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Saugatuck Township Regular Planning Commission Meeting April 30, 2018

APPROVED MINUTES

The Saugatuck Township Planning Commission met on April 30, 2018 at the Township Hall
on Blue Star Highway, Saugatuck, Michigan

Present: **Rowe, Lozano, Conklin, Prietz, Israels, Lane**
Absent: Welk
Also Present: **ZA Kushion, Nick Curcio**

Call to Order At 7:01 p.m. by Chairperson Conklin.

Pledge of Allegiance

Approval of Agenda- Motion by Rowe to approve agenda, Prietz seconds. Motion passes by unanimous voice vote.

Discussion of March 26, 2018 meeting minutes. Correct the heading to reflect proper meeting date, corrections on the bottom of page 1, and top and bottom of page 2. Motion by Rowe to approve March 26, 2018 meeting minutes with corrections; Prietz seconds. Motion passes by unanimous voice vote.

Public Comment –

Larry Dickie- 6108 Old Allegan Road- what happens if there was a 3-3 vote? Kushion responded it would be a denial.

Public Correspondence- Correspondence received from: RJ Prospects, Jane & Larry Dickie, Randy Nieuwsma, Steve Hickok, Dan Defranco, and Dayle Harrison.

Unfinished Business- None

New Business

- A. *Request for Special Approval Use to remove 400,000 cubic yards of sand and create a 3.5 acre pond at approximately 6400 133rd Ave (133rd and Old Allegan), Parcel number 03-20-012-005-20. This matter is being re-heard after rescission of the Planning Commission's prior decision denying the application.*

Public Comment:

Ross Veltema- RJ Prospects / Top Grade Aggregates- Property purchased last year. Plan is to sell home sites and dig a lake which takes a monetary investment. A good way to fund the lake is to sell some of the sand on the property. Ross shows a rendition of the potential pond and development. Accompanying Ross are Jim Dusma (attorney) and Greg Steigenga (Hudsonville City Commissioner). They were denied in part last time as the plan was deemed not harmonious with the neighborhood, but there are ponds in the area. They believe a larger pond will be healthier.

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They also plan for a crushed asphalt drive off 133rd. Ross spoke about dust remediation and bringing in top soil. Haul route would be 133rd to 60th and they would set a 20 MPH for trucks. It's in his best interest to get this done ASAP.

Project will take up to 5 years max but it could be done in 2 years. Included in the past proposal was a study from Lakeshore Environmental regarding the water level and Allegan Co. Road Commission's approval for the proposed truck routes. 13-17 loads per day are proposed, but that could rise if the time frame decreases. The goal is to restore the property. They are not sure if they are going to subdivide or sell to one owner. Veltema believes his company does well at end games and building value on the property. EX: *Preservation Estates* was a sand pit. They are working on other developments currently in Ionia and Burnips.

Will there be a fence? Veltema prefers berms with *No Trespassing* signs as fences have maintenance issues. There will be a fence for soil erosion and a locking gate at the entrance. Conklin stated the trucks will have to have a place to park if gate is locked upon arrival and that the trucks should not be idling.

Nick Curcio - Township Attorney- Gave a brief history of the appeal and what recourse exists if they are denied tonight. What changed to revisit this? Two items are at issue: The first is the rationale given to deny the project was regarding the *Special Use Standards* (items 1 & 2) that this parcel is residentially zoned. Sand Mining is allowed in residential areas, so this argument would most likely not hold up in court. Second, sand mines are subject to "heightened scrutiny" in a Circuit Court Appeal. The Township would have to find "serious consequences" to the application. Curcio decided it was best to revisit this decision.

Board Discussion-

Prietz asked for an example of "*Special Circumstances*," Curcio read the passage from the Zoning Enabling Act:

(5) In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in Silva v Ada Township, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:

- (a) The relationship of extraction and associated activities with existing land uses.*
- (b) The impact on existing land uses in the vicinity of the property.*
- (c) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.*
- (d) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.*
- (e) The impact on other identifiable health, safety, and welfare interests in the local unit of government.*
- (f) The overall public interest in the extraction of the specific natural resources on the property.*

Conklin- "Very Serious Consequences" boils down to three things:

1. Endangered Flora
2. Endangered Fauna
3. Water Table (pretty extensive water table reports have been done already by Top Grade)

Is there anything else we can look at? Curcio added:

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4. Credible evidence of property values decline
5. Plans and how they want to conduct their operation
6. Screening to deal with noise and externalities

Rowe asked what qualified as credible evidence of property value decline. Would we have to do a study? Curcio suggested perhaps examples from other communities where property values declined.

