

Chair
 Adam Bertram
Vice-Chair
 Bruce Keilen
Secretary
 Abby Lorenzen
Commissioners
 Steve Musselman, Trustee
 Dale Dailey
 Marsha Zimmerman
 Steve Gobbo
 Tim Fair
 Kristen Krol



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Township Planner
 Tory Niewiadomski

Township Planner
 Brett Wittenberg

Recording Secretary
 Linda K. Parkinson-Gray

**PLANNING COMMISSION
 MINUTES
 MONDAY, NOVEMBER 2, 2015
 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 Bertram.

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

ROLL CALL by Secretary Lorenzen.

MEMBERS PRESENT: Bertram, Gobbo, Lorenzen, Zimmerman, Dailey, Fair, Keilen, Trustee Musselman.

MEMBERS ABSENT: Krol.

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

APPROVAL OF AGENDA: **Fair moved to approve the Agenda as presented. Supported. MOTION CARRIED.**

APPROVAL OF MINUTES **Fair moved to approve the minutes of the October 5, 2015 meeting as printed. Supported. MOTION CARRIED.**

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS:

- I. **Request for Special Use Permit 15-990003 from Lawrence D. Clark** to do a major amendment to the Planned Unit Development for Shadybrook (SUP 04-990004 approving 115 single family residential units on 38.53 acres) to change the intent from a residential Planned Unit Development to allow for a mixed use Planned Unit Development that would include a four building Office Park development consisting of approximately 14,000 sq. ft. of commercial professional office space on a 4.67 acre site and modify the total number of single family residential units to 97 on the remaining 31.09 acres of undeveloped land. The subject site is located on the north side of Clark Road, east of Panther Drive, south of Myrtle Drive, west of DeWitt Road, in the southeast ¼ of section 18 and the

southwest ¼ of Section 17 of DeWitt Charter Township (Parcel #050-018-400-015-51). **Postpone until the December 7, 2015 meeting at the request of the applicant.**

Gobbo moved to postpone any discussion or action on Request for Special Use Permit 15-990003 from Lawrence D. Clark until the December 7, 2015 Planning Commission meeting. Supported. MOTION CARRIED.

II. PUBLIC HEARING - Request for Special Use Permit, 15-990004 from Kesler Properties, LLC to replace/renew Special Use Permit #06-990003 for removal of additional gravel material on property located at 2273 and 2285 E. Howe Road, DeWitt, MI 48820, north of Howe Road, south of Round Lake Road, east of US 127, and west of Krepps Road, in the west ½ of Section 2 of DeWitt Charter Township.

A. Open Public Hearing. Fair moved to open the Public Hearing at 7:05 p.m. Supported. MOTION CARRIED.

Commissioner Dailey stated this renewal is for a Special Use Permit of which his property was included in the original request. Since that time his property the mining operations on his property have been completed as of the year 2011 and his property is not included this renewal. He no longer has interest in this request and will now simply be a neighboring property owner. Currently, a berm exists along his joint property line with the site. He would like to participate in this discussion if the other Commissioners are agreeable to that.

Keilen stated past policy has been that unless a Commissioner has a vested interest or financial gain they should be able to participate in discussion and action.

There were no concerns expressed by fellow Commissioners regarding Commissioner Dailey participating in discussion and action on this request. It was the consensus of the Planning Commission that Dailey be allowed to participate.

B. Administrative Comments/Applicant Comments/Public Comments.

Township Planner Brett Wittenberg briefly reviewed staff's report dated October 28, 2015 advising the request is a renewal of an existing Special Use Permit (SUP 06-990003) that was originally granted in the year 2006 for mining and excavation activities.

Wittenberg went on to indicate the location of the property involved in the request. He noted the location of Commissioner Dailey's property (2707 E. Howe Road) and advised that this is no longer a part of the mining operation. He also indicated the approximate location of the proposed mining area. Whittenberg noted an item to be aware of is the 75 ft. mining setback along the east property line.

The original SUP approval involved approximately 150 acres. At that time the applicant estimated that the life of the operation would be 13 to 18 years with 6 to 8 acres mined per year. The approved SUP included 3 parcels, the applicant has ownership of 2 of these properties. The third was 2707 E. Howe Road and is no longer a part of this request.

