

MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION MEETING HELD ON
JUNE 27, 2001 AT 7:30 P.M. IN THE CLAY TOWNSHIP BOARD ROOM, 4710 PTE.
TREMBLE ROAD, CLAY TOWNSHIP.

1. Meeting called to order by Chairperson Mark Getman at 7:40 p.m.
2. Roll call: Present: Mark Getman, Chairperson; John Makuch, Secretary; Pat Sharrow, Sandra O'Conner, Chuck Michel, Diana Decker, Louise Cooper, Dorothy DeBoyer. Absent: None. Also present Township Attorney John McNamee, Wade-Trim Consultant Linda Anderson and Zoning and Enforcement Official Michael Kras.

3. **Communications:** None.

4. **Approval of Minutes of June 13, 2001**

Moved by Michel, supported by Decker, **MOTION CARRIED**, to approve the June 13, 2001 Planning Commission minutes as submitted. AYES: All. NAYS: None. ABSENT: None.

5. **Site Plan Consideration/Special Approval Land Use/Soil Removal**

Donna Horvath-Silent Acres Farms 2040 Golf Course Road, Harsens Island, MI

Chairman Getman: information was not in your packet as applicant did not submit a site plan, everything is as it was two weeks ago.

Attorney Frank Hearsch, Jr.: Special Approval Land Use is only matter before Ping.Com., referred to Ordinance 89, Section 1100 and Section 1117; Mrs. Horvath granted special approval land use in the past; stated steps will follow after: file new application with Clerk for Soil Removal Permit and sit plan per Article 10 of Zoning Ordinance will occur at that time; Township Board has final approval on site plan, Plnng.Comm. recommends; Ord. states application filed with Bldg. Inspector, decides if appl. Is proper. Application same as filed in 1996, only reason here is 4-year limit restriction. Client should be granted a continuation of the approval given in 1996, modest use of the property for soil removal.

Chairman Getman: Applicant's request is for both site plan and special approval; Zoning Ordinance gives only Planning Commission site plan approval authority, Township Board only approves permit; Zoning Ord. very clear procedure for a site plan approval is the Planning Commission, once approved transmitted to the ordinance enforcement person to see it is executed.

Attorney Hearsch: Based understanding of procedure based on Section 1117, subparagraph B requires site plan submitted pursuant to Article 10, paragraph 5 of subparagraph B, indicates after Planning Commission public hearing, special approval land use and site plan approval, the application and recommendation of the Commission should be submitted to the Township Board; does not say final approval.

Township Attorney John McNamee: States site plan approval and under Section 4 states Township Planning Commission may submit engineering designs and site plans to State or Federal Agencies to determine it meets all applicable requirements; your suggesting Planning Commission make a decision today on special land use approval and send it to the Township Board for approval of a site plan, where would #4 come into the procedure?

Attorney Hearsch: If approved, Section 1117 contemplates another application filed with Township Clerk and referred to Plnng.Comm. along (Article 10) with a detailed site plan, Planning Commission acts upon site plan and makes a recommendation to Township Board, there is no language suggesting Planning has the final decision.

Township Attorney John McNamee: Refer to Section E: Planning Commission has approved the special approval and site plan; section states Township Board shall approve the site plan? Referred to Paragraph 5 stating proper steps the Planning Commission must perform before the application and recommendation of the Commission should be submitted to the Township Board; your reading into this is "putting the cart before the horse", I don't read it that way nor do the Planners. Application submitted is for both s.a.l.u. and site plan approval; it appears to be your interpretation, never heard it different that the Planning Commission does not approve site plan.

Attorney Frank Hearsch: Dealing with Section 1117, does not become relevant unless the special approval land use is approved.

Chairman German: Section 1004, Site Plan Approval in regard to this entire Ordinance.

Township Attorney John McNamee: Suggesting a procedure never used; Section 1004 gives the procedure for submitting for site plan approval; you had asked for a postponement or a continuance to allow you time to respond to this document that was provided by the Township Consultant; none of the procedures stated in Section 1004 ever suggest that the Township Board has anything to do with this, it does grant an applicant may appeal a decision to the Township Board of Appeals; suggests would have to appeal through an agency that has not heard it for the first time.

