

ALGOMA TOWNSHIP PLANNING COMMISSION MINUTES
Tuesday, October 16, 2007

A meeting of the Algoma Township Planning Commission was held on Tuesday, October 16, 2007, at 7:00 P.M. The meeting was held at the Algoma Township Hall located at 10531 Algoma Ave., Rockford, MI 49341.

Chairman Witham called the meeting to ORDER at 7:04 P.M. and led in the Pledge of Allegiance to the Flag.

PRESENT: Chairman Witham, Vice-Chairman Newberger, Secretary Poolman, Members Bigney, Ensley, Heminger, and Lecceadone.

Also Present: Supervisor Hoemke, Site Plan Review Committee Members Bates and Sjogren, Township Attorney Brown, Township Engineer Bruggink, and 11 citizens.

APPROVAL OF MINUTES:

Minutes of the August 21, 2007, Regular meeting -

On Page 4, Representative's Report, Township Board: the word "of" should read "off".

Secretary Poolman motioned to APPROVE the minutes of the August 21, 2007, meeting as AMENDED, seconded by Member Ensley. The motion PASSED.

Minutes of the September 5, 2007, Special meeting - Member Bigney motioned to APPROVE the minutes of the September 5, 2007, Special meeting as submitted, seconded by Secretary Poolman. The motion PASSED.

Minutes of the September 18, 2007, Special meeting - Secretary Poolman motioned to APPROVE the minutes of the September 18, 2007, Special meeting as presented, seconded by member Bigney. The motion PASSED.

Acceptance of Site Plan Review Committee's reports - Secretary Poolman motioned to ACCEPT into the record the Site Plan Review Committee's reports for Site Plans #0608 and #9711, seconded by Member Bigney. The motion PASSED.

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AGENDA APPROVAL:

#0212 Mark Doren, Special Land Use Permit, question regarding extension, was added under Tabled Business, as item A. MetroSpec, item A. was changed to item B.

Member Lecceadone motioned to APPROVE the agenda as amended, seconded by Member Bigney. The motion PASSED.

PUBLIC COMMENTS:

There were no public comments given.

CORRESPONDENCE SENT & RECEIVED:

Building Inspector's report - This was received and reviewed.

Any Other Correspondence - A bulletin from Mika, Meyers, Beckett & Jones announced that James R. Brown was selected to be listed in the 2008 edition of the *Best Lawyers in America*. It is the 20th consecutive year that Attorney Brown has been selected for listing in this national, peer-reviewed publication. Congrats were given!

PUBLIC HEARINGS:

SITE PLAN #9711 (SPECIAL USE - REMOVAL OF NATURAL RESOURCES)

RUSCHES TRUCKING
12056 Algoma Ave.
Sparta, MI 49345
Parcel #41-06-10-100-003

Mailing Address:
4457 Alpine Ave. NW
Comstock Park, MI 49321

Chairman Witham noted for the record that Public Notice was given and an Affidavit of Mailing was submitted. The Commission members have in possession reports from the Site Plan Review Committee, township engineer, and resolutions from the township attorney. He stated there was a response to the Site Plan Review Committee's report sent from Mike Rusche.

Mike Rusche was present along with his son, Scott. He stated he was President of Rusche Trucking and he is requesting another 10 year permit. He said selling product has been scant for the last few years but he is screening stone to make gravel and getting some of that from Kelly Powell's Clouse pit to make it pass

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inspection. He said that is why they have been taking out of the other pit. He said they have been selling out of both pits but once the County Road Commission depletes from the Clouse pit they probably will move back over to his Algoma pit, weather permitting. He hopes to extend another 10 years but the way the economy is and now that the Doren pit will be done this year, they can sell more material out of ours.

Chairman Witham stated that 10 years was the length of the initial permit and he had hoped for less than that for a renewal.

Mr. Rusche stated they were about half way.

Member Lecceadone asked when the first permit expired and was told on December 17th of this year.

Chairman Witham explained the Public Hearing process and declared the Public Hearing OPEN for public comments.

There were no public comments given.

Chairman Witham CLOSED the portion of the Public Hearing to public comments. He asked the township engineer to address his report dated October 16, 2007.

Engineer Bruggink stated the final reclamation plan differs from the original which showed a lollypop-like street and this most recent plan is a simple cul-de-sac.

It was noted that the original reclamation plan was based on 42,000 Sq.Ft. units when ordinance allowed, but since then the zoning requirements were changed and now calls for a minimum of 84,000 Sq.Ft. units.