Wittenberg went on to advise the subject site is zoned A (Agricultural) and is designated for AP (Agricultural Preservation) on the Future Land Use Map. The surrounding area consists of A (Agricultural) zoning and AP (Agricultural Preservation) and INS (Institutional) designation on the Future Land Use Map. Current land uses surrounding the site consist of Agricultural, undeveloped and residential.

Wittenberg stated the applicant has advised staff that they pull approximately 300,000 cubic yards of material annually from this location. It should also be noted that staff sent out the proper notifications for the Public Hearing process. No comments were received.

Wittenberg further advised that the request meets the required discretionary standards under Section 42-1143 of the Zoning Ordinance with the exception of two areas. The first being a 75 ft. mining setback along east property line. This requirement is met except on the eastern boundary line where the previous mining took place. Staff is of the opinion, since the proposed mining activities are an extension of what previously approved, that the setback in this area meets the intent and would allow for the future connection of water bodies if that were in the applicant's and property owner's interest.

The second item is the requirement of perimeter fencing. Staff is recommending that fencing be provided along the east property line adjacent to parcel #050-002-400-010-00.

Wittenberg stated Section 42-1143 also requires that the applicant provide a financial guarantee in the minimum amount of \$6,750.00 per acre of disturbed area so that those areas can be restored in accordance with the approved plans. Based on the SUP request there are approximately 49.5 acres of disturbed area which would require a financial guarantee in the amount of \$334,597.50. The applicant is of the opinion that the financial guarantee should only be applicable to those areas that they are ultimately going to restore. Their position is the area under water will not have to be restored. Therefore, a financial guarantee should not be required for those areas. The applicant is suggesting a financial guarantee for approximately 21.61 acres (above water) resulting in an amount of \$145,867.50. As with any mining operation, there is no guarantee as to the amount that will be extracted. Staff is recommending the full amount of the financial guarantee be provided. Perhaps this could be revisited on an annual basis.

Wittenberg went on to advise that no concerns were expressed by the reviewing agencies. It should be noted that MDEQ will require the applicant to comply with all requirements of MDEQ prior to excavation of areas outside of their original permit.

Lastly, Wittenberg reviewed the request for compliance with Section 42-1067 of the Zoning Ordinance, Basis for Determination for Special Use Permits. Staff is of the opinion that the use is proposed to be conducted in accordance with applicable regulations and is consistent with the Comprehensive Development Plan.

There were no questions for staff.

Chairman Bertram invited the applicant to speak.

Jeff Kyes, KEBS, Inc., 2116 Haslett Road, Haslett, MI 48840, representing the applicant, stated he is also a neighbor of this site. He has never had any issues with the operation. Kyes noted that back in 2006 he worked very hard with the Township Engineer to come up with a dollar amount per acre for the financial guarantee amount. He explained that they know where the water table is at. The current \$6,750.00/acre is for minor grading, bringing in topsoil, seeding, mulching and fertilizer. He would request that the financial guarantee amount be reduced to not include any property under the 805 contour that is under water. In closing, Kyes stated he has spoken with the property owner, Mr. Kesler, who has agreed to provide fencing along the east property line.

Keilen asked if the slope to the pit ever has to be restored during reclamation or is it maintained during the mining operation.

Kyes stated it is very easy to maintain the slope to a 1/3 grade.

Gobbo questioned what would happen in the case of a drought.

Kyes advised that droughts do not lower the water table by more than a few feet.

Musselman stated he recalls the original request in 2006 and trying to determine the amount of the financial guarantee. He questioned if the cost of reclamation has changed in the last 9 years. He noted the subject site is quite level and perhaps would not require such a large amount of money for reclamation.

Niewiadomski noted the Zoning Ordinance specifically states a starting number of \$6,750.00 per acre. In order to consider changing that number staff would have to consult with the Township Engineer.

Wittenberg stated there has not been a study done as to what the current day cost would be to reclaim. However, the current Zoning Ordinance requirement is \$6,750.00/acre as a minimum amount. There is no maximum amount listed.