Attorney Frank Hearsch: Your review is the general site plan approval procedure for the Township; stated interpretation of a site plan and special approval land use section of a site plan; restated my client tonight is dealing with special approval land use, if you grant it, we will then be dealing with site plan.

Township Attorney McNamee: Michigan Courts give support to the interpretation of municipality ordinances, respect your right to disagree on the reading of the Ordinance, Planning Commission and Township Board for years have interpreted ordinance to suggest the procedure that has been followed the submission of the site plan. .

Attorney Frank Hearsch: Site plan matter is under the soil removal section of this ordinance and we are not at that stage; granting of the land use first before we even get to the site plan requirement; not here for site plan approval; special land use approval/soil removal permit, these matters are Segregated by your Ordinance per Section 1117.

Chairman Getman: Procedure followed by Planning Commission to approve soil removal operations has been the same since ordinance went into affect since 1988, advised by Township Attorney and Planning Consultant process followed is proper.

Chuck Michel: Suggest discussion is moved we do not have an application for a soil permit.

Chairman Getman: Cannot do a special approval without seeing something on paper that indicates what they want to do, need the site plan in front of us, everyone else that comes before us for site plan or a special approval presents a site plan showing the Planning Commission what is going to be done on the property.

Attorney Hearsch: Your ordinance charges your building inspector with making that determination, we submitted it in writing and your ord. gives him the responsibility for deciding whether the application is in proper form, he has done that by submitting it to this body; our form is filled out exactly as every other special approval land use for soil removal that this Township has ever considered.

Pat Sharrow: Directed question to Planning Consultant Linda Anderson: could you consider any Planning Commission could make an intelligent decision of a special approval land use when they do not know to what extent and where on a piece of property the soil removal will be.

Wade-Trim Consultant Linda Anderson: No, standards used in determining a special use request include things like is the request consistent with the zoning ord., will be compatible with the surrounding properties, will it have a long term hazardous effect, etc.; never have seen a special use review without having a site plan attached.

Pat Sharrow: Ordinance for S.A.L.U. requires the Planning Commission to insure that this site plan meets all conditions of Ordinance 47 also?

Township Attorney McNamee: Confirmed her statement.

Pat Sharrow: Duty of Commission to assure it meets the conditions of Ord.47, with no site plan do not know what conditions of the soil removal are; 6 yrs. ago a soil removal permit was granted by Planning Commission/approved by Township Board for one (1) soil removal excavation on property near Golf Course Road, now two (2) pits exist, no record of return to the Plng.Comni. or Township Board for additional excavation or haul route onto Cottage Lane, ZBA recommendation per Atty. Fletcher stated there would be no haul route or excavation near Cottage Lane, no pond permit as required by Zoning Ord., farm is not excused from the conditions of the Zoning Ordinance, there is an illegal pond and asking us to do special approval land use to re-approve.

Chairman Getman: Can't approve a special approval without a site plan to review and know what we are dealing with; violations of the last special approval, code enforcement officer never allowed admission to review the operation, haul route on Cottage Lane never approved; two mile radius limitation on soil removal pits been exceeded.

Michael Kras: Questioned if the Planning Commission had received the original paperwork submitted by J. Horvath and then you requested a revised addition of that site plan?

Chairman Getman: Original application was for a farm pond, if that was what Mrs. Horvath wanted to refund her money because Commission does not review farm pond; Mrs. Horvath was asking for a soil removal, she came in and amended the application for a soil removal.

Attorney John McNamee: What is the reluctance to supply the Commission with a site plan?

Attorney Frank Herasch: Site plan requirements of Article 10 are very expensive, determine whether a special land use would be appropriate before my applicant goes to the detail expense of a detailed site plan.

Attorney John McNamee: Your interpretation is a separation of process and that is not how it has been interpreted or enforced by this Township; this case would get much better weight with the Circuit Judge if this matter would proceed as to how the Commission reads it as opposed to how an individual applicant, no violations of any fundamental due process, procedure is to protect the applicant and the public and allow the Township to make an informed decision and have to have the information available.