Prietz spoke about Preservation Estates and if this project turned out like that, it would probably add value to surrounding properties. So do we consider property values in the short term or long term? Curcio stated that the timeline for this project is shorter than (project deadline of Jan. 1, 2021). Some of the "serious consequences" examples he saw was for projects with 10- 15 year timetables.

Public Comment:

Tom Shashaguay 6153 Old Allegan Road. Regarding *Item C- Property Values-* in the short term this will negatively affect property values. Tom also believes time limits are important to this project in case the economy tanks. Who is watching and enforcing this? He also believes the project interferes with zoning laws.

Larry Dickie- 6108 Old Allegan Road- Real estate speculation is risky as *The Ravines* found out- they eliminated items originally planned for their development. He encourages neighbors to get their wells tested to evaluate the current water quality and then again after this project to check for contaminants. He thinks Township revenue will decrease as the property values decrease. He is also concerned about the local children who play in the area by the proposed steep sided pond.

Jane Dickie- 6108 Old Allegan Road- Thanks the Planning Commission for their unanimous denial of the first proposal by Top Grade of 125,000 yard of sand removal. Now Top Grade returns asking for 4 times the size- almost 400,000 yards. These are the Planning Commission should consider in this proposal:

1. Safety of the neighbors along the hauling route- She calculated many more loads than predicted.
2. Serious health impact on the neighbors as silica dust is a carcinogen.
3. Drop of the water levels. A hydrological review shows an 8" drop in water levels on top of the seasonal variations. If there's a drought, our wells could dry up per Dr. Ed Hanson, Geologist- *Hope College*. Any pollutants added to the pond or the top soil could enter the wells of the neighbors.

Dustin Tyler- 6122 Old Allegan Road- Believes that Top Grade Aggregates is not concerned with being a good neighbor but with profits. They want an industrial site in a wooded, residential area. He believes this will negatively affect the properties according to the studies he has read- neighbors will stand to lose 5-30% of their property value.

Dale DeFanko- 6122 Old Allegan Road- The main issue that needs to be determined is will "very serious consequences" result from the sand mining operation? The consequences are: Impact on current property value; pedestrian and traffic safety and health issues. Under the *Zoning Enabling Act*, the party challenging the initial decision of the Planning Commission has the burden to prove that no serious consequences will result. DeFranko suggests that the Planning Commission amend the Township Ordinance to mirror State law regarding *very serious consequences* and table this discussion until they receive proof that very serious consequences do not exist.

Dayle Harrison- 3108 62nd Street- Handed out a copy of the relevant State law. Attorney Curio's memorandum doesn't mention what needs to be complied with under current state law to deny the application. There has to be a finding of fact (too much dust, decrease property value etc.) not that it just doesn't meet the standard. Remember,

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this is a brand new application asking to remove 400,000 cubic yards of sand. The “*very serious consequence*” criteria are very new and he does not know of any case law on this point. Property values will decrease and that’s one of the main criteria for the very serious consequence. Please go through the standards and update them.

Mary Breen – 6093 133rd Ave. – She is directly west of the parcel and has severe chronic asthma. This will certainly negatively affect her health as the dust particles from the site will travel. Her 90 year old mother lives with them and walks 133rd. She has macular degeneration and poor balance. She worries about her safety while walking. They also plan on retiring in a couple of years and are concerned about what this does to property values in that time.

Steve Hickok– 6092 133rd Ave. – Appreciates the intensions to build the property up nice, but there’s nothing legally binding making this a reality. Steve reads the names of the many children that live on 133rd Ave. He is very concerned for these children and other bike riders who use this very popular route.

Terry Klinge – 6172 Riverside Road – Asks how deep the pond is going to be. 20-25 feet. He’s concerned about the safety of the neighborhood children. What will be done to secure it? Veltema responds- No trespassing signs, silt fence and on-site manager. For topsoil coming in from other sites, can there be a bond? Veltema- Yes, that’s typical.

