

HOPE TOWNSHIP PLANNING COMMISSION
MEETING MINTUES
March 16, 2023

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

Members Present: Bob Norton, Junior Homister, Jim McKelvey.

Members Absent: Craig Jenkins, Roger Pashby.

Others Present: Planning Consultant/Zoning Administrator Nathan Mehmed, Attorney Catherine Kaufman, and approximately 41 people at the Township Hall.

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

Meeting Minutes: Motion by Homister, support by McKelvey to approve the January 19, 2023 meeting minutes. All ayes. Motion carried.

General Public Comment: Norton opened up the floor for public comment and asked that everyone keep their comments brief.

Don Sklenka, 8345 Wilkinson Lake Dr.

Don mentioned that he didn't recognize Dan Whalen without the beard. He thanked everyone for being there. The community has shown up month after month for over two and a half years. He noted that the neighbors and lake community have been at every one of these meetings. Interestingly enough, the applicant didn't show up back in August and the rest of us did. He expressed that the Planning Commission has taken a judicial, patient process with lots of deliberation and made a sound decision. The Planning Commission considered data from the public and everyone. It is all still available for review. He stated that he appreciates the decisions made to date and the process that has been adhered to. Sklenka noted that wanted the following quote from the May 5, 2022 minutes reflected in these minutes verbatim: "Homister asked Smith if they were no longer operating with process gravel. Smith stated yes, they are no longer operating."

Bill Krueger, 8214 Nadell Street

Bill serves as the President of the Healthy Waters Alliance. He thanked the Planning Commission for their continued diligence. The applicant and public have both had opportunities to provide information equally; it has been a fair process. The Planning Commission made a fair decision. It is generous of the Planning Commission to have a supplemental meeting. He expressed that the hydrogeo report does not provide any information that would overturn the decision. The applicant had plenty of time to provide information and they chose to slow the process and delay. He explained that there has been a lot of anxiety over this application for the last several years. Please deny again.

David Ellyat, 8313 Wilkinson Lake Drive

David expressed that he is disappointed to be there again. He appreciates the diligence of the Planning Commission in their work. Having read through the hydrogeo report, he sees nothing that would overturn the application, and it adds more questions than it answers. David noted that it is interesting that the applicant decided not to show up in August despite dozens of community members being present.

Larry Heslinga, 8202 Nadell Street

Larry noted that it may be a long evening so he will keep his comments short and summarize. The Planning Commission did a diligent, patient job to review the material. You had what you needed to make a decision, and I fully support the decision that you made. He explained that there are plenty of reasons why the special exception use shouldn't be approved. The lack of need, noncompliance with the zoning ordinance, and very serious consequences. He noted that he is just a lay person, but the hydrogeo adds more questions than it answers. It validates the concerns that Dan Whalen had.

Ken Vermeulen, Honigman, Stoneco, R. Smith & Sons

Ken noted that he has had several conversations with the Township's counsel prior to tonight's meeting. He isn't sure why he and his client are here tonight. The Planning Commission asked R. Smith & Sons to provide additional information about this time last year. We started working with Mr. Whalen to develop a scope for a hydrogeo report and then we were delayed due to weather and drilling techniques. Some wells didn't produce water and then there were lab delays. There was a consistent discussion and communication. Ken noted that their intent was to submit for September. There is no such thing as a do-over; there is no R. Smith & Sons application in front of you. It is done. We offered to cancel tonight's meeting and submit additional information. We were told that the Planning Commission wouldn't entertain submitting any additional information except hydrogeo report He

explained that they will submit a new application if it is accepted, on behalf of Michigan Materials. Ken said if need is an element, they are happy to provide information. Ken said his client understands the technicality that R. Smith & Sons doesn't have need because they aren't in business. He explained that if the Planning Commission is rescinding their decision from last August, that is fine; we submit that we have the opportunity to provide additional information as requested, or consider it as a new application. He expressed that reconsidering the R. Smith & Sons application is inappropriate and that they will not remain for that part of the meeting and will leave at that point on the agenda. Ken said his client is willing to present a new application tonight. Kaufman indicated that he can submit a new application to Nathan. Vermeulen provided an application packet to Mehmed and left the meeting.

Gordon Smith, 8374 Chain-O-Lakes Drive

Gordon thanked the Planning Commission for their time and effort. He explained that he is a consultant for a living and it is great that you followed advice from your consultants and attorney. He noted that he has a history of drinking polluted water as he grew up in Parchment. He has a particular concern with drinking water and is glad that the Planning Commission looked at the study, taking in data and facts. Please continue to do so. He appreciates that the Planning Commission is not intimidated by an attorney that has a tendency to lie. Please continue following the law, you will be fine.

