

CALL TO ORDER

The regular meeting was held on Monday, July 8, 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 and Carolyn Phillips, Matt Davis

Members Absent:

Staff Present: Andy Dean, Loyall Bennett, Deeann Scalf

Also present: Township Attorney, Bloom Sluggett, Blake Conklin
Applicants, B & Z Company, Bruce Binger, Charlie Binger,
B & Z Attorney, Honigman, LLP, Kenneth Vermeulen
Neighbors, Kim & Phil Miller, Bette Pierman, Joe Snyder, Eric Rankin

SILENT INVOCATION: None.

APPROVAL OF MINUTES: No changes or corrections on the Meeting Minutes from April 8, 2024 Meeting, Mr. Taylor motioned and support of approval by Mr. Davis. Motion passed.

AGENDA AMENDMENTS: None.

MOTION TO GO INTO CLOSED SESSION PURSUANT TO SECTION 8(h) OF THE MICHIGAN OPEN MEETINGS ACT TO CONSIDER A WRITTEN OPINION OF THE TOWNSHIP LEGAL COUNSEL:

Ms. Phillips motioned and support of approval by Ms. Rodez. Motion passed.

MOTION TO OPEN A PUBLIC HEARING: Ms. Rodez motioned and support of approval by Ms. Phillips. Motion passed

OLD BUSINESS:

- 1. (Continuation) 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.**

BUILDING DEPARTMENT REPORT: None

PUBLIC HEARING COMMENTS, CONCERNS, QUESTIONS OR REQUESTS:

B & Z's Attorney, Ken Vermeulen with Honigman, LLP to discuss the Engineering Report for the Soil & Erosion Report Summary which was received in the Planning Commission Packet for each Planning Commission Member last week. He advised the property used to be that of an old Orchard back in the 1940's and 50's. Fishbeck was hired to take soil samples of around the property and utilizing the Eagles Information Methodology where they take numerous samplings at each sampling location. So, they end up with (3) three different results from samples taken from all over the property. What those samples show is on the 10-acre parcel (11-03-0005-0013-00-5 located Northwest of existing operations) refer to as DU-1 (Decision Unit-1) and does not show direct contact numbers. And on the 47.5-acre parcel shows above the Residential Criteria shows just above the Residential Criteria but below the Non-Residential or Industrial Criteria at DU-2 (Decision Unit-2) in the (0) zero to 1 (one) foot increment. And then they resampled at the 1 (one) to 2 (two) foot increment and all of those levels were below the Residential Criteria. Given that, the Standard Methodology is that you would take that information and samples to use that for the berms that would surround the property and cover that clean fill. As that is what the Report recommends. As the intention would be to move all the trees down and clear out artificial soil, as that will be decades and decades of work to be done of mining activity (on the 47-acre parcel). The ideal would be on the (4) four or (5) five acres would be to clear the trees and take the topsoil off, build a berm on the outside of the Property on the other side of the trees, with hundreds of feet of trees between property owners and the Mining activity. Yet build those berms

as the topsoil is removed and utilizing the (0) zero to (1) one foot surface soils for the base of the berm and the deeper soils that are still not minable sand to cap the more impacted stuff.

The Arsenic Concentrations identified in DU-2 exceed the GRDCC but are below the non-residential direct contact criteria of 37,000 kg and, therefore, do not pose a risk to site works that may come into contact with the soil. Lead Concentrations exceed the background concentrations published in the MBSS for a sandy soil on the Michigan Glacial Lobe. Lead concentrations ranged from 44,300 kg to 50,000 kg. Regardless, the lead concentrations identified at the site do not exceed any exposure criteria established by the State of Michigan. The highest concentration identified at the site is well below the GRDCC for lead at 400,000 kg. Note that lead exposure criteria are currently under evaluation and may be revised in the near future. At this time, they have no indication that the levels will drop below 100,000 kg. Attorney, Vermeulen also advised B & Z planned to make a berm around the outside perimeter of the property.

PUBLIC HEARING COMMENTS, CONCERNS, QUESTIONS OR REQUESTS:

Neighbor, Phil Miller at 1234 Zoschke Road states as the Board was in Closed Session B & Z's Attorney spoke to the crowd and was briefing the Owners of said property, and that it seems to the Neighbors that they were speaking quite loudly and advising that it was the first time he had spoken to them and lots of comments were made. What are you doing, how big is the berms going to be, you do not really need a berm, these types of things. Mr. Miller would also like to point out someone saying that the Soils Test were above the Residential levels, but what are those levels. I pulled it up online and it states 10 parts per million for Residential which is what it is Zoned still. Based on the Residential Zoning, and the levels being above Residential, then it is too much for that Zoned Area as it is still Residential Property. The Attorney's keep stating "extreme consequences" with regards to that. He advised he did submit a Letter on May 3, 2024 to the Board for everyone to look at regarding that we do meet all (6) six A – F Circumstances that B & Z does meet the "extreme circumstances" with putting in a Mining Operation, not just based on the Tax Implication but for the Residents of that Area. As that (44) forty-four Residents live within 300 feet and (46) forty-six Residents live within 1,000 feet of this Mining Operation, including (3) three Businesses including Whirlpool's new Daycare Center. Everyone is going to be affected by the dust coming off of this, and the trucks coming up and down the roads, everyone in this area has the same problems as we are in a close area. Mr. & Mrs. Miller even offered the Binger's (who own Millburg Equipment Property) to buy their property, and they were not interested, so they could live by this hole in the ground. This is a negative thing.

Neighbor, Bette Pierman at 2033 Paw Paw Avenue stated the property in question is behind her home. When she purchased her home and property, she expected to live there and enjoy the peace and nature and quality of the environment. And then they started doing their gravel pit and hauling garbage back there. On the weekends somebody uses it for a shooting range, and blows things up. They thought after the last meeting that that would stop, but this past weekend they were blowing things up again. These are loud explosions it makes you think that there is an accident outside. Her concerns are the hauling around for this operation, Paw Paw Avenue has taken a beating with truck traffic between all the Businesses that use large semi's that haul stuff daily. She fears for her life walking her dog on Paw Paw Avenue because the semi's fly down the road, not doing the speed limit. She stated the Board / Township is not protecting her safety or help any of the people that live in the surrounding area.

Neighbor, Kim Miller at 1234 Zoschke Road stated the Mining Application from 1992 is nowhere to be found, she has requested copies of it since the last Meeting, and the Building Dept is unable to locate any documentation for this Application, except for the Meeting Minutes which she received a copy of. She advised proper procedures were not followed with the 1992 Application process and that the Township needs to make sure they do so with this New Application. And that the address for the 1992 Application is for 1811 Riverside Road, not 1812 Riverside Road which is the new Application is for. The original provision was given to mind sand and remove sand by Curtis Jenkins in 1992 at 1811 Riverside Road not 1812 Riverside Road. As the even numbers are on the North side of the road, and the odd numbers are on the South side of the road. You know that, and you did not follow procedure back then, you can not prove that you did, and you are riding on the coat tails of that now. And you declined the full Application by Curtis Jenkins in 2006 when they transferred the property to Millburg Equipment Company and said he did not need a Special Use Permit to continue mining at 1811 Riverside Road which is not even the property we are discussing. She would like to submit pictures to the Board Members for review of what

we started out as a little tiny blob and for a little tiny removal of sand at 1812 Riverside Road and 1811 Riverside Road to be clear. Now there is a hole in the ground for all of them to live by. Ms. Miller asked Marletta if she received the Well Information that she requested at the last Meeting from the Building Department. Ms. Seats advised no she did not receive the information requested.

Neighbor, Joseph Snyder at 2015 Paw Paw Avenue mentioned there is an Ordinance for Mining in Benton Charter Township at Chapter 6, Article 2. Part of that says the Application must have the Parcel ID No. on it, as well as proof that it is Zoned AA Rural. That means Mining is allowed in the Township on Rural Property, and is not allowed on Residential Property. This is Residential Property, if you give them a Permit to do this, then you have to give them a Special Land Use Permit, unless you do a Zoning Variance to rezone this property. That is what the Township Ordinance is stating. It has to be Rural, and it is not Rural, it is Residential. The property B & Z is on currently was Heavy Industrial and was grandfathered in as the Mining had already existed. But all the property surrounding it is Residential. The neighborhood is all Residential. The Board needs to give special consideration when changing the nature of that property. This is not allowed on Residential Land by a Special Use Permit. That is exactly what the Ordinances say. The Ordinance for Mining states it has to be Rural, and this property is Residential. We should not even be having this Meeting, as this property is not Rural property. As it is not a valid Application for Land Use, as it is not the right Zoning.

