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Kimberly Smelker
Bruce Keilen
Jason Flower
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Community Development Director
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Township Planner
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PLANNING COMMISSION MINUTES
MONDAY, APRIL 6, 2009
7:00 P.M.

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

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

ROLL CALL by Secretary Dailey.

MEMBERS PRESENT: Marsha Zimmerman, Dale Dailey, Terrie Shively, Kim Smelker, Steve Gobbo, Jason Flower and Trustee Ross

MEMBERS ABSENT: One (1) (Keilen)

VACANCY: One (1)

STAFF PRESENT: Jim Foulds, Township Planner, Rich Trent, Township Community Development Director and Linda Parkinson, Recording Secretary.

APPROVAL OF AGENDA: Chairperson Zimmerman requested that the Agenda be amended to place request for abstention by Commissioner Dailey after Public Comments.

Ross moved to approve the Agenda with the amendment to place request for abstention by Commissioner Dailey after Public Comments. Supported. MOTION CARRIED.

APPROVAL OF MINUTES: **Gobbo moved to approve the minutes of the March 2, 2009 Regular Meeting as presented. Supported. MOTION CARRIED.**

CORRESPONDENCE: The following correspondence was received and noted by the Planning Commission.

1. Michigan Citizen Planner – Training Information
2. Correspondence dated March 30, 2009 from Consumers Energy regarding the pipeline project and related staging area.

Chris Thelen, Area Manager, Consumers Energy, 530 West Willow Street, Lansing, MI 48909, gave a brief overview of the pipeline project.

Brief discussion followed regarding hours of operation related to the project, as well as the agreement reached between Consumers Energy and Mr. Rick Nalett.

PUBLIC COMMENTS: None.

Commissioner Dailey requested to be allowed to abstain from discussion or voting on Special Use Permit 09-990002 and Special Use Permit 09-990003 from E.T. MacKenzie. He explained that his property located at 2707 E. Howe Road is currently involved in a sand mining operation. Although he has no involvement with the day to day operation, he does benefit financially. Therefore, his reason for abstaining is to eliminate the potential appearance of a conflict of interest.

Ross moved to allow Commissioner Dailey to abstain from discussion and voting on Special Use Permit 09-990002 and Special Use Permit 09-990003 from E.T. MacKenzie Company, based on his statement. Supported.

ROLL CALL vote on motion:

AYES: 6 NAYS: 0 ABSENTION: 1 (Dailey) ABSENT: 1 (Keilen)

MOTION CARRIED.

UNFINISHED BUSINESS:

I. **PUBLIC HEARING - Request for Special Use Permit 09-990002 from E.T. MacKenzie Company (Major Amendment to SUP 07-990005)**, for property located at 14788 Boichot Road, Lansing, MI 48906, on the north side of Stoll Road, east of US-127BR, west of Boichot Road, in the SW ¼ of Section 22 of DeWitt Charter Township, to allow the applicant to eliminate the fifty (50) foot setback along the north property line so the existing excavation and lake can be connected to the applicant's excavation project and related lake located on property to the north.

A. Open Public Hearing. **Gobbo moved to open the Public Hearing at 7:15 p.m. for Special Use Permit 09-990002 AND Special Use Permit 09-000002 from E.T. MacKenzie Company. Supported. MOTION CARRIED.**

B. Administrative Comments/Applicant Comments/Public Comments.

Township Planner Jim Foulds briefly reviewed staff's reports dated April 1, 2009 regarding requests for Special Use Permit 09-990002 the "Stoll Road Pit" and Special Use Permit 09-990003 the "Clark Road Pit". The applicant is requesting to eliminate the setback requirements along the north property line of the Stoll Road mining operation and along the south property line of the Clark Road mining operation to allow the two (2) existing excavation sites and related lakes to connect.

Foulds went on to explain that approval of the current requests would be a major amendment to the existing Special Use Permits granted in 2007 for the extraction operations (SUP 07-990005 and SUP 07-990007).

Both sites are zoned A (Agricultural). Surrounding zoning consists of A (Agricultural) and BC (Business, Community) to the west; R3 (Residential Single Family) and R4 (Residential Single and Two Family) to the east; M-2 (Multiple Residential) and R5 (Residential Single and Two Family) to the south; BC (Business, Community), BL (Business, Local) and A (Agricultural) to the north.

