

HOPE TOWNSHIP PLANNING COMMISSION
MEETING MINTUES
June 17, 2021

The meeting was called to order by Vice-Chair Homister at 6:30 pm at the Hope Township Hall, 5463 S M43 Hwy, Hastings, MI. Pledge of allegiance to the flag.

Members Present: Junior Homister, Roger Pashby, Craig Jenkins, Jim McKelvey

Members Absent: Bob Norton

Others Present: Planning Consultant/Zoning Administrator Nathan Mehmed, Township Attorney Catherine Kaufman, Engineering Consultant Dan Whalen from Williams & Works, Applicant Trevor Smith from R. Smith & Sons, and approximately 35 individuals at the Township Hall.

Agenda: Motion by Jenkins, second by McKelvey to approve the agenda as presented. All ayes. Motion carried.

Meeting Minutes: Motion by Jenkins, support by Pashby to approve April 15, 2021 meeting minutes. All ayes. Motion carried.

Attorney Kaufman Comments:

Kaufman provided a summary of current gathering restrictions outlined by the Michigan Department of Health and Human Services (MDHHS). She noted that the meeting would be moved outside if more than 50 people arrived, which is 50% of the attendance of the Hall. She explained the Planning Commission has worked hard to keep meetings in accordance with the Open Meetings Act and Governor's restrictions.

Kaufman provided a summary of the Planning Commission's deliberation over the gravel mine. She explained that the Planning Commission may ask questions. This may include asking the applicant for clarification, which is not showing favor and is part of their job. She also explained why people can't speak to the Planning Commission members outside of the meeting. Kaufman stated that she needs to make sure this is a neutral and proper process and has instructed the Planning Commission members not to speak about the application outside of the meeting. She understands that some may not agree but she is the Township Attorney and it is her job to defend the Township.

Kaufman stated that the Planning Commission and staff read everything that is sent to them. Everything that comes to them is in the record. She explained that the Planning Commission or Township may not immediately respond but that does not mean that they are not processing or considering it. There are also updates on reports which are taking some time. She noted they haven't had much time for deliberation because of public comment and technology limitations. She explained that whatever decision is made, they are anticipating litigation. Therefore, she needs to make sure the process is correct.

General Public Comment: Homister opened up the floor for public comment. He requested that comments be limited to three minutes out of consideration for others and to allow the Planning Commission to deliberate.

In-person comments were received at Township Hall in accordance with MDHHS regulations for in-person gatherings.

Mike Cipolla, 8382 Chain O Lakes

Mike commented living on the lake since 1989 and stated that he was an aquatic ecologist. He sampled 40 different lakes in the area and an estimated 80 lakes elsewhere, without pay, and believes the most beautiful set of lakes are those being discussed. He recommended that decision-makers see the lakes through the eyes of the people and Hope Township, including the campgrounds and channels. His house cost \$20,000, but he wouldn't trade it for anything on Gull Lake. He believes it is the responsibility of the Planning Commission to defend the people and stated they need to see it to do this. He also explained that people with very little money could have a tremendous resource, which would be destroyed by the noise of a gravel pit. He mentioned a conversation with Todd at Carpenter's Gravel Pit, who was surprised a gravel pit would be on a lake and recommended the Planning Commission talk to Todd.

Bill Krueger, 8214 Nadell

Bill is president of the Healthy Waters Alliance and presented a map of where sand and gravel mining companies have been buying land in the area. He noted this as an area of concern. He explained that he lives out of state and comes up to enjoy the lake; it is a retreat. He noted that the Michigan Zoning Enabling Act (MZEA) states that property owners have the right to enjoy their property. He explained this is what he did. When he first bought his property 15 years ago, he was optimistic when reading the Master Plan and loved the natural beauty of the area. He noted looking at the Master Plan, which

recognized the lakes for their recreational value. Now a gravel mine on a recreational lake would be in direct conflict with this. He stated that the Planning Commission does a good job, represents the people, and tries to do everything they can. He thanked the Planning Commission.