Mike Nyles– 6017 Old Allegan Road – Thinks this is a done deal since the board is discussing truck staging. He asks if the Township Attorney is saying that the special circumstances are not enough to deny it. Conklin replies that they are gathering more information and please don’t assume this is going to pass. Since the Township decision in December, they have been made aware of the heightened standard regarding the very serious consequence standard. Curcio elaborates that the court established the heightened standard for mining operations in 2008 in the Zoning Enabling Act. There are not any court cases applying the 2008 standard that compare with our situation.

Holly Stafford- 6066 Old Allegan Road – Severe asthmatic and very concerned about the dust & well issues. Also, what’s our recourse if our wells are contaminated? Do we get money to redrill? Are we getting tied into city water?

Public Comment closed at 8:42 pm

Jim Dusma- This statute requires the applicant to make a profit. It’s speculation that the wells that will fail. The only party that has done a water study is Top Grade and it shows there’s not a problem with the ground water. Dust is not one of the standards, but dust is regulated by the DEQ. Property values in other areas have gone up after the mining their study shows. There has to be credible evidence not speculation. Initial decision in December was made under Township Zoning rules, not using the State’s heightened standard. The pit already exists, so let’s clean it up.

Have you recalculated the new loads with the new yardage? Veltema- Yes- 400,000 yards- 24 months 16,000 yards per month- 25 working days in a month 660 yards per day with 40 yard trucks is 16.6 loads per day. This is an average over a year.

Comments and questions arose from the attendees about those load numbers. They don’t mine year round so it would be 8 months out of the year and 8 hours a day, thus many more loads per day than they state.

Questions from the Board:

Are the trucks and weights alright on those roads per the Allegan Co. Road Commission? Veltema- Yes.

There are seasonal road restrictions and they would have to scale back on the payload on the trucks.

Is there anything in writing from the Allegan Co. Road commission? Veltema- Yes.

And the water study as well? Veltema- Yes.

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Veltema has issued a bond before for Salem Township and they set the bond at \$5,000 an acre for restoration. If *Top Grade Aggregate* failed to do the work, the Township would pull his bond and hire someone else to complete the project. We are close to 10 acres, so \$50,000 bond. Township would have to get a new miner in there to finish the project. Remember Veltema is the owner of the property and wants to see the property value rise.

Rowe asked Curcio where would we go for “credible evidence” regarding property values. Curcio has some in his memo and the public commentators and applicants do as well. It’s a difficult issue and we must consider long and short term time tables. Curcio states there is not a lot of case law regarding very serious consequences that are relatable to this case. There were very serious consequences found in a 10 and 20 year mine, but that was done at trial with experts on property value and safety. It’s very different from what’s happening here.

Israels recaps the main issues of the community- property values, health and safety. In the attorney recommendation there’s a 6 foot fence around the property. She didn’t know about the asthma and lung disease. Can the dust be controlled? Curcio answers that the fence is in the Zoning Ordinance (Section 40-740 subsection 3). The Planning Commission can impose a fence as a requirement if they think it’s a public hazard. It would have to be added to the list of conditions in the proposal. Signs also work for the zoning law requirements.

Rowe asked if more time is needed to make a decision. Yes.

Veltema wants to know what further information is needed to come to a decision. Conklin would like more information on the property values and information on the legal cases after the 2008 change.

Israels would like information from the DEQ about the dust and potential health issues. The attendees suggest the Planning Commission ask Allegan County Health Department as well.

Also what’s a reasonable bond amount if we approve the project? Kushion will look into that. Conklin said there was something in Leelanau County 2011, but Kushion thought it was earlier than that. There was also a project on 62nd Street in 2008 but that was probably prior to the changes.

Israels asks if we can get a stipulated load agreement for X number of loads per day. Veltema says that unusual. Typically it’s the quicker the better to get the job done. If loads are restricted, the project goes longer.

Rowe moves to table the *Request for Special Approval Use to remove 400,000 cubic yards of sand and create a 3.5 acre pond at approximately 6400 133rd Ave (133rd and Old Allegan), Parcel number 03-20-012-005-20* and give the board more time to consider the various points. Lozano seconds- Carried by unanimous voice vote. Since it’s tabled, there will be no more public hearings. 9:00 p.m.

9:05 p.m. Discussion of potential Marijuana ordinance with Township Legal Counsel.

