, then they proceeded to make a recommendation as shown in the staff report.

Clerk Mosier pointed out that although all mining operations are different, the Ordinance must work for all types of mining operations, so there are those with significant water surface areas that if that area was removed from the calculation, the financial guarantee would be insufficient to restore a site, if needed. This operation, which is fairly flat with smaller grades, appears to need less restoration after the operation concludes mining, but the Ordinance must work to protect the ability to restore all sites. Considering the previous, she stated that we are open to working with the developers when possible.

Trustee Balzer stated that she has a concern that the permit has expired, yet the pit has operated for over a year without a permit. Planner Wittenberg stated that staff has been working with the applicant during this period of time, so the issue before the Board is a result of what has transpired during this time, and the recommended action does not address any retroactivity.

Trustee Ross stated that the purpose of the financial guarantee is for proper restoration of the site, so the ordinance itself should be adequate for its purpose, but not punitive in terms of its scope. He noted that he does not know what latitude the ordinance allows, but we may need to look at the formula. He questioned the applicant as to whether they are mining below the waterline and they responded that they are mining below the waterline.

Trustee Musselman stated that the ordinance has been updated to make sure restoration can be accomplished with the money on deposit for that purpose, which was not the case before the update. He stated that if we need to look at the formula and its numbers, then we should do so for future applications. Questions were raised about what requirements the Ordinance has relating to below the waterline, and Planner Wittenberg stated that this will be looked at in conjunction with the rest of the Ordinance. He also pointed out that mining operations are ever changing often quite different at start than at finish, as is shown in the plans before the Board this evening.

Supervisor Galardi asked how the area to be mined would be updated as the project progresses, or when would the applicant get relief if the site changes significantly? Options and possibilities were discussed, but it was made clear that we are now dealing with the current Ordinance, and changes in the Ordinance take approximately six months.

Trustee Balzer stated that she questions changing the Ordinance for the benefit of this applicant, but that she understands all mining operations would be affected or impacted. Planner Wittenberg stated that staff is already looking at the Ordinance for possible updates, so the timing for these questions is appropriate. Manager Taylor pointed out that recent legislative changes and court actions are the reasons that mining regulations need to be reviewed, so this is a good time to give the Ordinance a broad look. Trustee Balzer stated that she is just looking for consistence and equal treatment for all operations.

Trustee Seeger questions whether the gas pipeline on the site is proposed to be moved? Daryl Kesler stated that he has not heard of any plans to move the pipeline.

Jeff Kyes, KEBS, Inc., representing Kesler Properties LLC., stated that he worked hard on this issue to find what would be fair for a financial guarantee. He pointed out that the need for a financial guarantee is to restore the site and make it safe and stop erosion. He noted that when applying, they need to turn in a five year plan, upon which the financial guarantee is based, yet only 21 acres of the site has been disturbed to date. He questioned why the area yet undisturbed for mining, and currently being farmed, needs to be included in the calculation for the financial guarantee. He asked if the issue can be discussed regarding the how the Ordinance is interpreted.

Planner Wittenberg stated that the Planning Commission did not consider this question regarding the financial guarantee, since this question was not raised at that time. The issue seems to be “area disturbed” as stated within the Ordinance.

It was noted that should the Board not concur with the Planning Commission recommendation, the issue should be returned to the Planning Commission, rather than the Board making changes to their recommendation. Supervisor Galardi pointed out that there are really two issues here, the interpretation of the current Ordinance as it relates to this application, and the need for review and amendment of the Ordinance effective now.

The issue of the applicant continuing to operate without a permit was raised. It was noted that the current financial guarantee is still on file with the Township, no complaints have been received regarding this operation, and mining operations have basically stopped for the season. Daryl Kesler stated that they are currently only removing from stockpiles, and that they agree not to mine additional materials until these issues are resolved and permit renewal has been granted. He also noted that they may be working on the berm on the site.

Supervisor Galardi stated that discussion has determined three issues exist: 1)Compliance, which the record will show has been resolved by the applicant’s statement to not mine without a permit 2)interpretation of the current Ordinance as it addresses “disturbed area” when calculating the amount of the financial guarantee, and 3)future review of the existing mining regulations.

Mosier moved, Ross seconded, to allow Kesler Properties to continue to remove from stockpiles and do site reclamation, at their Howe Road mining operation, relating to SUP 15-990004, while their SUP renewal is being considered. Motion voted and carried.

Mosier moved, Ross seconded, to return to the Planning Commission, SUP 15-990004, Kesler Properties, LLC, for additional consideration regarding an interpretation of “undisturbed areas” as it relates to the financial guarantee requirements of the Township’s Mining Ordinance. Motion voted and carried.

AYES: Balzer, Ross, Mosier, Galardi, Seeger, Musselman
NAYS: None Motion carried.

Ross moved, Balzer seconded, to approve the Union Employees 2016 Holiday Schedule, as presented. Motion voted and carried.

Budget Adjustments **Mosier moved, Balzer seconded, to approve the following budget adjustments: \$5,000 to 101-210-802-000 (Legal Fees) and \$2,000 to 101-215-977-000 (Clerk Capital Expenditures) from 101-000-390-000 (General Fund Balance). Motion voted and carried.**

Chief Building
Official Hire
Manager Taylor explained the most recent progress to fill the vacant Chief Building Official position, with a recommendation to hire Charles Rau.

Mosier moved, Seeger seconded, to authorize the Township Manager and the Township Clerk to execute an employment contract with Mr. Charles Rau as the Chief Building Official at Grade 9, step 8, contingent upon a successful completion of the pre-employment physical and review, and approval of the employment contract by the Township Attorney. Motion voted and carried.

PUBLIC COMMENT None.

REPORTS
Manager Taylor reported the following: he continues to work with Bath Township to resolve the odor issues our residents are experiencing on Wood Road; he continues to work with the City of DeWitt and Spicer Engineering on a “wayfinding” project; some initial steps have begun with SCCMUA and the Dog Park Citizens Group for the possible consideration of a site for a future dog park on SCCMUA Property; he provided an update on the progress for the Pathway/Sidewalk project in the southern tier.

CLOSED SESSION/
Union Negotiations **Musselman moved, Seeger seconded, to adjourn to Executive Session to discuss Union Negotiations at 8:10 p.m.**

AYES: Balzer, Ross, Mosier, Galardi, Seeger, Musselman
NAYS: Motion carried.

Supervisor Galardi reconvened the regular meeting at 8:33 p.m.

ADJOURNMENT **Seeger moved, Musselman seconded, to adjourn at 8:40 p.m. Motion voted and carried.**

Respectfully submitted,

Diane K. Mosier, Clerk

Rick Galardi, Supervisor