John Heavey, 8414 Chain O Lakes

John commented on being in the construction industry for his entire career, and has bought tons of gravel and been in quarries. He stated that what concerned residents are saying is true; gravel pits are noising and dirty. Despite what people say, it can't be made nice enough for people living on a lake. Gravel pits don't contribute to the lake community, which includes peaceful relaxation and enjoyment of lakes.

Gordon Smith, 8374 Chain O Lakes

Smith stated that he has sent a lot of data to the Planning Commission and spend countless hours doing this. He noted frustration at having no response and being ignored when trying to speak to them about running a peaceful protest. He thought this was inappropriate and that the Planning Commission should be able to communicate with people. He submitted a list of questions, but noted the most important is whether the Planning Commission is allowing R. Smith and Sons to amend their original special use application during this process.

Kaufman responded that when looking at an application like this, she anticipates litigation. She stated the judge won't look favorably on the Township if she says the application is deemed incomplete because something like a scale is not included. She stated this application is 100 times better than the Richland Township application. If the Planning Commission wants to ask questions of the applicant and ask them to provide more information, that's the Planning Commission's right. This is not allowed after the meeting time, as she noted above in her comments. The Planning Commission has been instructed not to speak to the applicant or members of the public outside of the meeting time because of this issue. The Planning Commission is allowed to ask the applicant for more information, additional studies, or more information from Planner Mehmed. People may interpret this as amending, but she views this as the Planning Commission asking for clarification so they can make a decision.

Smith clarified that these conversations should not occur after the meeting. Kaufman believed they were talking about the same thing. She has directed

the Planning Commission not to talk to the applicant or public after the meeting time. She noted that while this may seem harsh or overly restrictive, she is protecting this decision. She anticipates a challenge, which may include a procedural due process challenge. She explained last year was a tremendous challenge to comply with the changing conditions, so they did the best they could. The other part of a decision is substantive due process, which evaluates the neutrality of the decision-making body. She stated this is why the Planning Commission has been directed not to speak about the application outside of the meeting.

Smith noted that the Planning Commission has done a good job asking questions, as there were things not in the application that the Planning Commission has found out by asking questions.

Ellen Berens, 8244 Nadell Street

Ellen explained that she and her husband made an appointment at the Township Hall to look over the application. She noted the response to “Do you anticipate a high use of water?” The applicant stated no. While she didn’t remember the exact decibels, the estimated noise level was the equivalent of a lawn mower. She stated that she knows gravel mines are louder than a lawn mower. She believed that if the Planning Commission was going to accept the application, they should clarify with questions and asked that they get information in writing. She noted that this may be complete compared to Richland, but it still doesn’t seem complete.

Kaufman noted that this application has put more into the record than was ever put into the record in Richland. She stated that much in Richland that was put into the record was for other sites, but there were no traffic, dust, or hydrogeological studies. Kaufman recommended that the Planning Commission not take everything in the application as truthful. Even though the applicant says there won’t be an impact on groundwater, the Planning Commission can request a study to find this out. Kaufman briefly reviewed the provisions about gravel mines in the MZEA, stating that if the applicant makes their proofs, then the Township cannot deny. She stated that if the applicant puts proof in the record and the Planning Commission tries to put more in the record, there is a reason that they are doing that. They are looking for more neutral information.

Ellen commented that she doesn’t want Kaufman to feel attacked, but is questioning these things too. Ellen didn’t think the hydrogeological report

would have been requested if it weren't for the work of the gravel pit subcommittee. She appreciated these comments and that they're getting more information. She re-iterated that everything should be in writing.

Larry Heslinga, 8202 Nadell Street

Larry appreciated Kaufman as a protector of process. He commented that the State Senate has a series of bills that are favorable toward mining applications. However, a provision within the legislation that the legislature must have thought was a serious problem is false info on applications, as it was addressed specifically. Larry read an excerpt from Senate Bill No. 429:

(4) A person who intentionally makes a false statement, representation, or certification in an application for a mining permit, a form pertaining to a mining permit, or a notice or report required by a mining permit, knowing it to be false, is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not less than \$2,500.00 or more than \$25,000.00, or both, for each violation.

