

**MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION REGULAR MEETING
HELD WEDNESDAY, MAY 13, 2009 IN THE CLAY TOWNSHIP MEETING HALL, 4710
PTE. TREMBLE ROAD, CLAY TOWNSHIP, MICHIGAN 48001**

1. CALL TO ORDER:

Chairperson DeBoyer called the meeting to Order at 7:30 p.m.

2. ROLL CALL:

PRESENT: John Blair; Anthony Antkowiak; Edward Keller, II; Thomas Krueger; Kathie Schweikart; George Lyle; Edward Sharrow; Whitey Simon; Chairperson Dorothy DeBoyer

A quorum was established.

Also Present: Patrick Meagher, Community Planning & Management

3. AMENDMENTS TO AGENDA:

None.

4. APPROVAL OF MINUTES OF APRIL 8, 2009:

Motion by Antkowiak, supported by Schweikart to approve the Minutes of April 8, 2009 with correction.

Antkowiak: Requested a correction on page 1, last paragraph, 3rd line: Change “from two weeks two months from now” to “from two weeks to two months from now”.

Chairperson DeBoyer: **Restated motion by Antkowiak, supported by Schweikart to approve the Minutes of April 8, 2009 with the requested correction.**

AYES: All NAYS: None

MOTION CARRIED.

5. PUBLIC HEARING:

Special Approval Land Use / Site Plan Consideration: 3645 Pte. Tremble Road – William/Janet Thulin

Chairperson DeBoyer opened the public hearing at 7:34 p.m.

Chairperson DeBoyer then invited the Applicant to address the Planning Commission.

William Thulin: Thanked the Planning Commission for accepting this application. He knows that they've had a problem in the past but feels that they've ironed it all out, but realizes that it will be at whatever boundaries the Planning Commission requires. He further reserved the right to speak following the public comments.

Chairperson DeBoyer: This site had previously had a special approval land use for these uses for a number of years. However, because of some problems that ensued, the special approval

was discontinued. The Applicants are requesting a new site approval on this land. The public were then given the opportunity to come forward and speak in favor or in opposition to the Special Approval Land Use / Site Plan Consideration.

INDIVIDUALS IN FAVOR OF PROPOSED SPECIAL APPROVAL LAND USE / SITE PLAN CONSIDERATION:

None.

INDIVIDUALS IN OPPOSITION TO THE PROPOSED SPECIAL APPROVAL LAND USE / SITE PLAN CONSIDERATION:

None.

Chairperson DeBoyer then requested that the Planning Commissioners present their questions to the Applicants.

Krueger: Questioned whether the building was originally built with a second story?

Thulin: Stated that he believes the second story was added sometime in the 40's or 50's. Over the years the building had been a Dairy Queen at one time, a barber shop, print shop, tax company, among other things. He has resided in the Township for 35 years and doesn't ever recall it not having the second story.

Chairperson DeBoyer: Stated that she does not recall it ever not having the second story.

Lyle: Questioned whether any dredging spoils would be stored on the property?

Thulin: The dredging spoils would be attempted to be removed right from the barge onto the trucks for removal.

Keller: In regard to the temporary storage of used materials, he questioned what the used materials were and whether they would have any dangerous chemicals in any large quantities that they need to be concerned about?

Thulin: Stated they would not and that he wouldn't want that there himself. He feels the letter Mr. Keller is referring to was addressed to the Board from prior to the last pre-site review meeting. The materials would most likely be hard materials rather than liquid.

Chairperson DeBoyer then closed the public hearing at 7:40 p.m.

Chairperson DeBoyer then requested the Planning Commissioners thoughts on the requested Special Approval Land Use / Site Plan Consideration.

Sharrow: Stated that he felt that the application was pretty clear and it's pretty much as it was before other than the fact that we don't want the building of boats being conducted on the property. He feels the Special Approval Land Use and Site Plan should be approved.

Motion by Sharrow, supported by Lyle to approve the Special Approval Land Use / Site Plan Consideration for 3645 Pte. Tremble Road – William/Janet Thulin for marine dredging, sheet pile operation and storage of marine-related construction at 3645 Pte. Tremble Road.

Schweikart: Questioned the concrete sidewalk as this would be a sidewalk to nowhere and there are no other sidewalks on that side of Pte. Tremble Road. She further stated that the Applicant, in his February 11, 2009 letter on page 4 stated that he would grant the Township an easement for the future on this property.

Chairperson DeBoyer: Stated the Planning Commission does have the option to waive the requirement of a sidewalk on this property.

Blair: Stated that he doesn't feel that there is a need for a sidewalk on this property at this point. His concern is that under the Mater Plan if there were ever going to be sidewalks on that side of the road who would pay for the sidewalks if the Planning Commission waives the requirement at this point.