Foulds noted that both sites are designated on the Future Land Use Map as SF-M (Single Family Medium Density). The applicant has proposed a final use of the site to be open space, residential or agricultural, intended to take place in the somewhat near future.

With respect to the Clark Road operation, the total site area is 105.65 acres. Approximately 74.97 acres of the site is within the Special Use Permit area, with 37.01 acres to be excavated. The existing lake would be increased to 27.11 acres as part of the proposed expanded mining process. This site has haul road access to Clark Road. The proposed haul route is for trucks to travel east on Clark Road to local sites, or west on Clark Road to US 27 to access local sites or I-69.

With respect to the Stoll Road operation, the total site area is 61 acres. Approximately 26.26 acres of the site are within the Special Use Permit area, with a current disturbed area of 25.43 acres and final year disturbed area of 26.41 acres. The existing lake will be increased to 7.83 acres as part of the proposed expanded mining process. This site has haul road access to Stoll Road. The proposed haul route is for trucks is to travel west to US 27. A seasonal haul route exists on the MIC Limited property, west of the site, which has direct access to US 27 when load limits are in place for Stoll Road.

Chairperson Zimmerman invited the applicant to speak.

Ron Clark, representing the E.T. MacKenzie Company, 4248 W. Saginaw Highway, Grand Ledge, MI 48837 stated that the Stoll Road operation is beginning to wrap up, except for added material that would be extracted if the applicant is allowed to connect the two (2) extraction operations. Any material extracted from the Stoll Road site related to Special Use Permit 09-990002 would exit the site going north onto the Clark Road site and out through the Clark Road access. The applicant feels this is the best route since Clark Road is an all season road and has been constructed to sustain truck traffic. It is expected that operations should be completed on the Stoll Road site within the time frame of the current Special Use Permit (SUP 07-990005), dependant upon the status of the economy. It is anticipated that it will be necessary to extend the Special Use Permit for the Clark Road site (SUP 09-990007) for an additional year beyond its expiration date.

In closing, Clark stated that the main reason for requesting to be allowed to connect the two (2) extraction operations together is due to the amount of quality aggregate in that area. The total amount of aggregate left to be removed from the Stoll Road operation is approximately 120,000 additional cubic yards and approximately 130,000 additional cubic yards from the Clark Road operation. It does not seem prudent to not utilize the materials at an existing extraction operation and start another mining project at a new location, especially since the current site is located in an area with access to all season roads. In addition, Clark noted he has

no knowledge of complaints regarding the two (2) existing mining operations that E.T. MacKenzie has not addressed.

Brief discussion followed regarding the fact that correspondence dated March 13, 2009 from the Michigan Department of Environmental Quality (MDEQ) notes that the applicant previously obtained permits to create lakes as a part of these two (2) extraction operations. The permits will expire on June 11, 2011 for the Stoll Road site and on March 31, 2013 for the Clark Road site. The applicant may be required to modify the existing permits or obtain a new permit.

Clark advised that he has not yet submitted a request to modify the MDEQ permits. However he will be in contact with them in the near future to determine the steps required to proceed with the modification procedure. Further, Clark noted that activities associated with approval of these major amendments will not impact the existing water table in the area.

Brief discussion followed regarding future drainage plans should it become necessary to maintain a proper water level in the lakes.

Ross asked for clarification on the amount of additional water surface would be added with the approval of these requests.

Clark advised that the total water surface at completion of the Clark Road site would be 27.11 acres. The existing permit indicates approximately 25 acres at completion. The total water surface at completion of the Stoll Road site would be 7.83 acres. The existing permit indicates approximately 6.7 acres. Therefore, the total additional water surface related to these requests would be approximately 4 acres.

Brief discussion followed regarding how the site will look after complete restoration.

Shively questioned if some relief could be given to area residents by eliminating hours of operation on Saturdays. She further questioned if area residents have had communications with E.T. MacKenzie Company regarding the proposed amendments to the existing Special Use Permits.

Clark noted that the existing Special Use Permits allow for Saturday operation. Eliminating Saturday hours would not be an option due to the fact that the construction industry works six (6) days a week during the construction season in Michigan. Materials extracted from the existing mining operations are in demand. With respect to the area residents, only one (1) written communication has been received. Should any residents have questions or concerns regarding the operation they are free to contact him or the Township at any time. The crews on site are aware of the regulations set forth in the existing Special Use Permits and are expected to follow them explicitly. It is E.T. MacKenzie's intent to be good neighbors and co-exist through the duration of this process.

