

CALL TO ORDER

The regular meeting was held on Monday, March 25, 2024 of the Benton Charter Township Planning Commission was called to order at 6:00 pm.

Members Present: Chairperson Trina Rodez, Marletta Seats, Joe Taylor, Matt Davis and Carolyn Phillips
Members Absent:
Staff Present: Andy Dean, Loyall Bennett, Deeann Scalf
Also present: Charles Binger (B & Z Company), Mike Napier (B & Z Company)

SILENT INVOCATION: None.

APPROVAL OF MINUTES: No changes or corrections on the Meeting Minutes from March 11, 2024 Meeting, Mr. Taylor motioned and support of approval by Ms. Rodez. Motion passed.

AGENDA AMENDMENTS: None.

NEW BUSINESS:

1. Bruce Binger with Millburg Equipment Company LLC., at 2241 Lorenzo Ave. (Property ID#: 11-03-0005-0010-02-2) and 2099 Paw Paw Ave. (Property ID# 11-03-0005-0013-00-5) is seeking a special use permit for expansion of the sand mining operation from 1812 Riverside Road. Site plan as submitted on property zoned A-1 Single Family Dwelling District. (Public Hearing).

Planning Commission Meeting is now recessed at 6:02 p.m. to hold the Public Hearing.

Mr. Dean introduced Bruce Binger with Millburg Equipment Company LLC with the Application for a Special Use for mining (2) two parcels, adjacent to 1812 Riverside Road. Which is the existing pit that they have been mining since roughly 2005. Since 1992 when it was originally established as a pit. The purpose of this memorandum is to evaluate the request pursuant to the Special Use provisions of 82-481 of the Ordinance. As you described Madam Chair the subject properties are zoned A-1 Single Family Dwelling District adjacent to the mining pit. Mining use is not a defined use by right in the A-1 Zoning District. The Applicant has been directed to obtain a Special Use Permit, which he did, and that is what we are discussing tonight. We do have a provision under 82-481(c) that allows an addition to, in the Special Land Use Districts to 82-481(c) in addition to special uses preferred to each and individual District, any use not designated as a permitted principle use or permitted accessory use as set forth in the Specific Zoning Regulations shall be deemed a Special Use of Land within the Township and should be subject to the requirements of this Article.

Mr. Dean advised that the Staff Review of the proposed Site Plan that he has for the future, basically they want to mine it for an extended period of time and then develop that land after an estimated period of time. The Applicant's can describe their proposed use of that.

Mr. Dean the Board Members have had the criteria for quite some time now to review, were there any questions regarding any specific line items from the 82-481(h1)-(o). Or would anyone like anything covered in relation to that section? Mr. Davis advised he would like to hear from the Applicant and Public first. Mr. Taylor seconded that and would entertain any questions after that.

Applicant, Charlie Binger from Millburg Equipment to discuss the advantages of the mining operation, and how it fits in the Benton Charter Township Master Plan, concerns to the mining operation and measurements taken to alleviate those concerns and then a closing. Sanding gravel is vital to the maintenance and growth of Benton Township. Consistently from our current mining operation, the majority of the sand used has gone to serve Benton Township directly through Projects that include the most recent ones like Britain & Crystal Avenue Sewer Project, the Guagenti Drain with Whirlpool, M139 and Pipestone Sewer, Lake Michigan College Lift Station, The Conrad Lift Station was done by Selge (but used their materials) and The Rain Gardens at Meijer. In addition to the Benton

Township direct use, our material from our sand pits has been used for County Roads, County Drains, MDOT Roads and Highways, Residential Construction, creation for the Harbor Shores Golf Course and Whirlpool. We use many of these materials to keep basements dry, to keep Farms from flooding, and to increase the overall quality of life for an entire Community. The Benton Charter Township Master Plan states that “This vision is to build upon the Township’s existing assets and make the most of the opportunities that can attract new development and residents to the Community.” Our proposal today, is the best option to build upon an existing asset. Locations viable for mining sand are not plentiful and sand is a necessary commodity when attempting to supply new development and residential growth. The Master Plan also states, “Industrial growth should be directed to areas of existing industrial development to allow for complimentary site designs and efficient use of infrastructure.” There is no more efficient use then approving land that can utilize the same entrance, roads and SESC measures already in place.