Antkowiak: Stated that we have an interpretation that sidewalks are not to be put where there is no easement. There are probably several of them on the river side of the road that have those issues. Mr. Thulin has suggested that he will provide us with an easement on this property for future use. Therefore, he believes that the Planning Commissioners would be in agreement if the motion was amended to include this easement

Krueger: Questioned whether the residence in the second story of the building should be addressed?

Chairperson DeBoyer: Stated she doesn't believe it is an issue, it has always been there, so it's nothing new. It has been there at least 50 years and was included in the previous Site Plan.

Krueger: Stated that he just feels it should be included in the motion so that it is on the record, otherwise it will always be out there in limbo. Mr. Thulin wouldn't have the satisfaction of knowing that it has been accepted as being grandfathered and acceptable in a C3 zone.

Motion amended by Sharrow, supported by Lyle to approve the Special Approval Land Use / Site Plan Consideration, 3645 Pte. Tremble Road – William/Janet Thulin for marine dredging, sheet pile operation and storage of marine-related construction at 3645 Pte. Tremble Road, to include the approval of the existing second story residence of the building located on this property, and that the owner will grant an easement for a sidewalk to Clay Township, if requested.

R/C VOTE:

AYES: Simon, Antkowiak, Schweikart, Keller, Krueger, Lyle, Sharrow, Blair, Chairperson DeBoyer.

NAYS: None

MOTION CARRIED.

Chairperson DeBoyer: The Special Approval Land Use / Site Plan Consideration is approved. The Applicant will now need to go to the Building Department.

6. PUBLIC HEARING :

Special Approval Land Use / Site Plan Consideration: Vacant Fruit Road, Parcel I. D. No. 74-14-541-0116-200, Blue Water Materials – Mark/Sandra Pyszora, Sr.

Chairperson DeBoyer: Stated the intended use is natural resource removal of sand. This is a piece of property that is zoned I-1 and is an allowed use on the property under the Special Approval Land Use.

Chairperson DeBoyer opened the public hearing at 7:52 p.m.

Chairperson DeBoyer then invited the Applicant to address the Planning Commission.

Mark Pyszora: Stated that he hoped the confusion between Fruit Road and Field Road on the Engineering Report has been straightened out.

Chairperson DeBoyer: Stated the Planning Commission did receive a correction stating that it should have said Fruit Road instead of Field Road.

Pyszora: Stated that 80% of the material that they are going to remove is of septic quality. With their proximity to Harsens Island, it will be a big benefit where they won't have to transfer from one truck to another. It is currently coming from the Jeddo or Oxford area since no one in the area has this particular type of material. They will be entering and exiting on Fruit Road. Field Road is out of the question because it is designated as a residential entrance.

Chairperson DeBoyer: Stated that the Planning Commission is looking at the Special Approval Land Use and the Site Plan. In the event it is approved, in order to receive a soil removal permit there would be another step that the Applicant will have to go through for that approval through the Township Board. The public was then given the opportunity to come forward and speak in favor or in opposition to the Special Approval Land Use / Site Plan Consideration.

INDIVIDUALS IN FAVOR OF PROPOSED SPECIAL APPROVAL LAND USE / SITE PLAN CONSIDERATION:

None.

INDIVIDUALS IN OPPOSITION TO THE PROPOSED SPECIAL APPROVAL LAND USE / SITE PLAN CONSIDERATION:

Joe DeRue, 9164 Field Road

Questioned as to whether they would be notified of a soil sample content as to what the contaminants are?

Chairperson DeBoyer: Stated that they would not be notified but it would be available for his review through the Building Department.

DeRue: Questioned whether there was a mapped area that the Applicant owns which indicates the area where the soil will be removed from?

Chairperson DeBoyer: The Applicant provided the Planning Commission with a proposed plan for the property and it is available through the Building Department for review.

DeRue: Questioned whether there are copies available for the community/public to take with them for review?

Chairperson DeBoyer: Stated that copies are not available at this meeting but are available for review at the Building Department. The issue of soil removal is another step that will go to the Building Department and will then be placed on the agenda for the Township Board.

DeRue: Questioned the possibility of the wells of people in the surrounding area running dry?

Chairperson DeBoyer: Stated that the Planning Commission could not answer that question.

Eric Heim, 9121 Field Road

Stated as to whether it would affect surrounding wells would depend on whether it's a pumped pit or not. If you pump it down, then yes, it affects wells. He questioned whether the soil Mr. Pyszora has is contaminated? It's a well known fact that this property contained a dump. If Mr. Pyszora is going to haul the sand off the property, he has to transport it across a known piece of contaminated dump. So, would that transmit it to the rest of the Township? The road would be cut through the existing dump.