Ross noted the letter of concern dated March 27, 2009 from Ken Pung relating to the "back up" alarm and processing noise. He suggested that the applicant explore other alternatives available that would still meet State requirements.

Clark assured the Commission that their equipment is well serviced and maintained. However he will certainly pass along Commissioner Ross's suggestion.

Chairperson Zimmerman invited public comments.

Lois Baumer, 14420 Boichot Road, Lansing, MI 48906, stated that she is unable to use her backyard or screened in porch when the excavation site is operating due to dust and noise. She is trying very hard to be cooperative. However, she does experience negative impacts on her everyday life. She has resided at her current address since 1953. The active Clark Road mining operation located behind her home has been in existence since 1978. She has had very little relief for thirty (30) years and would like to know how many more years she must endure.

Bruce Omundson, 1052 Wild Turkey Lane, Lansing, MI 48906, stated he is also concerned with noise and dust. In addition, he expressed concerns with the operation affecting the water table and questioned the maximum depth that the applicant will be dredging. His final concern is how long the residents will have to endure the negative impacts on their lives that are directly related to the nearby mining operation.

Clark advised that the depth of the lake is approximately eighty-two (82) feet. The dredge will operate 28 to 30 feet below the water surface. Due to constraints on the property it would not be possible to go any deeper than that.

Shively questioned what the proposed ending date was at the time that these two (2) mining operations started.

Clark advised that he is not certain what the early history of the operation is. E.T. MacKenzie Company purchased the Clark Road site in 2005.

Trustee Ross stated that the Planning staff recently provided the Board of Trustees with a chronological history of the Clark Road site.

Chairperson Zimmerman requested that staff provide the chronological summary of the Clark Road site to the Commissioners at the next meeting.

There were no further public comments.

- C. Close Public Hearing. **Hearing no further public comments, Ross moved to close the Public Hearing at 7:56 p.m. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Planning Commission.

Gobbo questioned what further information staff would need to obtain if action on the request is postponed until the May 4, 2009 meeting.

Foulds noted that at previous Public Hearings related to mining operations several questions and concerns were raised. Staff was uncertain as to the number of questions and concerns that would be raised at this Public Hearing related to issues such as water table, dust, noise, issuance of required permits, clarification of the MDEQ permit, etc. Postponement would allow staff time to create a list of concerns and address issues raised. At that time staff could provide a recommendation at the next regularly scheduled Planning Commission meeting.

Shively requested that staff discuss amending the proposed hours of operation with the applicant to provide surrounding residents some relief from the noise and dust.

Brief discussion followed regarding the importance of due diligence being completed prior to a recommendation being made

Ross moved that the Planning Commission postpone action on Request for Special Use Permits 09-990002 and 09-990003 from E.T. MacKenzie Company to permit staff time to address the issues raised at the Public Hearing held on April 6, 2009. Supported.

Prior to voting, Commissioner Gobbo encouraged the applicant and the residents to meet for the purpose of negotiating an agreement that would be acceptable to all parties involved.

ROLL CALL vote on motion:

AYES: 6 NAYS: 0 ABSTENTION: 1 (Dailey) ABSENT: 1 (Keilen)

MOTION CARRIED.

- II. PUBLIC HEARING - Request for Special Use Permit 09-990003 from E.T. MacKenzie Company (Major Amendment to SUP 07-990007),** for property located at 1300 E. Clark Road, Lansing, MI 48906 and 14700 Boichot Road, Lansing, MI 48906, west of Boichot Road, east of S. US-127BR, south of Clark Road, north of Stoll Road, in the west ½ of Section 22 of DeWitt Charter Township, to allow the applicant to eliminate the fifty (50) foot setback along a portion of the south property line so the existing excavation and lake can be connected to the applicant's excavation project and related lake located on the property to the south.

This Public Hearing was held in conjunction with Item I. under Unfinished Business request for Special Use Permit 09-990002 from E.T. MacKenzie Company (see above).

- III. Request for Special Use Permit 09-990001 from Consumers Energy Company** for property located at 13603 S. Turner Road, DeWitt, MI 48820, on the southwest side of Turner Road at the intersection of Wellman Road and Turner Road, in the southwest ¼ of Section 16 and southeast ¼ of Section 17 of DeWitt Charter Township to be allowed to construct a 1,170 sq. ft. meter/regulator building and a 144 sq. ft. ordorizer enclosure on the site.