Charlie advised the Industrial Growth as of the publication of the Benton Charter Township Master Plan Heavy Industrial property totaled 358.2 acres of the 20,965.5 total acres or equivalent to 1.71% of the land use. Millburg Equipment has since removed 29.65 acres of mining on Heavy Industrial Land to repurpose into a vacation destination designed to support event venues. With reclaiming 29.65 acres, now the approval of this Application would only increase this type of land use by approximately 0.1%.

Charlie stated, they understand the concerns of a Mining Pit in close proximity to houses, but fortunately in this area, there are big yards, and none of those houses sit close to the property line. On Zoschke the closest house is about 350 feet away from the property line. On Paw Paw Avenue, all but (1) one house are over 400 feet away from the property line. And on Joyce Street does have the closest house which is at about 115 feet away from the property line. Millburg is still going to create a buffer to provide their neighbors even more separation from any activity. They designed a berm, that they will set 15 feet off of the property line and will have a very gradual forum one slope that is mobile. It is set for 8 feet high, but they are willing to compromise with the height to meet Benton Township’s requirements or the homeowner’s desires. Between the length of the berm and the off set of the property line, they will keep a 100 foot distance off the property line from any mining activity.

They employ multiple Licensed Storm Water Operators and developed a system to collect watershed from County Roads and rain runoff into their site, so they eliminate any potential for any sediment loss into County Drains or flooding coming from their site. They will continue the use of an asphalt driveway with a sprinkler system where semi-trucks enter and exit and they will not be changing the entrance or exit from where it is existing. They will also hydroseed to stabilize disturbed soils.

Charlie advised their hours of operation are from 7:30 a.m. until 6:00 p.m., with the pit usually closed by 5:00 p.m. Under these circumstances, they believe the neighborhood would not endure any significant changes from the current conditions. They would like to build a better tomorrow, with working sewer and running water, crops for food, roads to bring our kids to schools and parents to work, industry and residential growth and for emergency repairs. All of these depend on the use of sand and with the price of trucking escalating and the extended distance to the nearest sand pits, not having this local sand could cost the community an extra \$16.00 a cubic yard for sand. In addition, they feel like they are the best option Benton Township has for sand supplying Businesses, Homeowners, and the County as they are established in this area and have the capability to help the people of our community with these needs. And are ready for any questions or concerns.

Mr. Dean introduced the Benton Township Attorney, Blake Conklin with Bloom, Slugget Law Firm. He is here to discuss how the State Law impacts the Planning Commission’s consideration of Mining Applications. Mining is treated differently then other land uses, State Law has pulled away some of your Authority away in this area. Regardless of the zoning classification, a mining use can not be prohibited unless there are very serious consequences (which is a legal term “very serious consequences”) that would occur if the mining use were to be allowed. This is a high standard, not an impossible standard. There are various factors, that the Law requires you to consider before determining the very serious consequences are occurring for example: the impact on land use within the vicinity, the impact on property values in the vicinity supported by evidence, impacts on pedestrian and traffic safety and the overall need in the Township for the natural resources being mined. Regardless of the zoning classification, or regardless of the zoning ordinance may say, in terms of what classifications it is allowed in versus

not allowed in, it cannot be prohibited unless there are very serious consequences as defined by the Law. If the Planning Commission is inclined to make a recommendation to the Township Board of denial, my suggestion to the Planning Commission would be to direct to the Township Attorney and the Planning Staff to prepare findings of fact based on the Application that would support that very serious consequences standard and table the Application and consider finding those facts for your next meeting, if you are inclined to make a recommendation of denial. As I have mentioned, in order to prohibit you have to show very serious consequences, but all of your regulatory authority has not been taken away by State Law, there are some areas where you can regulate, hours of operation, lasting hours, dust levels, noise levels, dust control and traffic are all typical topics of regulation in mining activities as long as they are reasonable or your regulations are reasonable. These regulations would typically be located on the Special Use Permit under conditions, for example (different regulation examples): prohibiting processing activities on the property, washing, crushing, screening, requiring the existing mining operation to use existing drives, or requiring the Applicant to post bonds, or Letters of Credit to prevent damage to public roads, vegetative buffers or berms, hours for mining activity, such as prohibiting mining activity between the hours of 6:00 p.m. and 6:00 a.m., requiring storm water calculations and a storm water drainage plan. These are all some examples of the conditions you can place on a Special Land Use Permit when it comes to mining that are completely acceptable and legal under the State Law. If the Planning Commission is inclined to make a recommendation on approval to the Application, his suggestion is to table the Application and direct the Planning Staff and Township Attorney to prepare proposed conditions to discuss with the Applicant to present at your next regularly scheduled meeting. He is happy to address any questions or concerns at this time.