Paul Yelsma

Paul explained that he is here for a different reason. He has eight points, and what you do tonight and the next year is going to have an impact far beyond this community. He explained that he recently went to Sharon Township and got info from those folks that mining is a great deal more than getting stones out of the ground. It has a tremendous impact on the people that live in that area, not just near the mine, but miles from the mine. Your concerns become ours. Sharon Township is setting new records because of local control, and we need to keep local control. It is essential when we make big changes. Need is not the issue, we all need gravel, we all need stone. The issue is safety, long into the future. Keep in mind that every decision that we make has consequences. Places and procedures are central issues, mining could happen in places that have little impact in Barry County and mining companies need to know that. Gravel mining is about health and safety. What happens in four to six years is minor compared to what will happen in 20 years to our water and ground.

Public Hearing: Palmrose Accessory Dwelling Special Exception Use Application:

- a. Introductory comments. Norton opened the discussion and asked Mehmed to provide an overview of the application. Mehmed explained that the applicant is requesting to construct an accessory dwelling on the property located at 3900 Head Lake Road. He noted that the property has a single-family dwelling with a detached pole barn and provided some detail regarding the size and orientation of the proposed structure. He noted that accessory dwellings are permitted as a special exception use in the AR, Agricultural Residential zoning district with approval by the Planning Commission. The applicant, Victor Palmrose, made brief comments and indicated that the dwelling would be for his elderly parents.
- b. Acknowledge written comments received. Norton announced that there were no written comments received.
- c. Open public hearing to receive comments. Norton opened the public hearing at 6:54pm.
- d. Close public hearing. Hearing no comments, Norton closed the public hearing at 6:54 pm.
- e. Deliberation and motion. Norton indicated that Mehmed had provided a memo outlining the items that the Planning Commission is required to consider when reviewing a special exception use request. Mehmed briefly summarized his memo. The Planning Commission reviewed the standards outlined in Mehmed's memo and found that the site plan and special exception use request met the standards of the Zoning Ordinance with the exception of a few items, including the inclusion of only one electrical meter. Palmrose indicated that he can work with Mehmed to figure that out. It was found that given the size of the parcel, the use would not have any significant impact on the neighborhood or adjacent uses. Motion by Homister, support by McKelvey to approve the special exception use and site plan review request for an accessory dwelling incorporating the findings in Mehmed's report, subject to the following conditions:
 1. The applicant shall obtain all necessary local, county, state, and federal permits and approvals, including a soil erosion and sedimentation control

- permit from Barry County, if required. Copies of all applicable permits should be provided to the Township
2. Any stipulations of the Delton Fire Department, Barry-Eaton Health Department, Barry County Drain Commissioner, and any other approvals shall be met.
3. The applicant shall produce and sign a Statement of Conditions in compliance with Section 10.13, J for review and approval by the Township Zoning Administrator.

All ayes. Motion carried.

Supplemental Review – R. Smith & Sons Special Exception and Site Plan

Application: Attorney Kaufman gave an overview of where the Township is in the underlying litigation, which is R Smith and Sons' challenge of the Planning Commission's August 2022 decision. One part of the plaintiff's complaint is a due process violation, based on the plaintiff stating that they were not aware of the August 18th meeting. Kaufman said that the Township disputes that R Smith and Sons was not aware of the August 2022 Planning Commission meeting, as the application had been on the Planning Commission agenda for over two years. She explained that she heard from Vermeulen that R Smith and Sons' application is a dead issue. The Township's defense counsel determined that having a supplemental meeting may help address the Plaintiff's due process claim and would offer an opportunity for the Planning Commission to consider the hydrogeo report which was submitted a few days after the Planning Commission made its decision in August 2022. Kaufman said that applicant R Smith and Sons and Attorney Vermeulen had been noticed and invited to this Planning Commission meeting, so that there is no question as to the meeting date and time or that the Planning Commission may make a decision at this meeting. Kaufman said that the Planning Commission should confine its review to everything that it had on record on August 18, 2022 plus the hydrogeo report. Kaufman said that the Township Engineer reviewed the hydrogeo report and provided a memo to the Planning Commission with his review and recommendations. Kaufman indicated that the Plaintiff's count regarding failure to receive adequate notice of the August 2022 Planning commission meeting remains active. Kaufman said that tonight's Planning Commission meeting is supplemental only and she has cannot predict if the judge may find this additional meeting, with proper notice to the applicant and his attorney, compelling or persuasive.

Kaufman read through her proposed resolution for the Planning Commission's consideration.