Larry questioned why the State legislators found this provision important and thinks it is because this is a common industry practice. He noted that other organizations see falsehoods on applications and believes the State senate thought this needed to be addressed and defined as a felony. He understands this is not law yet, but noted that this was found to be important.

He explained finding five falsehoods in two pages on the site plan review application. 1: When asked about any toxic substances in the proposed uses of property, the applicant left it blank. 2. When asked which toxic substances would be used and how they would be handled, the applicant answered there would be fuel use and storage similar to agricultural operations. He noted there was no indication about how it would be handled or what type of fuel. There is also a section which asks about outdoor storage of hazardous materials, to which the applicant said no. 3. When asked if there will be noxious fumes, the applicant said no. Larry explained that with 250 gravel train trips per day, there will be noxious fumes. 4. When asked if the use will use require large amounts of groundwater, the applicant stated no. Larry explained that through questions the applicant was found to have already registered a well for 1380 gallons/minute. 5. When asked if there would be discharges other than sewer, the applicant said no. Larry noted that water will have to be discharged somewhere. Larry thought these are the types of responses State legislators are responding to and didn't understand why the application was being considered in light of these falsehoods.

Don Sklenka, 8345 Wilkinson Lake

Don appreciated the public turnout and thanked everyone. He asked the Planning Commission if they received documentation from his attorney. The Planning Commission responded yes. He noted that everyone is talking about process and wanted to clarify it. He likened it to creating a new password, which requires special characters. He asked if this was a fairly accurate representation, with several things that must pass for the special use, very serious consequences, and various topics in these categories. He wondered if one of these qualifications does not comply, it should be denied. Kaufman stated this was a fairly accurate statement. Don wondered why everyone was still there a year later. He discussed property values, mentioning that the same report was submitted in Richland. This report was noted as being an inaccurate representation of property values by Andy Moore from Williams and Works because it wasn't from the area and removed from consideration in Richland. He wondered why the same document under the same consulting agency hadn't been removed.

Kaufman responded that the Planning Commission will go point by point through the very serious consequences and talk about each one. She stated they're not at this point yet because they don't have all the information. She made Richland go through every point, which was recorded in their minutes, because that's what a judge is going to look at. She explained they haven't gotten that far in the process and it takes a long time. Mehmed noted that he wrote a similar staff report and also mentioned a similar point. He stated that he and Andy read each other memos, so it should be very similar.

Don thanked them for their time.

Char Wabeke, 8297 Wilkinson Lake Drive

Char appreciated how the Planning Commission was covering their actions. She commented on reading the Michigan Environmental Protection Act (MEPA) and wondered how this act applies to the process, especially since a lake is involved. She asked if there would be any consideration of this.

Kaufman summarized the very serious consequences, which include a general statement on health, safety, and welfare. She noted that a list of animals was read at the previous meeting, which is a component of the analysis. She believed MEPA would be brought in if applicable to the review, but noted that they haven't gotten that far. She stated that when they evaluate these standards, there could be many subfactors. Impacts on natural resources

would be part of that and the list of animals is important. She also noted that there are often regulated wetlands around lakes, which are important. Further, she stated the hydrogeological report will be helpful, because there could be impacts on groundwater. These factors need to be known before making a determination on very serious consequences. She stated that while it seems to be dragging on, the Planning Commission needs as much information as possible.

Char also commented that she thought MEPA may require a setback of 200 feet from the nearest residence, but wasn't sure. She thought there might be different regulations in MEPA.