Ms. Seats stated they are a recommending body as he stated, but where does it state that as a State Law? Mr. Conklin advised it is in the Zoning and Enabling Act in the MCL125.3205. Ms. Seats so if they make a recommendation to go to the Trustee's, they should table it? Ms. Phillips stated he is stating they should table it as per the discretion of the Attorney. Ms. Seats why didn't this Hearing just of gone direct to the Trustee's from what the Attorney is stating? Since the Planning Commission doesn't have the authority and has to table it. Mr. Conklin stated as a Planning Commission, you have the discretion to take whatever action you want, approve it, deny it, table it. Ms. Seats since the Trustee's are the body that approves or disapproves it, then the authority has been taken away from the Planning Commission Members, yet they had to submit an Application to the Planning Commission that is a lot of bureaucracy, why would they have to submit an Application to the PC then? Mr. Taylor is it his understanding that the Attorney is requesting them to table it, in order to get a formal list of written conditions together to be carefully thought out because of the consequence of their decision? Mr. Conklin that is correct. You are required to hold a Public Hearing and you are the body that holds the Public Hearing and makes the recommendation to the Township Board. Ms. Seats is clear, that the PC just does what they always do, and submit it to the recommending Board. Ms. Phillips states the PC always holds a Public Hearing on the Special Use Permits regardless of what kind and then recommends to the Township Board and they have the final say.

Mr. Taylor asked the State rules and regulations on the MCL portion of the Law that the Attorney read, that it cannot be disapproved unless certain criteria is met. Mr. Conklin advised the Law states unless "very serious consequences" which is a high standard, but is not an impossible standard. If the PC is inclined to make a recommendation of denial, then my suggestion is to table it, to allow us to develop findings of fact based on the Application that will support that standard for your later consideration. Mr. Taylor is he to assume that even when it comes from the PC that even if it is tabled, that it will go back to the Planning Department and the Attorney for approval and actions to be taken back to the Regular Board Meeting? Even that Board could not deny? Mr. Conklin you would be making a recommendation to the Board, then the Township Board could approve it, deny it, or table it but they are subject to the same serious consequences. Mr. Taylor this is an extension, not a new mining operation, just an extension of it. Mr. Dean it is a new Permit for the expansion of the existing mining operation.

PUBLIC HEARING COMMENTS, CONCERNS, QUESTIONS OR REQUESTS:

Phillip Miller located at 1234 Zoske Road (neighbor) 7 ½ acres north of the new proposed sand pit of 47.6 acres. He works for AEP at The D.C. Cook Nuclear Plant, they are a highly regulated Company all the way up to regards to how they treat silica which is the main deficit of this proposed mine. The Attorney makes the PC Board think they do not have much say, but they have a lot more power than he lets you think. The State of Michigan Federally tries to make it so you have no say in mining within your Township. Yet the PC has all the say in the mining that