Chairperson DeBoyer: Stated that there is an existing easement that would be used.

Heim: Questioned what the easement crossed through?

Chairperson DeBoyer: Stated the easement is on the edge of Mr. Pyszora's property.

Heim: Stated that it crosses through the existing dump.

Chairperson DeBoyer: Stated that according to the information that the Planning Commission has, it does not cross the actual dump site.

Heim: Stated that Mr. Pyszora's property is on the north side of the dump and Fruit Road is on the south side. The only way to get through that would be to travel south, which means he would travel through the existing dump.

Chairperson DeBoyer: Recommended that Mr. Heim look at the Site Plan available at the Building Department. There is a large area but not all of it was dump site, part of it was, but that was more to the west. There are also plat maps that designate the dump area. Also, several

years ago there was testing done on that area and that is also on record at the Township for review.

Heim: Stated that the north side of the property is good. He just doesn't want him to cross through the dump to haul out the soil.

Chairperson DeBoyer then welcomed the Applicant to speak one last time.

Pyszora: Stated that the trucks will just be passing through on the easement part which is not part of the dump. There is an easement that is 77 foot wide that is east of the dump. They will be digging wet and will not be pumping out the soil. Therefore, they will not affect surrounding wells. As far as environmental, that area had a Phase II study done on it which provided the ground flow and the location of the dump.

Chairperson DeBoyer then requested the Planning Commissioners present the Applicant with any questions they may have.

Simon: Stated that since Mr. Pyszora will be digging or mining wet and he referred to the smaller trucks that would be hauling the materials, he questioned what the load would be on the trucks since it is a wet material?

Pyszora: Stated it would not be sold and hauled until it was dry. It would be removed and piled on the property to dry before being hauled out.

Lyle: Questioned how large the trucks would be that would be hauling the material?

Pyszora: Stated they would probably be linked semis or a tri-axle or tandem axles. The radius of supply is not a great distance.

Krueger: Questioned the stage of any permits the Applicant has applied for?

Pyszora: Stated that they have held off on the Road Commission. He is waiting to submit for the permit until a decision from the Planning Commission.

Krueger: Questioned whether the Phase II was done for compliance with DEQ?

Pyszora: Stated that the Phase I and Phase II was done by DiLorenzo in 1999.

Krueger: Stated that because part of the property was a dump, he questioned whether he will need to get permits from MDEQ?

Pyszora: Stated that they will not be digging in that area.

Krueger: Questioned whether he would be digging in that area in future development?

Pyszora: Stated that there is 150 feet that they will not be using because of that situation.

Lyle: Questioned whether there will be no trespassing signs installed?

Pyszora: Stated that he will comply with all aspects of the Ordinance.

Antkowiak: Questioned in regard to stacking the trucks, whether that would all be done in the easement and not on Fruit Road?

Pyszora: Stated that nothing would be on Fruit Road.

Heim: Stated that the Applicant advised that the material he will be hauling is not available for at least 50 miles from his location. He questioned whether there would be trucks coming from 50 miles around to Fruit Road to haul this material?

Chairperson DeBoyer: Stated that would not necessarily happen, but could. The Planning Commission is not discussing the soil removal operation.

Heim: Stated that he was questioning whether Fruit Road would be capable of handling that type of traffic?

Chairperson DeBoyer: Stated that you have to keep in mind that the Planning Commission previously had zoned that industrial property. For the Planning Commission to zone it industrial and then to say you cannot use it as industrial would be putting the Township in a position for a lawsuit.

Heim: Questioned whether the Planning Commission would assume responsibility for stop lights?

Chairperson DeBoyer: Stated that is a County road and that is not something that the Planning Commission would have any authority over.

DeRue: Questioned how much are we talking to remove?

Chairperson DeBoyer: Stated that the Planning Commission is not talking anything to remove. If the Planning Commission were to approve the Site Plan, Mr. Pyszora would then have to make application for permits and comply with all aspects of the Township Ordinance for soil removal.

Keller: Questioned whether there was a chance of contamination of ground water?

Pyszora: Stated the ground flow study shows that it flows away from the area. At the pace that they will be digging, it will not have a problem with pulling water from that way.

Chairperson DeBoyer closed the public hearing at 8:09 p.m.

Chairperson DeBoyer then requested the Planning Commissioners thoughts on the requested Special Approval Land Use / Site Plan Consideration. She further directed the Commissioners to the Project Control Engineering comments, the engineering review, and issues that would be addressed during engineering in the event the Planning Commission approved this.

Lyle: Questioned whether the Applicant had seen the letter from Project Control Engineering and whether or not the Applicant had any comments about the questions presented?