Marilyn Breu, 8226 Nadell

Marilyn emphasized that the area is zoned residential recreational. She stated that people deliberately chose to live there because of recreation. She explained that she kayaks daily and takes her dog, knowing more people because of the lake. She watches people actively improving their property and cottages. She stated that she likes to kayak early mornings before the boats and looks for muskrat, beavers, and other species. She noted that rock crushing at 6am would ruin this. She commented on a variety of mammals and birds that would be impacted. She noted that the rock crushing would cause a lot of vibrations, which would disturb her and likely the wildlife. She explained that silence and friendly neighborhood get-togethers would be ruined by the noise. She noted that she saw three stakes in the water near the gravel mine area while kayaking last week and thought they were odd. She didn't understand how one landowner could disrupt the area for 35-40 years. She explained that she recently retired and is spending a lot of time there because of the peace. She stated that this is a small town on a lake, and the backyard is the community park. She didn't believe one landowner should be able to take that away.

Ralph Krueger, 425 Harrington Road, Wall Lake

Ralph stated that he represents a lot of other lakefront property owners around the area and felt the gravel mine shouldn't go in. He didn't want to repeat the reasons, but asked the Planning Commission to imagine this was next to their property, stating they wouldn't like it either. He hopes they make the decision in favor of Wilkinson Lake.

David Ellyatt, 8315 Wilkinson Lake Drive

David believed the community already failed with this application and believed there was ample evidence. He stated that it was good to see things rectified on the Otis Lake site, but doesn't want this scenario at Wilkinson Lake. He stated that past performance is the best indicator of future performance. He noted that since the applicant hasn't shown good past performance, the future performance is not expected to be good. In the Fishbeck report sent in by the applicant regarding silica, it states that this is a potential occupational health hazard. He believed silica exposure will be the same next door as it would be for workers.

Mike Cipolla

Mike was granted permission to speak again. He pointed out that Otis and Wilkinson Lakes are not the same type of lake. People don't want to live on Otis Lake. This application should not be confused with gravel pits on other lakes, because Wilkinson is a recreational lake.

Annual Report: Homister indicated that the annual report had been prepared for the Township Board. Motion by Pashby to send the annual report to the Township Board. Support by Jenkins. All ayes. Motion carried.

Unfinished Business: R. Smith and Sons Inc Special Exception Use Application (8409 Miller Road, PN 08-07-030-003-00):

Jenkins read written comments received regarding this application after the April 15, 2021 Planning Commission meeting, including names and dates associated with each:

1. Don Sklenka email, 4-16-21
2. Gordon Smith magazine article, 5-20-21
3. Mark Litke email, 5-27-21
4. Gordon Smith email, 5-25-21
5. West Michigan Law Center, Maureen B. VanHoven letter 5-26-21
6. Don Sklenka email, 6-5-21
7. Ellen Berens two emails, 6-15-21
8. John Shumaker email, 6-16-21
9. Gordon Smith email, 6-16-21
10. Tom Kulpa email, 6-17-21

Mehmed forwarded a memo from Fishbeck on May 11, 2021 and also sent another memo on May 15, 2021 regarding the hydrogeological work scope.

Mehmed asked Whalen to provide an update on the hydrogeological study. Whalen stated there were two proposals received so far. He indicated that he knows most of the hydrogeo firms in the State of Michigan and has experience with their quality of work, so he is fairly selective. He contacted many qualified firms and some couldn't work until September or October because they were so busy or they didn't want to undertake the project. Two submissions were received by the provided deadline. One addressed the scope of work and the other provided an alternate scope that wouldn't help answer the questions. Whalen is continuing to contact companies. Mehmed noted they are trying to make sure this is a competitive process. The Board doesn't have copies of the proposals yet, but everyone has a copy of the RFP.

Whalen commented that several good firms have denied the RFP because of a conflict of interest or not enough time. Once a firm is selected, they will also need a driller. He noted that this isn't a house well driller job, but something that a very experienced water well and environmental driller needs to do. This is going to provide a lot of information an experienced geologist needs to provide good data.