goes on within the Township. He cannot think of anything more serious than an open sand mine, which is currently 36 acres approximately to expand into 47.6 acres (and 10 acres over here). That is a 62.5% increase in land size. The actual pit that is in now has gone through multiple Lawsuits in itself and is questionable to the origin of that Permit as well. That came up in research as they were researching the new Permit request. Ordinance say we have too, but ordinance is the Law, our Township and Ordinances state that we can only use Special Use Permits for the (9) nine listed reasons in Section 8292(b). Mining is not one (1) of the nine (9) listed reasons. B(2) states that a description of land within a proper zoning district, mining in a residential zone is not allowed. Everything around his property to the North and the West is zoned residential, that is why we all live here. The Application was not completely all filled out, if no one has seen it. The writing on the back, stating they are already a mine and that they are already doing it. You cannot grandfather your property to an existing piece or property that has it's own parcel number. He wouldn't be allowed to do it, so why should Millburg be allowed to do it. That is just wrong. And that would be grandfathering, the grandfather clause does not apply in this regard because the property that they are on is separate from the new property that they bought. Him and his wife tried to buy this property from the same Owner. Number three (3) it would be grossly negligent which would allow mining on said parcels based on the Applications submitted, incomplete and inaccurate. We, the Township would need to rezone these properties as you cannot mine on residential. And the Applicant would have to resubmit, and that would be at the very least. That would also give the process time, as we were only given seven (7) days to deal with this. The Letter in the mail was post dated the 7th, and we received it on the 15th. He is working twelve (12) hour shifts, as he is in an outage, and his wife had time to work on it every day, multiple hours every day. Number four (4) the interest of a single business, versus the interest of land owners and even the Township. It's already a big hole in the ground out here already. He does not know if anyone has been out there or not, but he has photo's, and video's, it is very deep. It is definitely a mine. Adding proposed parcels to approximately 57 acres of the two (2) proposed which is a 62.5% increase. The current mining operation has seen a lowering in the assessed SEV Value. In 2021, the assessed SEV Value was \$261,100 and the current assessed value is \$168,200. So, the SEV Value has gone down on the property that they are currently mining. The assessed SEV Value surrounding this property has continuously risen, the value of their 7 ½ acres property was \$103,000 in 2020 and is currently \$156,200 in 2022 for their assessed SEV Value. Private property or residential property is still a business undertaking. Everyone here that does not want this mining to go in, have their own vest interest of their own lives. Part of that business is the value of their own properties. He has worked very hard to pay off the property where they are at, as it was their forever property with their five (5) year old grandson living with them, they have planted trees and they were hoping that he would be around to see them get big. They have a definite business interest in the value of their properties. If they allow the Applicant to start, this is a grave mistake. There are multiple articles online that they have been given a Permit that later on was challenged and there is nothing you can do about it. It's the Township that becomes responsible, not the people doing the mine. As Mr. Conklin said you can see the power that mining has in any State. They will get going and you cannot stop them. It is very, very difficult. And anything that would happen in regards to Permitting would fall back on the rest of us and the Township, did we do it right? So, we need to make sure we do this right, and in his opinion, we are not even in the right Application process yet. A Special Use Permit cannot be used for this. We have a mining ordinance and we should use it. That involves a more Permit process and he thinks we should take advantage of that as a Township. You cannot put dirt back, once it has been taken off of the site. Again, Township becomes responsible for the Applicant if they are given the ability to go ahead. And you cannot put the plants back. Dust created from a mine is called silica, and it is a very fine quartz crystal when it becomes air bound. If you have ever seen a crystal, it has very sharp edges. Quartz crystals that are inhaled into the lungs cuts the lungs and creates damage to the lungs. That is how you get silicosis and that is how you die because you cannot breathe. They have been at this mine for thirty (30) years, it will not be mined for five (5) years then turned into a vacation rental resort. This is going to go for a very long time and he does not want it in his backyard. Again stating, they tried to purchase this property from the previous Owner, they got in touch with them three (3) to five (5) days after they had already agreed to sell to Millburg Equipment. They stated they have an organic garden, as they supply food to the Benton Harbor Fruit Market downtown. Bernie (the previous Owner) and his grandson both stated the Miller's did not want that property as it was full of arsenic. As it used to be a large orchard, a 50 acre orchard, and back in the day in the 20's, 30's and 40's until it was legal in the 60's, that lead arsenic was allowed to be sprayed. It does not go very far it has become bound and that the vegetation on this property now and in the soil. And the best thing to do is to not disrupt this soil and move it around. Arsenic travels quite easily and in water as well. It is sand, but it can go down as much as two (2) feet into the sand. If they want to push up berms around here, what do you think they

are going to use? All the topsoil for the berm and then they will have arsenic right up against their property lines. If they want to do mining, they should move forward with soil testing as the State recommended in one of the Ordinances. Millburg Equipment are good people, but on the weekends, it is a full-on Shooting Range, it is noisy it is loud. He has gone to them and complained, they have done a decent job in stopping it, but at times it still gets used. It is not Permitted for a Shooting Range. These types of things will increase, if the neighbors allow this to go on. He stated we all need to be good stewards for our land an environment.