Engineer Bruggink stated when the development comes in, it must meet current township ordinance requirements. He said the plan showing existing site condition appears accurate after his review. He said the owner has been taking care of soil erosion and sedimentation controls and there have been no issues. He presented photos of the site in a panoramic view. He stated there was no equipment at the site last Friday when he visited. He said should the Planning Commission decide not to allow the permit, he would recommend the owner flatten the slopes and active faces of

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the mining operation for stability. He said the site is completely fenced in. From an engineering point of view, he stated he didn't see why the permit would not be extended, it is already operating and he is not aware of any complaints.

Chairman Witham stated originally the Commission was very concerned about safety, road conditions, and dust.

Supervisor Hoemke said early on there were complaints on dust but that was taken care of and the township hasn't received any further complaints.

Chairman Witham read the Site Plan Review Committee's report dated September 18, 2007, and stated Mr. Rusche responded to it with a letter that the office had mailed separately for the Commission members to review.

Engineer Bruggink stated that Phase I has been reclaimed.

Member Bigney stated there was an obvious need for the material.

Member Lecceadone agreed stating especially with the current highway construction.

Mr. Rusche said bidding hasn't come up for gravel along the road shoulders or new roads yet. He said the County estimates what is needed for the winter season but last year it was so cold they put straight sand on the roads with no salt.

Member Lecceadone said he agreed with Engineer Bruggink in that there is an operation already going there and they are doing it right. They have been a good neighbor.

Member Bigney said he didn't agree with the Site Plan Review Committee. He said at one time the township had five gravel pits and now they are down to one and that will help his sales.

Member Lecceadone asked how many pits were in the area geographically.

Mr. Rusche said not many; there is one out of Kent City.

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Member Heminger said the Doren pit hasn't done much the last few years. He said it appears there is more sand to the north on this site. He asked how fast that could be mined out.

Mr. Rusche said the Doren pit did a lot of County work this last year. He said there is gravel 5' but farther to the north and they can blend it and bring stone in to make it pass. He said some of the boulders can be crunched up.

Chairman Witham said the question is what is needed in the future and we will always need sand during the winter and then you have the need for gravel for roads. He could get, or not get, a portion of bids available for that. He said he is at 50% there but when you consider the future, could this need take 10 to 12 years or 5 to 6 years to complete. When this permit was first applied for there were neighbors against it but the Rusche pit has been a good neighbor and the township has received no complaints. The pit is already open but they can't guarantee when they will be done.

Member Bigney said he couldn't believe it has been 10 years already and it doesn't matter how long they go, there hasn't been any problems.

Member Heminger stated the Commission can't grant it for eternity but it needs to end sometime.

Member Bigney said he would rather see the pit than houses.

Attorney Brown stated the ordinance contemplates in situations like this one that even though it has been operating for the time period given, there still is an amount of valuable resource not removed. He said the operator has some considerable rights to remove it if it would not cause adverse consequences. The language is there to enable townships to permit a continuation where situation justifies extending the time or where "extraordinary circumstances" are present. This could be applied to having a significant amount of valuable natural resources remaining. He said the Commission is entitled to give extended time and it's their judgment as to what to give, whether there is a need, and if demonstration is given for the need. He said because other pits are concluding that there would be a lack of

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resources so it comes down to balancing the extension. Is there value in what's remaining and second, is there a legitimate need for it. He said it would be proper to permit if they find a need; the issue is how long is appropriate.

The Commission discussed this and what would be the reasons for denial should they apply that. There was discussion as to the need for the County and the location of their north garage to this pit. There is now another pit in this area closing and another closing soon.

Chairman Witham agreed with the consensus of the Commission that the need exists and this pit is already open, but he was still concern with the number of years requesting. It would end up being a 20 year pit. Neighbors were concerned at the time 10 years ago but the difference now is that there is no one present with those concerns now.

Member Lecceadone said he could think of other pits like Grand Rapids Gravel that have lasted 20 years.

Member Heminger stated that the desire of the township should be that one doesn't go on forever and ever.

Member Lecceadone said right now we have some ammunition the next time someone comes in requesting opening a new pit that the township already has this one.

Secretary Poolman stated the township would still need to prove the need is being met in this area with just the Rusche pit.

7:55 P.M. - Vice-Chairman Newberger arrived at the meeting.

Secretary Poolman said he was not in full agreement with issuing another 10 years but 5 years seems fair. He said he agreed with the need and the pit is already there so there is no reason to say no. The economy is poor and we know it and housing in Michigan is not good so you can say there isn't a great need, but there still is road construction taking place around here so there is that need.

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Member Bigney stated that 5 years won't be long enough to complete it and why have them go through this again. He said he didn't know what the contention was for closing it. The trucks have been driving moderate speeds.