Kyes stated the amount was based on a real number. However, it includes bringing topsoil on site at the cost of approximately \$1.25 per square yard. The \$6,750.00 is not being disputed. The applicant feels anything below water level should not have to be reclaimed.

Lorenzen questioned what staff's reasoning was for requiring the full acreage.

Wittenberg noted the Zoning Ordinance stated "disturbed area" must be reclaimed. Also, there could be any number of factors that come into play for determining what actually happens on site.

Musselman stated he does recall instances where the Township was left with the job of reclaiming property for other mining operations.

Gobbo stated if the Ordinance allowed he would suggest as the project progresses and it is clear that certain areas were undisturbed then on a sliding scale somehow the bond of

money could be reduced. At this point in time the Ordinance does not address taking the water line into consideration.

Brief discussion followed regarding setting a precedent for future mining operations.

Dailey stated he would be in favor of somehow incrementing the disturbed area if it were possible.

For clarification Niewiadomski read Section 42-1143 from the Zoning Ordinance as it relates to Financial Guarantees as follows:

“Said guarantees shall be supplied and remain in effect for one (1) year after a completion of rehabilitation according to approved plans. No guarantee, or portion thereof, shall be released until by inspection and review of such proofs as maybe submitted and/or maybe required to be submitted. The Township Planning Commission can determine that acreages under guarantee are in fact rehabilitated according to approved plans. Upon favorable review of compliance with approved plans the Commission shall transmit the same in the form of a recommendation to the Township Board who shall have the final authority to release financial guarantees for rehabilitation required under this Section.”

Niewiadomski stated perhaps the financial guarantee amount could be revisited at the annual renewals if the applicant can prove that they have rehabilitated areas.

Chairman Bertram invited public comments.

- C. **Close Public Hearing. Hearing no public comments, Musselman moved to close the Public Hearing at 7:52 p.m. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Planning Commission.

Gobbo moved that the Planning Commission recommend that the Board of Trustees approve Special Use Permit 15-990004 from Kesler Properties, LLC based on the plans last revised on September 24, 2015. Approval is recommended on the following basis:

- 1. The use has been designed in accordance with the requirements of Section 42-1143 of the Zoning Ordinance.**
- 2. The applicant shall comply with all conditions included in the proposed Special Use Permit 15-990004, including a Financial Guarantee in the amount of \$334,597.50.**
- 3. The standards of the Basis for Determination listed in Section 42-1067 of the Zoning Ordinance.**
- 4. Fencing shall be provided along the east property line adjacent to parcel #050-002-400-010-00.**

Supported.

ROLL CALL vote on motion:

AYES: 8 NAYS: 0 ABSENT: 1 (Krol)

MOTION CARRIED.

III. Proposed Ordinance Amendment 42.8 – Mining Operations – Discussion

Niewiadomski briefly reviewed staff's memorandum dated October 30, 2015.

After brief discussion, Niewiadomski advised the next step would be to look into the financial guarantee portion of the proposed ordinance and set up a meeting with the Township Attorney to discuss the possibility of compiling a final draft copy for a public hearing to be held in the near future.

NEW BUSINESS: None.

EXTENDED PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

REPORTS:

I. Trustee:

Trustee Musselman gave a brief report on business conducted and action taken at the Board of Trustees meetings held on October 12, 2015 and October 26, 2015.

II. Zoning Board of Appeals:

Commissioner Gobbo advised there was no Zoning Board of Appeals meeting held in October.

III. Committees: None.

IV. Staff:

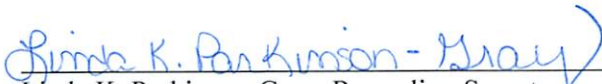
Niewiadomski advised that staff has had a couple of inquiries regarding firing ranges. It is on staff's list of items to address in the future.

Dailey questioned what the status is on the group being formed to discuss Senior Housing Facilities Committee.

Niewiadomski advised staff is still identifying the stakeholders. There has been interest expressed by a couple Planning Commission members to sit on this committee.

DISCUSSION: None.

ADJOURNMENT: Fair moved to adjourn the meeting at 8:26 p.m. Supported. MOTION CARRIED.


Linda K. Parkinson-Gray, Recording Secretary


Abby Lorenzen, Secretary