Neighbor, Eric Rankin at 2381 Paw Paw Avenue he owns (7) seven acres on the corner of Paw Paw Avenue and Zoschke Road and he cannot speak as eloquently as everyone else because he does not have as much information, but when he purchased his property, he had to purchase the (7) seven acres behind his property as well to make sure no one else bought it. It was his responsibility to make sure that his backyard did not have any other building. The other neighbors had the opportunity to buy it, but did not. He is not saying it is right that they go in there, but to tell someone else that bought their property, that they can not do something on it, he is not one to tell them what to do. As far as traffic, he has never had any issues, and has never seen any of their trucks come down his street or his corner, and it has been the traffic from Aludyne and all the other Companies down that way. So as far as traffic he has seen no issues with B & Z's traffic / trucks. And he sees everything on the corner. As he is home all day long, so he would know. He does not want to see a Water Tower moving in across the street, but he had the opportunity to purchase it and decided not to. So that is his fault, he saw it for sale, he did not buy it. So that is on him for that. As were all the other neighbors having the opportunity also. Now there is a Water Tower possibly going in there. He does not want to see it outside his door, but nothing he can do about it, as he did not buy the property when he had the chance too. As far as he is concerned as long as they are not infringing on his property, it is their property they can do what they want with it. He has no issues with what B & Z are doing on their own property.

B & Z Attorney, Kenneth Vermeulen would like to address the concerns from the neighbors above. The concern about more traffic, there is no reason to believe there will be any additional traffic as a result with allowing the Mining Operation to expand and continue on the additional piece of property. The existing property where the Mining is currently at is simply out of resources and will Mine the exact same amount that they are currently Mining with the loading, stock piling, the traffic will all be in the exact same place and exactly the same volume as they have been historically. Those volumes may fluctuate from time to time if they build another Golf Course there will be more traffic. If there is a big road project, then there will be more traffic. It is not going to be because B & Z are expanding their Mining Operation. Second issue is the address, they simply had the wrong address. The property that was permitted back in the 90's is the property where the current Mining is located. In fact, that address is 1812 Riverside Road. If someone made a mistake administratively as they originally, had it as 1811 that is entirely possible. But it is the same property. The issue on how the property is currently Zoned, the Michigan Zoning and Enabling Act makes it very clear, that a Township can not prohibit Mining on any property, no matter how it is Zoned unless there is very serious consequences as a result of the Mining Operation. And what they know from (30) thirty plus years of Mining is that there have not been any serious consequences, not as annunciated by the Statues and the Courts, as they have not experienced those types of consequences. There is no reason to believe that by simply now expanding the Mining Line that that would change.

Mr. Taylor asked when was the Michigan Compiled Law Act for Mining that superseded the Townships and Cities. B & Z Attorney, Mr. Vermeulen advised it was in 2011. Mr. Taylor stated that is pretty recent, so we do not know if there has been any impact before. You have not had any impacts that have lasted over 11 years when the Michigan Compiled Law was not active. Mr. Vermeulen stated the no very serious consequences has been the Law of the State of Michigan since 1982. It was just that the Supreme Court Case aided the Township, and that in 2010 that Case got reversed on the grounds that if that in Michigan if we want the Legislature pass that Law, and not have the Courts come up with it. So, the very next year (2011) the Legislature by name, adopted the Silva v Ada Township, 416 Michigan 153 (1982) and put it into a Statue. But it did not change what the Law has always been since 1982. Mr. Taylor, so you are saying before (11) eleven years ago the Township then held the power. Mr. Vermeulen no, that in 1982 the Supreme Court put this test into place so that you could not prohibit Mining unless there be very serious consequences involved. That was the Law from 1982 until 2010 when the Supreme Court said if that is going to be the Law then it should to be in a Statue. The only thing that has changed is that it came from the Supreme Court or the Legislature, as the rules are exactly the same. Mr. Vermeulen you are allowed as the Board to regulate the Mining but you are not allowed to prohibit Mining. And your regulation also has some limits mainly with it can not be consistent with Commercial Mining practices. For example, if the Board were to say you can not start loading trucks until noon, well Asphalt Plants all open at 8:00 a.m. so those kinds of things would be inconsistent with Mining Practices. If you were to put a noise limit on that is below what traditional Mining is then that would be an enforcement. You are still allowed to have set backs, you are still allowed to require fencing, berms, all the things that they have done. If the Board refuses to issue the Application, he is sure someone could challenge that. Most of the things in the Ordinance you can not regulate. You just can not prohibit. You can say you can only Mine in Agricultural, but someone could easily challenge that. The reason you can not Zone Mining is because mother nature decides where the gravel is. The Board can decide you want Factories, Retailers, Strip Malls in between, but as far as the gravel goes mother nature decides that. You can only Mine it where mother nature put it. We can not prohibit it being Mined because that is where mother nature put it.