Member Ensley stated he would like to see it completed in 5 years but then if they needed one more year he would rather go with a straight shot. He does see a need and with weather issues, even if it is being used primarily as a sand pit, he is content with keeping it open but would like to verify a time limit.

Member Lecceadone said he didn't think if 10 years was given, there would be an issue with going any longer.

Member Lecceadone motioned to APPROVE the Resolution for Extending Site Plan #9711 for another 10 years, with 1 year renewals, and with no exceptions of extending beyond 10 years.

No second was given at this time.

Discussion: Member Bigney said he would like to see that in a way but there is no idea how long it will go on.

Chairman Witham said if they are at 50% now, that the pit shouldn't be working after this. He said the township sees a need here but he is doing this to make some money; not for the love of the labor and at some point and time they are not going to make any more money at it so it will be closed. He said he is still having a difficult time with issuing a 10 year extension but if the Commission members are OK with it.

Member Bigney seconded the motion.

Discussion: Attorney Brown stated the Resolution could state that the applicant agrees that no further attempt would be made to apply for another extension again for this permit and they would also state this would be for the purpose of truly and ultimately limiting this extension to 10 additional years.

Engineer Bruggink agreed with an extension stating it is reasonable to approve one.

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Attorney Brown said the purpose to establish time limits is that they encourage getting the material out of there and they may have to bid lower to get the contracts but it gets them out.

The motion PASSED unanimously.

TABLED BUSINESS:

#0212 Mark Doren, Special Land Use Permit, question regarding extension:

Mark Doren was present. He said he has waited a month to get an answer and would like to keep his gravel on his property over winter but his permit will expire in December. He said there would be no mining, just setting on the ground.

Mr. Doren was asked how much gravel. He said 10,000 yards. He said there was no market for it this time of the year. He said he will do some more digging and use that stone to grind up and make gravel.

Member Bigney asked how many yards of stone did he have.

Mr. Doren said he didn't know. The last time they did a lot of screening because they needed screened gravel. He said if they can grind it they can make something of it but they cannot get it out before winter.

Member Heminger asked if he was still operating under his current permit until December.

Mr. Doren said they are making gravel now and will set that aside to sell next year but he would cease operations at the end of the year and there will be no more making of anything.

Vice-Chairman Newberger said the only operations would be the fact that trucks would come and pick up material and no more. He said that material should be used but the problem is how we can allow it to happen formally under the Special Land Use. He said if allowed, it should be very limited and focused on what can take place and for how long.

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Attorney Brown said it could be addressed in that this is the end of the operation and under the Site Rehabilitation Plan there is leeway to say the plan may continue until the remaining stock pile is gone under certain terms and conditions and with no reoccurrence.

Member Lecceadone said we could consider this part of the reclaiming and the Performance Bond is released only when the stockpile is gone.

Attorney Brown said yes, but it would be removed over a certain period of time.

Chairman Witham said there has to be an end date.

Mr. Doren asked that if he was cutting hay, he would be able to renew it.

Member Lecceadone asked how long it will take to remove the stockpile in this situation.

Mr. Doren said a couple of good road jobs will take it.

Engineer Bruggink said to pick a time for completion so he can establish grass before next winter, no later than Oct. 31st.

Member Bigney motioned to APPROVE the reclamation of Site Plan #0212, Mark Doren, Removal of Natural Resources, to be completed no later than October 31, 2008, including the entire removal of the stock piled material and restoration of the site with top soil and seeding of grass to the satisfaction and approval of the township engineer and that the Performance Bond be kept in place until fully improved; further finding however, that the removal operation from the pit be completed by its expiration date of December 17, 2007, seconded by Member Lecceadone.

The motion PASSED unanimously.

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Chairman Witham said it appeared 62 Units are still available in the township to build on.

Mr. Powell said the study will show how lots are clearing up and nothing is projected for coming in so they feel this is a good time to present this.

Building Inspector Bates said 82% are built on or are in process of being built.

Member Ensley asked what the price range would be for these units.

Mr. Powell stated between \$300,000 to \$400,000 ranges.

Chairman Witham asked to address the Site Plan Review Committee's report dated September 18, 2007.

Regarding item a., the second entrance coming off from Wolven Ave., Mr. Powell said the neighbor didn't want an access across from his driveway and other neighbors didn't want to see any further road cuts out on Wolven Ave.

Member Lecceadone stated the idea of a P.U.D. is to keep far from the road as much as possible so he asked if they would see more of this if a second road entrance was put in.

Chairman Witham said the township engineer would look at the Health Department's recommendation for the septic system.

Under c., the applicant stated they could provide a cross section of the smaller street.