Kim Garrison Miller located at 1234 Zoske Road (neighbor) lives with their daughter and grandson. And they are concerned for their health and wellbeing as well as their families. As soon as they received the Letter, they came down to Benton Township and spoke with Mr. Dean requesting any and all documents related to this Proposal. Complaining that none of the Applications are complete or have all the details on what the proposal is requesting, including Township Zoning and Approval Acceptance. It states on the Application they have to be all the way complete, before a Hearing is scheduled. But we are all here at this Hearing, and they are not complete to her knowledge. She brought that up with Mr. Dean, and specifically the impact on the adjacent property as those actions are already occurring. Stating that Millburg Equipment has been doing this work for years already since the early 1990's. She states that it is not allowed in the Ordinances, and she is here to back that information up. She is not an active Realtor and has the knowledge of sixteen (16) years, as she is now retired. Ms. Miller gathered four (4) booklets of information that she delivered to Mr. Dean asking him to share them with his co-workers, and everyone that is involved in this decision. She also brought copies for the Board Members as well. They also met with Loyall Bennett on Friday, March 23, 2024. They met with Mr. Dean twice on Friday, and then both gentlemen together on Friday as well. Not only are they in danger of silicas, but the arsenic found on the Lorenzo property (as she has a text as level of proof from March 2024 from the previous Owner's grandson, as well as a Warranty Deed showing they were the previous Owners of the property in question). She requested files of the property, ownership of the property from Mr. Dean that he could share with her. The text states, they declined the rights to sell the soil, due to arsenic in the property. Harbor Shores developed a lot of property and there was a lot of Brownfield Development there, so there was proper mitigation with things and just bulldozing the layers is just not it, and or selling it to who knows where, you are spreading the arsenic to god knows where. And she requests that that get looked into. She has asked for the records previously for this from Mr. Dean. The previous Owner gave them to her, so she has them now, so Mr. Dean can follow up on the contact information now with Bernie Vanderplook. She even has the Quit Claim Deed where they sold the property to Millburg, and Mark Vanderplook who is the grandson told them this, and she has the text messages to prove it. When this was Permitted originally in 1992, it was not officially Permitted, it was much like a Meeting like this one, there is a lot of evidence that proves that the Zoning was either Residential or Agricultural at the time. When Curtis Jenkins first requested, not even applied, but requested to remove sand on the property. She has that in documents that she requested from Mr. Dean with the original Permitting Process. The only thing Mr. Dean supplied to me and did supply to me was the Minutes from the Meeting from 1992 here at Benton Charter Township, that did not go through an Application Process, just honored his request to move sand. There was no official Permit written, or approved, or defined or a timeframe. Then Mr. Jenkins officially applied for it when he did not even own the Land, as he signed a Land Contract in 1994 for the property. As it was only to remove soil in 1992. She would like answers as to why this happened this way? Once Mr. Jenkins acquired the property in 1994 in means of a Land Contract and then by a Warranty Deed in 2001. Mr. Jenkins attempted to apply for a Mining Permit on the original pit on Riverside Road in 2005, and was told by the Township, Tom Baldwin that he did not need that Permit. The original Permit is continued to be pushed toward all of us right now, because they are already doing the mining. Even though they are mining it, they keep changing the Zoning to Heavy Industrial after it was already being mined. And the property is also being used as a Shooting Range, unpermitted. And the neighbors and Township should not allow for it.

Joe Snyder located at 2015 Paw Paw Avenue (neighbor) his property shares 200 feet of property to the 2099 Paw Paw Avenue Parcel. That property line is 400 feet from his house, from his Dining Room he can see the Mining Operation at 1812 Riverside Road. He see's a pile of dirt that is 40 feet high with large machinery parked on the side. That was already there when he purchased his piece of property, but that is located on the other side of the property that is located behind him. The Application for the 2099 Parcel specifies that they will remove 300,000 yards of sand, ten (10) acres is 48,000 sq yards. But in order to remove 300,000 yards of sand, you would have to take down ten (10) acres of land fifteen (15) feet on his backdoor. He can see the Mining Operations today, he can

definitely hear them, if these Mining Operations move to the 2099 Paw Paw Avenue Parcel, he will feel them and taste them with his dinner. That is how close this is to his property. He has an apple orchard, and he is trying to get these trees to grow, but it is sandy soil, so he is having a hard time with this apple trees. But he should just bulldoze them, if they plan to mine that property behind him. These are serious consequences for him and his property. The Ordinances have to mean something. When you apply for something that is not specific to residential, the Mining Ordinance specifically says "assert that this property is AA Zoned, Rural Zoned". He does not think it is appropriate to grant a Special Use Permit on land that is not Zoned for it. Millburg should have to use space that is Zoned for it. He thinks the Township has to change the Zoning, before Millburg should even be able to apply for a Special Use Permit for Mining and making all considerations to our Master Plan. The Term of this Application is thirty (30) years. The Township should follow the proper process with it's Zoning.