Norton asked if the Planning Commission must have additional discussion on the R Smith and Sons application. Norton said that the Planning Commission made this decision in August 2022 at a regularly scheduled meeting and we are being held to the fact that we somehow had a secret meeting and made a decision without the applicant knowing that a decision might be made at the meeting. Kaufman said that the Planning Commission does not have to take any further action or review additional information if it does not want to; it is just an option. Kaufman said that although the Township disputes that any error in process was made, the Township is trying to address and clear up any error that the court may find. Norton indicated that the assertion from Smith that there was a violation of process is irritating. He asked if this was the direction of the Township's defense counsel and wondered if the opposing counsel was going to make a big deal out of this. Kaufman indicated that Stoneco can submit a new application, but that new application would be separate and distinct from the decision on the R Smith and Sons application, which is the subject of the underlying litigation. Homister asked if Vermeulen contacted Mehmed about a September 2022 meeting. Mehmed indicated that no one contacted him from R Smith and Sons, including Attorney Vermeulen, asking him about a September 2022 Planning Commission meeting.

Norton said that it feels disingenuous to make another decision on the R Smith and Sons application with new information since the Planning Commission didn't have that information in August 2022. Norton said that the Planning Commission made its decision based on the information it had in hand at the time of the August 2022 meeting. He said that the Planning Commission had talked about this application for over 2 years and had requested additional information from the applicant in March 2022, which it never received. Kaufman explained that since the applicant did not appeal the Planning Commission's decision, the Court did not get to review the extensive record in this matter and may not be aware of the length of time or the extensive public comments and discussion that the Planning Commission considered before making its decision.

The Planning Commission discussed that they didn't want to appear that they had done something wrong when making their decision in August 2022. Kaufman said that if that was the way they felt, they did not have to reconsider the application. Norton asked if someone would make a motion that the Planning Commission leave its decision intact, as adopted in August 2022. McKelvey indicated that he would shy away from being wishy washy. They made a decision because it was the right one to make. He said that he came to the meeting to clear things up, but wants to clearly indicate that in August 2022 the Planning Commission made a decision based on good evidence at a regularly scheduled meeting. It is important for the judge to

understand the chronology of this application. Kaufman explained that there are court rules that come into play and that the judge has to be neutral. McKelvey asked Mehmed when the Planning Commission asked the applicant for the hydrogeo report. Mehmed explained that the most recent time the Planning Commission asked for the hydrogeo report was in March 2022. McKelvey indicated that Smith had all that time to get the report prepared and submitted to the Planning Commission and it seemed like they weren't very interested in getting it done. Homister noted that he is in the building trades and you can get things done if you have the money and know the people. He is confident that the Planning Commission made the right decision in August 2022.

Norton asked if there was any doubt that we didn't make the right decision. Homister and McKelvey indicated no. Norton entertained a motion. As requested, Attorney Kaufman read the preamble of the Resolution reaffirming the Planning Commission's previous decision into the record as follows:

**Hope Township
County of Barry, State of Michigan**

Resolution NO. 23-01

The following preamble and resolution was offered by McKelvey and seconded by Homister:

WHEREAS, in 2019, R Smith and Sons (the "Applicant") applied to the Hope Township Planning Commission for a special exception use permit and site plan approval to allow a mining operation and related activities on various properties in the Township, which properties are more particularly described as 8409 Miller Road in the Township (153 acres on the corner of Miller Road and Rose Road, immediately adjacent to Wilkinson Lake with approximately 900 feet of lake frontage); and

WHEREAS, on January 16, 2020, the Township Planning Commission conducted a preliminary review of the special exception use and site plan at their meeting; and

WHEREAS, on August 20, 2020, pursuant to public notice properly given, the Township Planning Commission held a public hearing¹ on R Smith and Sons'

¹ The August 20, 2020 Planning Commission meeting, including the public hearing, was held in accordance with applicable Executive Orders regarding COVID 19. Ten people were allowed to attend the meeting in person,

special exception use request, including correspondence received, closed the public hearing, received feedback from the Applicant, and then tabled the application, after determining that more time was needed for the Planning Commission to consider all materials submitted, comments by the Applicant and public comment; and

WHEREAS, on September 17, 2020 the Planning Commission continued its review and discussion of the special exception use and site plan requests, took public comment on the request and tabled the Planning Commission deliberation to the next Planning Commission meeting; and

WHEREAS, the Township Planning Commission also reviewed the Applicant's special exception use and site plan application, including receiving public comment and correspondence, receiving comments by the Applicant and its representatives, receiving reports from the Township Engineer and Township Planning Consultant at Planning Commission meetings on the following dates: 10/15/2020, 3/18/2021, 4/15/2021, 6/17/2021, 3/17/2022, and 5/5/2022; and