Neighbor, Kim Miller (again) wanting to respond regarding the discrepancy with the 1811 and 1812 Riverside Road properties. Stating it is not an administrative error, it is an incomplete processing by Benton Township in 1992, as Benton Township Building Department could not produce a Valid Permit to Mine in the first place. All Benton Township Building Department has is Meeting Minutes. She asked Andy Dean to advise if he could produce anything further to her or anyone else other than just Meeting Minutes from the original Application in 1992. As she has requested this information repeatedly, and Mr. Dean could not verify anything other than just Meeting Minutes. So, she believes it is not just an administrative error. She stated no one from Benton Township went out and visited the property for the original Application, as Curtis Jenkins was not the property owner in 1992. He only had a Land Contract with Goodush. Who was the property owner. When Mr. Jenkins tried to apply, Mr. Chris Fuchs and Mr. Thomas Baldwin told him he did not have to do so. So, she is blaming Benton Township for not following the proper procedures in 1992. Since no record exists in the system, it cannot be corrected. Advising this property has been being Mined since 1992 and they do not have the authority to do so.

NEW BUSINESS: None.

BOARD COMMENTS, CONCERNS, QUESTIONS OR REQUESTS:

Mr. Taylor asked if B & Z were going to address the Board. Bruce Binger, B & Z Owner advised that the traffic will stay the same, they are not increasing the traffic. The entire Operation will stay the same.

Mr. Davis wants to share a couple of comments. (1) one this Body is responsible to make decisions based on the Ordinances and we also have to reflect on what the State Law is and we certainly need to follow our own processes. He has not been on the Planning Commission that long, so he is unaware of what happened back in 1992, and that he can have empathy for anything that was not done right in the past in accordance with Policies to way in the decisions that the Board has here. Reviewing the Zoning and Enabling Act he thinks there is (3) three criteria is there (1) one a valuable criteria to Mine, (2) two is there a need for it, and (3) three is there very serious consequences? He thinks it is a matter of fact that there is a need for materials to be Mined on the property. He has come to the decision that there is a need for this material. He is not at a point where he has a decision on will there be any serious consequences. He believes the serious consequence of value, but does not believe the Board

has any record to support whether there is or is not a serious consequence on the valuation of the properties, or the impact of value on the properties. He believes there is also some requirements from the Applicant for the Site Plan and how they plan to mitigate the consequences. He thinks it would be appropriate for this Body to table this matter and for the Township to conduct a Study of the impact of what these operations will be and the property values to determine whether they with serious consequences or not. And to request the Applicant to add a Site Plan, and among other things, provides more specific information on the proposed grades and addressing the recommendations that were provided in the Environmental Report. More specific information on setbacks, fencing, berms, and Phasing of the property. With all of that information I would be in a position to make a determination on the serious consequences.

Ms. Seats conquers with everything Mr. Davis requested with tabling the issue for now, and would also like to see set limitations and mitigation measures for the noise and the dust. And also, would like to look at water management, to prevent water from contamination and controlled sediment run off and protect ground water resources. If that is at all possible and this information came from an Agency that does this and was a recommendation from them that we do suggest the possibility of these things. She understands that anyone can buy anything. So, these types of things that she is asking are concerning to what she has heard, so she is for tabling and putting measures in place. In order for her to even consider whatever, she needs to see these things first.

Mr. Taylor conquers with Mr. Davis and Ms. Seats and would also say that the Board our own inside Engineering Firm should look at the data. And advise B & Z to have Fishbeck look at the items as well. Also based on that Michigan Compiled Law with the evaluation of the properties that the Township should also assess to make sure that we have gained or have we lost innuendos in those areas (Section C). Also, in Section B – So that is (2) two items out of five or six issues with in the Compiled Law that need to be addressed. He would like to see items B & C of that Compiled Law. As well as the Township's Environmental Firm to get involved to re-evaluate the Findings from Fishbeck.

MOTION TO TABLE THE APPLICATION FROM ALL THE COMMENTS THAT WERE MADE:

Mr. Davis motioned to table the Application for B & Z Company with (2) two requirements. (1) one for the Township Staff to assess (3) three items. (1) The Township to assess the vegetation in regards to the Orchards. (2) The Township to engage with identifying the impact of property values adjacent to this proposed use. (3) For the Township Engineer to review and advise the Township on the recommendations on the Report that the Board recently received. These would be the Township's responsibility. For the Applicant, the items on the Application that were left blank need to be addressed, provide a Site Plan that typically addresses what the proposed grades are for the Mine. Addressing specific recommendations on the Environmental Report, the Phasing of the Mining, the proposed set backs with regards to berms and sand mining, whether then intend to install any fencing with where or what type of fencing and its height and support of approval by Ms. Rodez. Motion passed

NEW BUSINESS: None.

TOWNSHIP BOARD REPRESENTATIVE REPORT: None given tonight.

ZONING BOARD OF APPEALS REPRESENTATIVE REPORT: None.

ADJOURNMENT: Public Hearing is now adjourned at 7:23 p.m.

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