Dick Bertog located at Riverside Road (neighbor) he lives on ten (10) acres with a brand-new home. He has a 10,000 sq ft Body Shop which he is now retired. Now it sits with all his toys in it. It is unbelievable what comes in and out of that pit. Millburg applied for a Permit, roughly seventeen (17) years ago, and Mr. Bertog started taking pictures of what was going on out there. He has over 5,000 pictures of the Millburg properties, with the mud and the water, etc. Pictures are direct evidence of what is going on over there. He gets the dirt and dust out there all day every day, he is retired now, and he cannot even go outside without a mask on now. He states he has serious health problems, and his wife now as well. Even when he went to court, at the end of everything, the Judge was not presented with everything he had given to his Attorney's. Millburg does anything and everything they want to, and still does anything and everything he wants. States Millburg has violations from the DEQ (Mr. Bertog has copies of all of it). Mr. Bertog states that Millburg buries stuff, and if he has to, he will pay to drill holes to see what all is buried on the properties in question. He thinks it is all over looked. He has even called the DEQ about large piping on trucks (talked with the Supervisor at the Kalamazoo, MI District).

Betty Pierman located at 2033 Paw Paw Avenue (neighbor) her property is not as deep, and is not as close to the mess that is back there. But that does not mean she does not watch it every day, does not mean she does not listen to it every day, she deals with the dust that flies around. In years past, she came to the Township regarding dumping that was going on there and the Commissioners said they did not know what she was talking about, that it is not a dump it is a gravel pit. She advised she had been watching trucks coming from Harbor Shores and dumping trash and rubble back there, which she had pictures of. And the mounds that they had piled up along Riverside Road. So, they have been doing illegal dumping, even if they had a Permit to do some Gravel Mining at the time, they were doing some dumping as well. And no one has done anything about it. Millburg has had huge fires, after hours and late at night, she has even called the Fire Department with concerns of other things catching on fire. She cannot believe this is even being considered right now. It was Agricultural Land behind her and her neighbors that spoke and the neighbors who used to own property over there was considered Farm Land. She cannot believe the impact of the heavy trucks, that close to her home, yet she is not within one hundred (100) feet of the boundary. With the weight, the heavy trucks, and the loads, digging of the sand and making the land more unstable is going to affect her property. Please do not allow this to go on.

David Kissinger located at 2073 Paw Paw Avenue (neighbor) he is the closest one to the pit, from everyone who has spoken so far. He feels it is a personal matter, as most who have spoken tonight their property lines, are not even close to the property lines involved. With others complaining that their property values are going down, when they are fifty (50) acres away from that property line, it has to do with the mining, as they have been doing it for years. Even before people bought their properties it was going on, so why would they buy it then if they had problems prior to owning the properties? The Millburg properties are always very well groomed, and he also has fires, so he has no issues with what is going on over there. He thinks it is a personal attack, as some homeowners shoot guns on their own properties, yet complain about Millburg having individuals out on their Shooting Range. He thinks it is a personal preference and he does not see anything wrong with what is going on currently or in the future on these parcels.

Clusteen Swinton located at 2263 Joyce Street (neighbor) the property line is at her back door. She cannot even walk out of her back door and the property line is almost in her back yard. She has a natural drain that runs through there, when it rains all the water backs up onto her property (she has pictures to show the severity of the situation).

The roads are terrible (she has pictures of those too). If they bring in heavy equipment, they will all be in a mud field. With the natural drain, the water runs through there and out back into a huge field. Her lot backs up against his property line, and she does not want to have to walk out of her door, and she have a pit in her backyard. There is an easement that goes through there, and she does not want them to be able to use that to go between her property and her neighbor's property on the property at 2241 Lorenzo. She would hope that they not use the easement as a go between with their heavy equipment and destroying all the yards. She does not want this in her backyard and have her water issue get worse from the pit expansion.