WHEREAS, in January 2022, R Smith and Sons submitted a revised special exception use and site plan application, which included revised proposed mining operations and related activities on the Township parcels, with some of the proposed mining activities being relocated to a site across the street in an adjacent Township; and

WHEREAS, on March 17, 2022, the Planning Commission conducted a preliminary review of the revised special exception use and site plan application, determined to schedule a public hearing on the revised application and had discussion regarding additional information needed by the Planning Commission to allow it to make a decision regarding any potential very serious consequences that might result from the proposed mining activities (hydrogeological report, threatened/endangered animals, haul routes); and

WHEREAS, on May 5, 2022, pursuant to public notice properly given, the Township Planning Commission held a public hearing on R Smith and Sons' revised special exception use and site plan request, closed the public hearing, received feedback from the Applicant, and tabled the application to await receipt of requested additional information from the Applicant; and

which included the Planning Commission, Planning Consultant, Township attorney, applicant and applicant's representatives. The meeting was also conducted via Zoom meeting platform for other interested persons to attend and participate in the public hearing.

WHEREAS, during its meetings described above, the Planning Commission undertook its deliberations regarding the Applicant's special exception use and site plan request and amended special exception and site plan review request for gravel mining and related activities, including reviewing the requirements of the Michigan Zoning Enabling Act and the Township Zoning Ordinance as they applied to the Applicant's request, reviewing staff reports from the Township Engineer and Planning consultant, asking questions of the Township's consultants, including Township legal counsel and asking questions of the Applicant/representatives; and

WHEREAS, the Township Planning Commission allowed public comment as required under the Michigan Open Meetings Act at all its meetings; and

WHEREAS, the Township's Planning Consultant and/or the Township Engineer submitted staff reports regarding the application and amended application dated 1/9/2020, 8/13/2020, 10/12/2020, 3/15/2021, and 02/15/2022, which reports are incorporated into the record; and

WHEREAS, at its meeting on March 17, 2022, the Planning Commission directed the applicant to submit the following information to the Planning Commission: 1) complete hydrogeological study to determine, among other things, groundwater flow, water table levels, impact of high capacity wells (even if wells located to adjacent Township) ; 2) data to prove need for the gravel on the subject site in the market or by the person; 3) proposed haul routes; and 4) environmental assessment, including threatened and endangered species; and

WHEREAS, the Township Planning Commission has not received the requested information as of 8/18/2022.

WHEREAS, the Township Planning Commission, as its meeting on 8/18/2022, made findings of fact, reviewed provisions of Section 205 of the Michigan Zoning Enabling Act and adopted a Resolution denying the applicant's special exception use and site plan request because the Planning Commission found that the applicant did not prove there is need in the market or by the person for the natural resources on the property; and that the applicant did not prove no very serious consequences would result from the proposed mining operation and associated activity; and

NOW THEREFORE BE IT RESOLVED AS FOLLOWS, the Planning Commission has decided to let its decision on the R. Smith and Sons application made on 8/18/2022 stand as is and is not accepting information submitted after 8/18/2022 for review or consideration and will not reconsider its decision made on 8/18/2022.

YEAS: Members: Norton, Homister, McKelvey

NAYS: Members:

ABSTAIN: Members:

ABSENT: Members: Jenkins, Pashby

Resolution declared adopted.

Zoning Ordinance Text Amendments: Mehmed explained that a variance request from Section 8.4, C pertaining to setbacks on nonconforming lots of record was approved by the Zoning Board of Appeals on Monday. Norton noted that this type of deviation from Section 8.4, C has come before the Board several times now and it is likely pertinent to amend the Ordinance. Mehmed indicated that given the busy schedule that the Planning Commission has in the near future, it may be best to start with just this edit. Currently, Section 8.4, C requires that “A structure to be located on the lot shall be no closer to any roadway or lakeshore than a straight line connecting the nearest building (other than a boathouse) on each side of the lot.” The proposed amendment would be to remove “roadway or” and leave lakeshore. Norton expressed that leaving lakeshore makes sense. Mehmed also noted that Section 3.4, B states principal building, and it really should state that any building shall meet at least fifty percent of the setback requirement. That is how the standard has historically been interpreted. The Planning Commission agreed with both amendments. Motion by Homister, support by McKelvey to set a public hearing on the described text amendments for the April 20th Planning Commission meeting. All ayes. Motion carried.

Zoning Administrator/Planning Consultant Nathan Mehmed: Nothing else to report for now.

PCI Annual Reports; ZCP Annual Report: Mehmed presented both reports and indicated that they are a snapshot of the building and improvements that occurred in the Township in 2022.

Adjournment

Homister moved to adjourn meeting, support by McKelvey. All ayes. Meeting adjourned at 7:54 pm.



Bob Norton, Chair

3/24/23
Date