Attorney F. Hearsch: Application before you is essentially mirrors the one that was filed in 1996 and approval was granted, letters from Planners approving that application, standards appear to have changed.

Chairman Getman: Appears another pit, expanded.

Attorney John McNamee: Referred to the letter adjournment from the June 13, 2001 Meeting; specific requirements under the Ordinances that need to be met, restate those Requirements from the report, don't see why that information cannot be supplied.

Attorney Frank Hearsh: Problem is the provisions of Section 1117 requires us to supply an engineered site plan that meets those requirements when we file for the soil removal permit; this property has had this use approved before, could approve it again subject to us coming in with the detailed site plan and subject to any condition imposed upon the use.

Chuck Michel: Again stated you have not made an application accompanied by a site plan and other requirements stated, Board cannot act on this new application, do not have the required information.

Attorney Hearsch: We will do all those requirements, according to Section 1117 not until we have been granted the special approval land use.

Chairman Getman: Mr. Hearsch evidently is going to stay on this course; if you want to agree members we can go that route, two courses of action we could take: postpone again until such time they submit the information needed to make a decision or since already gave them two weeks time can move to deny it per Planning Consultant's report; will not accept a motion to approve because do not have the data and information we need to do so.

John Makuch: As a Board cannot approve something when we don't know what it is.

Motion by Makuch, supported by ~~DeBoyer~~ Cooper Amended 7/11/01 V.K., to deny the special approval land use for a soil removal permit for Donna Horvath-Silent Acres Farms, 2040 Golf Course Road based upon the applicants reluctance to supply the Planning Commission the appropriate information as outlined in Wade-Trim Planning Consultant Linda Andersen's review for us to make a reasonable and knowledgeable decision.

Discussion: Sharrow would require definite information re: pond size, amount of soil to be removed, land would not be able to be designated agricultural if all soil removal, designate haul routes, etc., would approve a postponement if thought petitioners would submit a site plan and a re-use plan what they are doing in extent.

Donna Horvath: Under the impression gave you everything you needed.

Pat Sharrow: Information at last meeting would be mute, was to show one farm pond, dug that pond, last time site plan is useless, now need to know where you are going now.

Dorothy DeBoyer: In favor of postponing if had some assurance that we will receive the info that we need to make an informed decision, needs to be submitted properly.

Chairman Getman: Explained if postponed would not have to pay and would not require a public hearing, would save them time and money if not denied.

No more discussion.

R/C Vote on the motion: AYES: Michel, Decker, Cooper, Makuch, Getman.

NAYS: DeBoyer, Sharrow, O'Conner.

MOTION CARRIED TO DENY.

6. CHAIRMAN'S REPORT

The Horvath property is three separate parcels, one tax bill per Assessor.

Joint meeting with the Township Board within the next several, 2nd meeting of the month, also, extend an invite with our neighboring communities.

Set up a joint meeting with the DDA in the future, wait until the draft of the new Ordinance is ready.

Pat Sharrow: Comment regarding the recent proposal presented to the DDA from a Planning firm, sounded wanted to do ordinance amendments, suggestions; planner was suggesting DDA intrude into areas that by State law are given to the Planning Commission.

Chairman Getman: Letter to DDA stating Planning Commission's realm of responsibility.

Chuck Michel: Update of DDA meeting, postponed decision planner proposal; hired to do the bike path study; DDA would like to be informed of things within the district that Planning Commission has something to do with it.

7. PLANNING CONSULTANT'S REPORT

Linda Anderson: Zoning Ordinance update, finished with the map, waiting for last comments from the subcommittee on the final review; will get the map done and mail out three copies.

Pat Sharrow: Proposed ordinance by the next workshop meeting.

Chuck Michel: Committee should meet with Linda to get it into a final state.

Linda Anderson: Subcommittee has gone through send it over to the Township Attorney for his review.

8. **PLANNING COMMISSION COMMENTS:** None.

9. **PUBLIC COMMENTS:** None.

10. **ADJOURNMENT :**

Moved by Michel, supported by DeBoyer, **MOTION CARRIED**, to adjourn the meeting at 8:42 p.m. AYES: All. NAYS: None. ABSENT: None.

Valerie J. Kulba
Recording Secretary