Pashby asked a question about registration of wells, gravel washing, and water quality. Whalen described the process and indicated that it would primarily be fines created from washing. Smith explained that this would be a gravel washing process, so water would return to the ground eventually. Pashby asked if the crushing process would return water of a hazardous nature. Whalen explained that the crushing could add minerals to the water, but not necessarily hazardous materials. Pashby wondered if the water would become purer through the process. Whalen said the infiltration process wouldn't change quality, but could change the fines (clay, silt, etc.). Mike Cipolla disagreed and thought the water quality would change due to soluble material in crushed rock. Whalen agreed that there could be additional minerals, but generally speaking there is not going to be hazardous product. Cipolla indicated that the only way you can know is by testing rock from other pits. Whalen agreed that could be measured.

Homister asked if there were additional questions. Jenkins asked about the environmental assessment. Clarification was provided that the environmental impact assessment was separate from the hydrogeological report. Whalen explained that the next quote he is expecting should have both components. Mehmed noted that they're having the same problem with firms being busy or not responding for the environmental report.

Pashby asked if a study was done on the need for gravel. Kaufman replied there was a study done for MDOT related to the gravel industry that has been discredited. She thought the applicant had provided customers and contracts, but noted she may be wrong on this. Kaufman recollected that the Planning Commission had determined there was valuable natural resources on the property and a market for those resources. Her understanding was that they were down to the very serious consequences analysis. The Planning Commission agreed. Kaufman reiterated that they are waiting on important studies.

A question was asked about the zoning district being residential and recreational. Mehmed noted that neighboring properties are primarily in the Residential Lake zoning district, but the applicant's property is in the Agricultural district.

Tiny Homes & Temporary Use of RVs on vacant lots discussion: Mehmed reminded the Planning Commission that at the last meeting they asked him to do some research regarding temporary use of RVs. He provided three example ordinances for temporary use of RVs for Planning Commission review. Kaufman noted she doesn't like the Webber Township Ordinance. Mehmed agreed that he had heard there were issues.

Mehmed noted that Hope Township's ordinance doesn't permit the temporary use of RVs, unless it's a temporary living place while someone's house is built or if it burned down. There have been enforcement calls about these and he receives about a dozen calls asking to place RVs on properties throughout the year. Jenkins pointed out that these are already present in the Township. Mehmed noted that because Barry County allows them, many people assume they are allowed in the Township. There is a demand for them. He noted zoning compliance permits could be busy if allowed, but it would allow a route for enforcement. Jenkins suggested having a time limit for those living in an RV. Mehmed recommended they look through the examples for standards they could include in an ordinance for discussion at the next meeting. The Planning Commission agreed.

Further discussion was held on tiny homes. Mehmed was asked to provide additional information on these. Homister thought these would arrive in the Township and they should give more thought to them. Jenkins noted that these are sometimes in parks or districts, like a manufactured home park. Kaufman noted that a tiny home on a relative's property could be classified as an accessory dwelling unit (ADU). Mehmed confirmed that ADUs are permitted in the ordinance. He noted that he hasn't seen an ordinance permit any trailer/wheel type of tiny homes. If they have


wheels, they would likely be treated like an RV. At the next meeting, Mehmed said they could work on a draft for RVs and he would research tiny homes.

Zoning Administrator/Planning Consultant Nathan Mehmed

A zoning variance request will be on the August 12th ZBA agenda. Mehmed noted there are lots of zoning compliance permits. Pashby asked about impact of lumber prices. Mehmed indicated that some have asked how long their permit is good for so that they can wait. Someone is interested in adding resorts to the ordinance, but Mehmed has not received anything in writing outlining plans. There are currently not any uses in the ordinance that allows for something like ten cabins on a property. Pashby asked if there were any complaints regarding kennels. Mehmed hasn't received any calls regarding excessive dogs.

Adjournment

Pashby moved to adjourn meeting, support by McKelvey. All ayes. Meeting adjourned at 8:00 pm.


Craig Jenkins, Secretary
Hope Township Planning Commission

06.25.21
DATE