

CALL TO ORDER

The regular meeting was held on Monday, September 9, 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: Applicants, B & Z Company, Charlie Binger,
B & Z Attorney, Honigman, LLP, Kenneth Vermeulen
Bette Pierman, Joe Snyder, Kim Miller, Phil Miller, Arthur Bullocks, Mr. & Mrs. Cathy Yates

SILENT INVOCATION: None.

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

AGENDA AMENDMENTS: Ms. Rodez Building Department to Amend the Sign Ordinance pertaining to Height Requirements. Mr. Bennett advised to the Board, we would like to get this added on to the next Agenda, that the Building Department is looking into to this. Since there are so many Zoning Variance Applications, we would like to look into Amending the Sign Ordinance from a sign height of 40' and increasing it to 60' along the I94 Corridor. So, it will take away from having so many Zoning Applications come through for sign height. Just wanted the Board to be aware, that this will be coming soon.

PUBLIC HEARING COMMENTS, CONCERNS, QUESTIONS OR REQUESTS: None.

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.**

Ms. Rodez advised this is not a Public Hearing and is only an Update and Report from the Building Department.

BUILDING DEPARTMENT REPORT: Ms. Phillips requesting to discuss the Law with the Sand Mining Operation. Mr. Bennett everyone has seen the Zoning and Enabling Act, and it states, we can not without severe consequences deny the rights to mine minerals from the property. Whether it is Zoned Agriculture, Rural or Residential. This is why we are here, to determine if there are severe consequences to deny, if there is severe consequences what are we going to do? And if there is not, how are we going to proceed? Has everyone had a chance to look at the Prien & Newhof Review of the Fishbeck Report? Any questions about the method of containment for the arsenic, or the ground water contamination? We roughly have a Mine going 30' plus / minus, and the well depth is between 59 and 100 foot, which is well out of the Water Table. The arsenic levels settle in about a foot down, but if everyone read the Review, that if they settle in, that is where they stay.

Mr. Bennett (showed on the Map that was displayed) that along Zoschke Road Millburg Equipment is going to push and berm all the contaminated soil and cap it with clay. This over along Joyce Street will stay wooded. They are not going to push the trees out or berm over in this area, that is where it is going to stay, we will use the original trees as a barrier. Then B & Z is going to slowing Phase in slowly to get a 30' depth and then all of the water is going to stay onsite, there is no dewatering. B & Z already has SESC approvals and Erosion Control from the County and there is nothing from drain water, as it is all staying onsite. Has everyone seen the Niles Township Appraisals of Property that was in your Packet, that is along a Mine Operation? Mr. Davis advised he has, but would like a better understanding of it. Mr. Bennett Niles Township had an Appraisal done on property in a similar scenario that was able to get information on (5) surrounding properties around that Mine. (2) of the properties sold

for more than the appraised value, and (3) of them sold for less than the appraised value, only because you had to enter thru the Mine to get to that particular house. So that is understandable, but the Benton Township properties you do not have to enter into the Mine to get to their home. So there should be no reason why the properties should lose property values in the locations they are currently in. In the long term, Niles Township lost a Lawsuit because they denied the use of Mining, as there were not able to provide severe consequences to be able to deny them from doing this type of work. As well as there was a 15 to 30% increase in assessed value of properties in sale prices. Mr. Taylor asked that Mr. Bennett is saying Niles Township was sued by Business Owners for not letting them Mine. Mr. Bennett that is correct, to not be able to mine natural resources. They could not support severe consequences is what it amounts to. Ms. Rodez it is my understanding there has never been any severe consequences? Mr. Bennett, I can not answer that questions, I am sure there were in some situations, but we can say they had no way of proving it.

BOARD COMMENTS, CONCERNS, QUESTIONS OR REQUESTS: Ms. Seats has questions about Prein & Newhof Letter Item No. 4 – “No information regarding the depth of groundwater was submitted for our review. If the proposed mining will include excavation below groundwater, the proposed mining may have the potential to affect nearby drinking water wells by lowering the water table. The Applicant should provide sufficient information to evaluate the potential groundwater effects on nearby wells and demonstrate how potential impacts will be avoided.” Mr. Bennett we have a Mining Depth of 30’ plus / minus for the excavation level, correct. Charlie Binger stated correct. Mr. Bennett groundwater comes from a depth of 60’ to 100’ deep, at least 30’ below the excavation and level of this proposed pit. And with the arsenic settling in at a foot down, so there is very little chance of contamination. You would have to get arsenic to travel 30’ down, and that is just not how it reacts according to all of the reviews and reports.