Gobbo moved that Request for Special Use Permit 09-990001 from Consumers Energy Company be removed from the table to allow for discussion and possible action. Supported. MOTION CARRIED.

Township Planner Jim Foulds briefly reviewed staff's memorandum dated April 2, 2009 advising that the Public Hearing was held at the previous meeting on March 2, 2009. At that time the Commission tabled the request to allow the applicant time to address numerous issues raised such as building placement, landscaping, lighting, hours of construction, and Turner Road access. The applicant has submitted correspondence dated March 30, 2009 addressing the issues raised (copy attached).

Chairperson Zimmerman invited the applicant to speak.

Chris Thelen, Area Manager, Consumers Energy, 530 West Willow Street, Lansing, MI 48909, clarified that the one (1) property owner to the south of the site still has concerns regarding loud noises coming from the site that are not related to the proposed landscaping plan.

Brief discussion followed regarding the revised landscaping plan.

Gobbo moved that the Planning Commission recommend to the Board of Trustees approval of Special Use Permit 09-990001 from Consumers Energy for the expansion of a public service installation at 13603 S. Turner Road. Approval is recommended on the following basis:

- 1. That the proposed public service installation has been designed in accordance with the requirements of Section 7.13.1(c) of the DeWitt Charter Township Zoning Ordinance as represented by the site plan documents submitted.**
- 2. That the standards for the Basis for Determination listed in Section 7.4.3 of the DeWitt Charter Township Zoning Ordinance have been met.**

Supported.

Howard Shooltz, 13620 Turner Road, Lansing, MI 48906, requested to speak on this Agenda item. He expressed concerns relating to aesthetics of the site, safety concerns related to the placement of the driveway on the site and loud noises coming from the property. He expressed frustration with the fact that he sold the property to the applicant and now use of the site has become a nuisance to him. He further stated that it would be difficult to sell his home because of the Consumer's property being adjacent to his.

Chairman Zimmerman invited the applicant to respond to Mr. Shooltz's concerns.

Thelen advised that a Consumer's employee determined that the noise coming from the property is due to a heater located on the site that sometimes makes a sound similar to a car backfiring. He then read a correspondence received by a neighboring property owner, Stephen Metzger located at 13543 S. Turner Road, Lansing, MI 48906. The correspondence stated that the Metzger's also heard loud backfire noises coming from the site. However, after contacting Consumers Energy the problem was taken care of and no noises have been heard since.

Thelen further stated that the existing operation on the site is in compliance with all Federal and State regulations, which are very stringent.

Smelker questioned if the applicant had considered relocating the access drive into the site.

Thelen advised that he is currently working with the Clinton County Road Commission (CCRC) and it is their decision as to where the driveway is placed

Foulds advised that staff has met with the CCRC and they were comfortable with the placement of the driveway. At this point, the location meets all CCRC standards.

Shively questioned what Mr. Shooltz would like to see done to address his issues.

Shooltz expressed further concern with the noise and stated that it continues to be a disturbance for him. He suggested that the applicant purchase the property west of the site and move all of the

existing equipment further back from the road. In closing, he stated he is completely opposed to the approval of this request.

ROLL CALL vote on motion:

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

MOTION CARRIED.

NEW BUSINESS:

- I. Request for Special Use Permit 09-990004 from Schafer's 27 LLC** for property located at 16164 N. US-27, Lansing, MI 48906, Lots #44, #46 and #47 of Valley Farms, No. 1 Subdivision, north of Wieland Road and south of Hannah Street, in the northeast ¼ of Section 33 of DeWitt Charter Township.

Ross moved to receive Request for Special Use Permit 09-990004 from Schafer's 27 LLC and set a Public Hearing to be held on Monday, May 4, 2009. Supported. MOTION CARRIED.

EXTENDED PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

REPORTS:

- I. Trustee:**

Trustee Ross gave a brief report on business conducted and action taken at the regularly scheduled meetings of the Board of Trustees held on March 9, 2009 and March 23, 2009.

- II. Zoning Board of Appeals:**

Gobbo advised that there was no Zoning Board of Appeals meeting held in March.

- III. Committees: None.**

- IV. Staff: None.**

DISCUSSION

Brief discussion followed regarding the Capital City Region International Airport incinerator project.

ADJOURNMENT: Ross moved to adjourn the meeting at 8:28 p.m. Supported. MOTION CARRIED.

Linda K. Parkinson, Recording Secretary

Dale Dailey, Secretary