Terry Johnson located at 223 Joyce Street (neighbor) she does not have any pictures, but she hears the noise, and that as a resident she feels the residents should have a say. It is personal, because those are their homes, and whether it is business hours or not, some people work the midnight shift and that is not going to work for them. And they should be able to rest in their home.

David Bishop located at 2003 Paw Paw Avenue (neighbor) he just recently moved there in 2021. He is not making this personal, when he first moved in, it was quieter, but a lot has changed within the last year. Now he can see and hear everything that is going on. He shares the property line. Who wants a Mining Operation on the other side of their property line? Nobody, he understands that Benton Township needs the sand but that he would not like to see Millburg come any closer to him. The shooting he says has calmed down some, he shoots on his own property from time to time, so he does not see an issue with that at all. He thinks it is everyone's right to do that on their own property. He stated he is here to support his neighbors.

Mr. Bertog (neighbor) advised this has always been Farm Land.

ADJOURNMENT: Public Hearing is now adjourned at 7:05 p.m.. And the Planning Commission Meeting is reconvened. It is the Board's consensus that they want to table this Proposal before they move forward with anything.

Attorney Conklin suggested reopening the Public Hearing, to give Millburg Equipment the opportunity to answer questions and concerns. Ms. Rodez at 7:06 p.m. the Public Hearing has been reopened.

Mark Seaman from Park Blue Environmental Consulting Firm in St Joseph, Michigan for Millburg Equipment. Some issues were brought up about silica dust, he will not comment on silica in general, but there are measures that take place to minimize dust. That is standard, in the past they have paved the road at the entrance. From a Sand Mining Operation, the sand that they are going to be mining is weathered, silica sand that is rounded where you get the respirable crisp land silica dust is by pulverization and abrasion. You will not get that by just digging it out. Not to say there might not be some dust, but the silica dust is more so of an issue with OSHA. It is the workers that would have an issue with that. Industries that are more susceptible to that are Countertop Manufacturers where they are grinding down countertops, it's the jackhammering, saw cutting at Construction Sites, grinding. Those are the types of Industries causing silica issues with workers. That is not an issue with Sand Mining. This is just digging at this area, and excavation, loading, marshaling, it is not filtering, it is not grading. It is a nice clean sand deposit that is typically not a source of crystal and silica dust. The arsenic issue as far as Orchards. This whole area was Orchards, and showed a 1950 Aerial to show Riverside Road and the railroad tracks view, and across is the area of the proposed new pit. It is a great area to grow food crops from the late 1800's to the mid 1960's they had lead arsenic to these crops. It is a problem for some Developments, but it does not have a tendency to migrate far into the soil, sixteen (16) to eighteen (18) inches is what is typical. You do have an upper topsoil that is a problem. It does not have a tendency to migrate very far, it does not have a tendency to leach into the ground water, it has to have some pretty significant chemistry to create a dissolvable arsenic. It stays in the soil. Which is not a problem. Usually a concern for direct contact, but all these houses around here have this. All of your yards, unless you scrap the topsoil off, has this lead arsenic residual in your yard. It would have to be tested to know the extent of it.

Bruce Binger with Millburg Equipment asked what do you do with the soil with lead arsenic in it? Mr. Seaman it can be led off, it can be scraped off, obviously the site would need to be investigated to know for sure what concentrates are there, but it can be appropriately managed. The Law allows it to be relocated onsite, and yes it

can be relocated into berms on the site. As long as it is placed within areas that are similarly contaminated. And they do not even know if anything is contaminated at this time. Mr. Binger no one has even tested this yet to know.

Charlie Binger (Bruce Binger's Son) with Millburg Equipment as far as the Roads on Lorenzo and Joyce they have zero traffic anywhere on those two (2) Roads. They are beaten up and bad, but they will not make them any worse. Millburg was not aware of any water issues, and that they are not a part of that issue because they have not done anything back there. He would like to help them get the water issue taken care of though. And he does not see how what they are proposing being a bigger water issue for her. All these people are good people, they have spoken with most of them that were in attendance tonight. They agree on a lot of things in the world, just not this which is understandable. He knows they do not want a mine in their backyards, but they already have one in their backyards. He was hoping to come here tonight and get what distance is acceptable? If you bought a house with a Mining Pit 600 feet from your property line, would 500 feet be okay? Would 200 feet be okay? What would be okay? Obviously 600 feet was, because they purchased their homes at that. He spoke with some about how he could do some things to improve their current situation. Most people did not care, or did not want to give him anything to help them. He is willing to try to do what he can to make their lives better, or equal to what it is now. Some neighbors have large backyards, and he is willing to give them space or tree coverage where he does not think they will even notice a difference.