Chairperson DeBoyer: Stated that she believed Mr. Pyszora reviewed the letter as he had questioned whether the Planning Commissioners had received the corrected copy. She further advised that since they have had the public hearing and the Commissioners have had the opportunity to ask their questions, if they feel they are not comfortable to make a decision tonight, the decision may be postponed to the next meeting.

Simon: Stated in regard to the Planner's letter that also refers to the trucks and the Road Commission which will not happen until after the Planning Commission's decision, he feels the Planning Commission is between a rock and a hard place.

Chairperson DeBoyer: Stated that the St. Clair County Road Commission no longer designates haul routes.

Simon: Stated that he still feels it begs the question regarding the types of trucks that will be used, their weights, and the amount of materials.

Chairperson DeBoyer: Stated that they would have to meet the requirements of any weight restrictions imposed on any County roads.

Antkowiak: Stated that he does not exactly know what the haul route would be and questioned what same would be.

Chairperson DeBoyer: Stated there is not a designated haul route.

Antkowiak: States that the letter refers to the haul route being kept dust free.

Chairperson DeBoyer: Stated what he is referring to is from the pond out to the Fruit driveway. That is the area that should be kept dust free.

Antkowiak: Questioned the spoils that will be brought out onto Fruit Road from the trucks' wheels? He feels that would need to be controlled as this is a residential area.

Chairperson DeBoyer: Read from the statement that "the haul route shall be kept dust free by hard topping with concrete, asphalt or chemical treatment." She further stated that an individual is not required to do those improvements to a County road. The County will address the spoils on the roadway.

Meagher: Stated that the haul routes and whether they will be coming down one of the local residential streets, the issue of not stacking trucks on Fruit Road, and no access to Field Road would have to be articulated in any type of motion presented as conditions for approval. By doing so, if there were violations, there would be recourse for same.

Motion by Antkowiak, supported by Simon to postpone a decision on the Special Land Use Approval / Site Plan Consideration on Vacant Fruit Road, Parcel ID #74-14-541-

0116-200, Blue Water Materials, Mark/Sandra Pyszora, Sr. until the next Planning Commission meeting.

Krueger: Suggested that it would be beneficial to have an outline of issues that should be incorporated into any possible motion for approval for the next meeting. He further stated that he would like the opportunity to speak to a member of the Site Plan Review Committee on such issues as whether there is enough fencing, landscaping, etc.

Chairperson DeBoyer: Stated that the Applicant was directed to the Ordinance and the requirements of same. She further requested the Commissioners review the Ordinance and the requirements in relationship to this site.

Meagher: Stated that he will attempt to provide a letter to the Commissioners that summarizes the topics that the Planning Commission has discussed.

Antkowiak: Feels that the postponement would allow the Commissioners more time to review the Ordinance and sort out the issues that the Planning Commission needs to address.

Lyle: Questioned whether the Mr. Meagher would have his comments available for the Commissioners prior to the next meeting?

Meagher: Stated that he could do so within the next few days.

Chairperson DeBoyer: Stated that she would provide the Commissioners with a copy of Mr. Meagher's letter along with the unapproved Minutes of tonight's meeting. She further requested the Commissioners keep the packets that were provided to them tonight and bring same to the next meeting.

Chairperson DeBoyer restated motion by Antkowiak, supported by Simon to postpone a decision on the Special Land Use Approval / Site Plan Consideration on Vacant Fruit Road, Parcel ID #74-14-541-0116-200, Blue Water Materials, Mark/Sandra Pyszora, Sr. until the next Planning Commission meeting.

AYES: All NAYS: None

MOTION CARRIED.

7. PLANNING CONSULTANT'S REPORT:

Meagher: Stated that there was a meeting with the Master Plan Committee a few weeks ago and they have started compiling a list of questions for the Master Plan process. He will refine these questions and provide same to the Planning Commissioners for their thoughts and comments.

8. Z.B.A. REPRESENTATIVE'S REPORT:

Antkowiak: Stated there is a ZBA meeting scheduled for May 21, 2009 on a variance request.

9. CHAIRPERSON'S REPORT:

Chairperson DeBoyer: Stated there has been some activity regarding the corner of M-29 and Nook Road. It is her understanding that Kroger has received approval from MDOT. Soil borings have been done. A Freedom of Information request has been received on what has previously been located on this property. They have not come forward with a Site Plan but appear to be doing preliminary work.

Lyle: Stated that Brisbay appears to be out of business.

10. PLANNING COMMISSION MEMBER'S COMMENTS

None.

11. PUBLIC COMMENTS:

None.

12. ADJOURNMENT:

Motion by Simon, supported by Lyle, to adjourn the meeting at 8:25 p.m.

AYES: All NAYS: None

MOTION CARRIED.

Respectfully Submitted,

Christine Holcomb
Recording Secretary