The applicant presented the drawing for the entrance sign which the Commission members acknowledged they liked what they saw.

Under e., Mr. Powell stated they could move the houses out of the 20% slope area and pull the road back but then they would only need to create another 20% slope for walkouts and they have been trying to minimize the removal of trees. He said this was a small band of units and they want to use what is naturally on site instead of making another slope.

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Engineer Bruggink agreed that it is very true about creating a 20% slope for walkouts.

Member Lecceadone asked if 20% slopes were needed for daylight levels also.

Building Inspector Bates stated this area is not enough to preserve only to have to create another 20%.

Member Heminger stated that the developer was told the 20% slope issue was discussed and was not going to be changed in the language but he put these three units in here anyway. He felt the three units within the 20% slope area could be eliminated.

Mr. Powell said he was told to go ahead and put them there for discussion; he wasn't going to do it.

Secretary Poolman said if you are going to create 20% slopes, why not use what is already there. What is wrong with using them?

Stan Jager stated they could create the 20% slopes but anyone looking at this must realize it is less than 1% of the total site. He said if you were designing a building site, you would want that 20% there. He said his motivation was to create something as desirable as what has been done here and he has a great deal of time, money, and energy in this preserving what is naturally there. He said, being less than 1% of the total acres, he would ask the Commission to look at and consider an amendment to the ordinance giving discretionary powers so that if such an area is only a small percentage of a site, than they would be able to consider the intent of the ordinance in any case.

Member Heminger stated the Commission did go this and didn't change anything with the 20% slopes.

Mr. Jager stated there was a willingness to reconsider it. This wasn't an attempt to offend anyone. He said if you look at this site plan there is a significant amount of roadway that has residence only on one side and portions that have roadway with no homes on either side. The by-product to create a unique development is that it costs money and he said they are setting aside two acres of open space for a park with a gazebo. He said they will manicure it, seed it, and spent time on the site

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flagging trees not to destroy but to relocate them in the development elsewhere. He said he needs a quantity of home sites to market and he hasn't done the math but when all is said and done, this is a good example as to how to develop acreage.

Member Heminger stated developers are out to make the money and the sub-committee went through this language seven months ago. He said when they talked about zero lot lines, he said that would allow more houses than permitted but he was told that would not happen. He said this is 60 acres and there are 62 home sites on it and that is against township ordinance. He said the Commission can allow as many as permitted or less than what would be allowed and he thinks the three sites in the 20% slope should be out of there and maybe others should be gone as well. He said he believes density has a great deal to account for with the quality of life and density brings congestion on streets, more lights, air and noise pollution, and adds to the crowding in schools. He said all the surveys say the township residents want better living conditions and we are not doing a better job at this and this development isn't right.

Mr. Powell said he agree 99% and it will give more light and have more kids in the school but said this wasn't located in the middle of the township but in close proximity to the City of Rockford and Master Planned for 42,000 Sq.Ft. lots. He said they are not asking for more than what the ordinance allows.

Supervisor Hoemke said there was discussion in the Consultants Review regarding developing on 20% slopes and the necessity of moving roads to make adjustments. He said they talked with Attorney Brown to prepare an amendment that would allow discretion so they could discuss this. He said he took some part in that discussion and the developer was told to go forward with this plan so it could be reviewed and debated so to jump all over the developer is not correct. He said there needs to be some common sense here and the Planning Commission needs to look at the amendment that would give some discretion to allow this.

Attorney Brown said there was discussion at that meeting and the present ordinance says that all shall be preserved without flexibility. He said this amendment would give discretion and flexibility should the Commission want to consider it or not. He said if the Commission wanted to move this way they could possibly

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consider it at the Advisory Public Hearing and do an ordinance change at that time. He said the other alternative would be to consider the ordinance change first before a public hearing on this. He said he would get the draft copy to the Commission and they could set a public hearing.

Vice-Chairman Newberger stated the 20% slopes were in the language so they just don't get filled in and flattened. He asked if other items should be "tweaked" under this category to be considered discretionary also. He stated that if the Commission looks at changing ordinance language to accommodate small situations, they might find themselves in the same position for the next site plan.

Member Bigney said they need to have sense in these areas.

Member Heminger said then the ordinance is just willy-nilly and you can change whatever you want to accommodate someone.

Member Bigney said if it doesn't make sense then they must change it.

Member Ensley asked if they were encroaching closer to the pond to stay away from the property to the east. He said the slope actually looks more than 20% and asked if the sweeping curve could be pushed more to the south.

Mr. Powell stated they worked with the neighbors on the location of the roads so there wouldn't be any encroaching. He said they traded property and put in no disturb areas for the neighbors. He said they just want to be able to utilize the 20% slopes for houses.