Curcio put together two ordinances

- Regulatory Ordinance which amends Chapter 5 of the Saugatuck Township ordinance and defines terms and authorizes facility types. Lays out a process of applying for Township approval. Authorizes Provisioning Centers only which would be allowed in only commercial zones with no numerical limits or buffering zones. Applicant would have to complete the State application and get approval from the State then they can bring it to the Township along with a draft of site specific plans. Applicant would have a certain time frame to submit their Township application.

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- Zoning Code Draft- Amends the Use Table to provide for provisioning centers with site plan approval reviewed by the Planning Commission for each application. This would provide for: sufficient setbacks; regulation regarding storage and disposal of chemicals and marijuana, signage stipulations, odor control plans and hours of delivery and operation.

Devin Loker, Attorney – The timeline to complete the application and get approval with the State is very slow; maybe change process to allow for proof of State submission and have it be contingent on obtaining the State License. The application fee and annual assessment fees were discussed and clarified.

Lane stated that underwriters cannot do closing on a mortgage on a property if marijuana is to be grown or distributed there as it conflicts with federal law. It cannot be insured.

Conklin has heard of one municipality that takes only credit cards instead of having a lot of cash on site. Apparently this is not the case as most Credit Card Processors won't allow that type of business to use their processing.

Israels asks if child proof containers and bags required. Yes, they are required per State law.

Public Comment:

Greg Pond – 6176 Bayou Trail- Saugatuck is a family oriented community and isn't struggling financially so we don't need this type of business here. Most lakeshore communities are not opting into this type of business from what he saw online. He also spoke with an undercover State police officer who said absolutely zero dispensaries are 100% compliant. Mr. Pond read a statement from Mr. Stelios Donianakis 6165 Bayou Trail who said in other communities he was familiar with had issues with break ins, loitering; vandalism, and adjacent properties were not being rented.

Cory Hunt- 6272 Whitehorse Lane- Mr. Hunt is a police officer for 24 years in western Allegan County. He is strongly opposed to any medical marijuana in our area as it goes against the community values. Other communities have not allowed these dispensaries. The Planning Commission is not required to review or allow these businesses in our area. A 2017 State of Michigan study showed just fewer than 93% of Michigan Medical Marijuana card holders' list "chronic pain" as their debilitating disease. He believes we will see a jump in fatal accidents as Colorado did.

Stacy Aldrich- 3473 64th Street – Stacy is a hair stylist and has issues with her hands and arthritis. She applied and was approved for a Medical Marijuana card and met Tammy Jacobi who helped her so much. Since Tammy's dispensary was closed down, Stacy now has to drive to Lansing. Please consider her request to open a dispensary.

Motion by Rowe: Take the proposed draft ordinance, with the two proposed changes to a public hearing next month. Israel seconds.

Prietz believes they should keep medical marijuana facilities out of the community.
Motion passes 5-1 with Prietz opposing.

Board discussion- Move the meeting date to June 4th for next meeting. Motion passed 6-0

Kushion states that the parcels on 63rd and Old Allegan Rd zoned on the front A2 and zoned industrial on the back. The owners want to have them completely zoned A2. That would be better discussed at the second June meeting.

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Next Planning Commission Meeting- June 4, 2018 at 7:00 p.m.

Motion to Adjourn by Rowe- Seconded by Prietz; Meeting adjourned at 9:48 p.m.

Brenda Williams, Recording Secretary

1. Motion by Rowe to approve agenda; Prietz seconded. Motion approved by unanimous voice vote.
2. Motion by Rowe to approve amended minutes; Prietz seconded. Motion approved by unanimous voice vote.
3. Rowe moves to table the *Request for Special Approval Use to remove 400,000 cubic yards of sand and create a 3.5 acre pond at approximately 6400 133rd Ave (133rd and Old Allegan)* to give the board more time to consider the various points. Lozano seconds. Motion approved by unanimous voice vote.
4. Motion by Rowe to take the proposed draft marijuana ordinance, with the two proposed changes to a public hearing next month. Israel seconds. Motion passes 5-1 with Prietz opposing.
5. Motion to move the meeting date to June 4th for next meeting. Motion passed 6-0
6. Motion by Rowe to adjourn at 9:48 p.m. Prietz seconded. Motion approved by unanimous voice vote.