ADJOURNMENT: Public Hearing is now adjourned at 7:16 p.m..

Ms. Rodez requested for the Board's actions, comments, concerns. Matt Davis requested any further information that was received at Benton Township that he can see. Mr. Taylor advised he had a copy of a Letter that he was provided.

Ms. Rodez asked for any Board Member's comments or questions. Ms. Seats wants to know how many wells are in that area? And is there any impact if there are wells? As she was reviewing litigations and lawsuits involving this situation and that a couple have been won and a couple have been lost. She had no clue that there was no Local Control when it came to this particular item that is on the Agenda. Is this an Ordinance issue, or a Zoning issue, should this be a Conditional Permit? Whose interpretation is a "Logical Person" by the Law? How can you use that as a point of consideration. Is this a Conditional Permit that we should have followed the process for? We have no choice in this matter, as our hands are tied, and to do certain things, and listened to people's concerns. That to them is legitimate, to them it is serious, to them it poses a serious consequence. When they took it out of Local Control who is going to monitor, who is going to determine when there is violations, because Local Control may miss something. At the end of the day, she is also a resident and stays in a residential area, and being on the Planning Commission does not exempt her from feeling what residents feel. But she does want to know how many wells are in this area, and is there evidence where it lowered the water table for the wells and there was some sediment? She heard there is no concern on property values, but the Assessor determines when the values go up and when they go down. So, the property value could be going down, and it is just based on who the Assessor is. Is there a Mineral License? The Application needs to be completed. She is not trying to stop Economic Development but we could have expedited this matter if different protocols would have been taken.

Mr. Taylor thanked everyone for coming, and stated he is a resident of Benton Charter Township as well, and no one wants any nuisance by their properties. We are property owners, and we want our values to stay, we love where we bought into. As far as the Attorney stated, he does not want to challenge that but it is in the Township's hands because we do have an Ordinance for Mining. Stated that if the PC were to deny it, that they would have to table it and talk about it with the Attorney, Township Board and Planning Commission Members then voted on by the Board, he does not believe that. He believes the PC can say ya, or neh because they are not denying they are only approving something that should be added on when you look at the Ordinance, it talks about the Purpose, which is to protect the Public Health, Safety and Welfare. He believes that is some of their job as a PC. And that nuisances and hazards are not created and that property will be left in a usable condition when Operations are completed. But that property talks about the hole in the ground, but to our Business Owners but that is how we get our taxation in the Township. He wants to make sure to stay mindful of the approval or disapprove when it is not the right thing to do.

Mr. Davis thanked everyone for coming out, and stated that tonight is the Forum and that the Public Hearings do have a very valuable purpose and he would ask that everyone respect the opportunity that everyone has to speak. He feels comfortable with interpreting the Ordinance and what authority the State has over the Township's Ordinance is that the PC has some conditions they can place on it and some determination they have to deny it. And he wants to carefully understand what those thresholds are so they can make a good decision. All the information that was shared tonight, he has not had time to review, so he would like to ask to table this so he can review that before making a final decision and fully understand people's perspectives on it. He is not prepared to make a decision tonight, but he would like to review the information. The Applicant's gave a reasonable amount of information for them to consider, and would expect to have more once they review it all.

Ms. Rodez does not have enough information to make a recommendation at this point. She has learned a lot of new information, listening to everyone on both sides. And she would like to table the decision at this time as well.

Mr. Taylor made a motion to table this Agenda Order for additional information. Ms. Phillips supported. Motion passed.

Ms. Rodez a written report was presented to Board Members from the Township Representative.

ZONING BOARD OF APPEALS: None.

AUDIENCE COMMENTS: None.

BOARD MEMBER COMMENTS: None.

ADJOURNMENT: There being no further business before the PC, the meeting was adjourned:
Minutes: Deeann Scalf the Secretary of the Planning Commission.

Andy Dean, CBO