Member Lecceadone asked what trees would be eliminated should they relocate the road and pull the houses back out of the 20% slope.

Mr. Powell showed on the site plan what mature oak trees would be removed.

Chairman Witham complimented the applicants for preserving trees. He said the sub-committee looked at 20% slopes and considered what other townships used but decided whatever the percentage would be it wasn't going to be right with developers. He asked why they couldn't move these home sites elsewhere.

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Mr. Jager stated that after walking the site and doing the engineering, they located these in a manner of being the best building sites on the property for the aesthetics and selling. The grades and drainage all play into this. He said it is more a representation of the spirit of the ordinance and conservation. He said he was taking a risk but wanted to put out the finest material he could and wants this to be the development of choice. He said some P.U.D. language is written in a manner that handcuffs but when they have the authority with discretionary language to deviate from the strict writing of the P.U.D., this is a perfect case for that and he hopes they will take another look and hopefully find this is superior.

Member Lecceadone said if the Commission stands firm with the 20% slope, then they will have to move the road and create another slope. He said what they are trying to do is preserve.

Member Heminger said it would be easier to just take three lots off. He said he didn't agree with maximizing everything. He said they always come in here and say I'm not going for everything I can get but won't give anything up. He said Elstner Ave. is a Natural Beauty road but when he looked on the west side of this property they have taken one acre lots right up Elstner.

Mr. Powell said the neighbors didn't want a road out to Elstner, they wanted houses.

9:30 P.M. - Member Heminger left the meeting because of his job.

Mr. Powell asked to move the process forward with the 20% slope amendment but if that wasn't approved they would have to move the road, he just wanted to keep the process going.

Secretary Poolman stated he didn't realize it took 20% to put in a walkout and wanted to see the trees stay.

Chairman Witham said there was a difference of opinion with the 20% slopes and asked Attorney Brown to provide the language for a general application so they could review it.

Member Lecceadone asked if this would be a public hearing.

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Attorney Brown said the Planning Commission could hold the Advisory Public Hearing for the site plan and consider the ordinance amendments at that time.

Member Lecceadone motioned to set Public Hearing for November 20, 2007, to consider amending the P.U.D. ordinance for 20% slopes and other possible aspects in the Primary Conservation section, and to set an Advisory Public Hearing for Site Plan #0608 Metro Spec Condominium P.U.D., seconded by Member Bigney.

Discussion:

Member Ensley asked if the Commission was looking for discretion for any part of the P.U.D. if it met certain criteria.

The motion PASSED.

Vice-Chairman Newberger asked if the number of units was checked and he was told the Site Plan Review Committee reviewed the calculations and found them to be correct.

Chairman Witham gave "Kudos" for the open space.

Member Lecceadone stated he liked the development pushed off the road and wouldn't be seen from Wolven Ave., the single loading on the roads and the way they have taken the spirit of the ordinance into account.

Secretary Poolman agreed and said he liked the seclusion.

Vice-Chairman Newberger questioned if the development was pushed back off the road more due to the Consumers Power easement. He questioned why the lots on the west were parceled off Elstner and why they couldn't have been maintained within this development. He also asked about a road cut out to Elstner Ave. and not one off Wolven Ave.

Mr. Jager said they were providing a type of neighborhood that was a different plan providing border-scapes and preservation.

Engineer Bruggink asked the Commission, in regards to the Advisory Hearing, did they need anything else from him at this time and he was told they were good for now.

NEW BUSINESS:

#0525(R) BENCHMARK METROLOGY / PETERSON JIG & FIXUTRE, MINOR CHANGE - Site Plan Review Committee submitted a report dated August 30, 2007, that the applicant was going to phase the site plan but install all storm water control measures for the site at this time. No action was needed.

ON-GOING BUSINESS:

Tickler File - Is attached to and made a part of these minutes.

Master Plan 5-Year Update - It was reported that no municipality had contacted the office regarding the plan.

Attorney Brown stated he would proceed with publishing the public hearing for the month of December.

Ordinance Amendments - There was no discussion.

Representative reports -

Township Board: Member Bigney reported the Township Board renewed the agreement with Kent County Sheriff for the Community Sheriff at \$90,000.

Board of Appeals: Secretary Poolman reported they did not have a meeting.

Any Other On-Going Business - There was no other business.

NEXT MONTH'S MEETING: Tuesday, November 20, 2007 - 7:00 P.M.

ADJOURNMENT:

Member Bigney motioned to ADJOURN the meeting at 9:44 P.M. The meeting was ADJOURNED.

Jack Poolman, Secretary

Julie M. Sjogren, Recording Secretary