Ms. Seats would like more information on Prein & Newhof Letter Item No. 5 – “If the Township water and sewer service areas would need to be master planned. If the Township will be approving the SLU Application for Sand Mining, it should be noted that no approvals of future land uses or utility services are expressed or implied”. Mr. Bennett correct, so when they go to claim this and turn it back into a Resort (which is their ultimate goal), Millburg Equipment has to come back to the Planning Commission Board to present for approvals. Yes. Mr. Taylor so it would be the same as when Millburg Equipment came and proposed the Business Case originally. Mr. Bennett yes, they will potentially yes. It could be a little different layout, and design, but that is their ultimate goal is to repurpose into Single Family Residential Resort Style similar to Millburg Equipment. Yes.

ANY OTHER BOARD COMMENTS, CONCERNS, QUESTIONS OR REQUESTS: Mr. Davis has questions for the Applicant (Millburg Equipment). The Staging Sequencing Plan clearly shows the 100’ set back, but the future grading appears that the grading with interfere with that set back distance. Is that the case or? Which one will actually control? Mr. Charlie Binger, the 100’ set back on here is going to remain the same at 100’. Millburg Equipment Attorney stated that the berm will remain the same after that berm restoration, the berm material will be used for the recollection. Mr. Davis but there will be no excavation being done within that 100’? Attorney stated that is correct. Mr. Davis there will be some fill, and removal of that fill, but there will not be any reduction of that grade. Attorney that is correct. Mr. Binger also advised that is correct.

Mr. Davis fence height and material. Mr. Binger, the fence is going to be a wire fencing with wood posts and will be 6’ high. Ms. Rodez any further questions for the Applicant.

Mr. Taylor so you gave us a fence height of 6’, and what about the potential for the trees? Those will remain the wooded area, what about the additional trees that would potential block where there will not be trees? Mr. Binger correct, that would be on the North end. We will be planting trees, but we do not have an exact layout, or how many spaced out to be planted yet. But we are looking into that yes. Mr. Taylor but that is something Millburg Equipment can and is willing to look into then? Mr. Binger yes. Mr. Bennett a little extra buffering. Mr. Binger yes. Attorney, yes once the berm is built they will have a better idea of what is needed and where, but until then they have no idea what will be needed and where. Mr. Bennett but for sure they would have to go on top of the berm. Ms. Rodez anything else requested? At this point is the Board ready to take a vote?

Mr. Davis is ready, he finds that there is a need, and that he feels there will not be a severe consequence in not letting them move forward. But he has some conditions he believes need to be addressed before moving forward with a decision and that the Board should consider before putting any of this into a Motion.

Conditions:

- 1) Master Plan Recommendation – does not include approval of Master Plan Future Development will require subsequent Application to the Township.
- 2) Final Grading – Grading upon completion of Mining shall be substantially the same as the submitted Plan but no excavation within the 100' wide buffer and berm per Staging Plan (Sheet 3).
- 3) Time of Operations – Limit Operations from 7:30 a.m. to 6:00 p.m. Monday through Friday, except the following Holidays (Christmas, Thanksgiving, 4th of July, Memorial Day, Labor Day and New Years). Noise Ordinance Section 26.182 line No. 4 7:00 a.m. through 9:00 p.m..
- 4) Access – Limit access to existing drive at 1812 Riverside Road. With no access along Lorenzo for Sand Mining.
- 5) Operations – No crushing or processing of aggregate on the property.
- 6) Ownership – Maintain Single Ownership of the (2) subject properties and the property to the South (1812 Riverside Road) with the existing Mining until such time as all Mining is completed and the properties are fully restored, with the maintaining of (1) Operation.
- 7) Buffer – Fence shall be wood / wire and a minimum of 6' in height. With trees planted where there are none on the berm.
- 8) Timing – Must commence Special Use within (1) year of Approval from the Township Board.
- 9) SESC BMP (Best Management Practices) – Comply with the Berrien County Drain Commission Permit Application that has been issued. Dust control must be required on any and all roads within 500 ft of Residential Zoned Property per Ordinance Section 26.27.c
- 10) Soil Management Plan – A Soil Management Plan as recommended in the "Fishbeck" Report shall be provided to the Township in accordance with the Approved SLU prior to any work being done on site.
- 11) Dewatering – no dewatering shall occur below 30' or that will negatively impact the adjacent potable wells. (Nearby wells are screened at 59 – 100' with varying layers of clay and sand).

Mr. Davis these are the Conditions I feel are reasonable and appropriate to move forward with a Motion. Ms. Rodez thank you so much, that is very thorough and helpful. Any further comments on his Conditions. Mr. Taylor commented on Condition No. 6 – you commented on Maintaining Single Ownership, meaning they can not sell it, or? Mr. Davis that the Ownership of the existing Mining Operation and Requesting Mining Operations would stay under one Ownership, not meaning that they could never sell, but saying they would have to sell both Operations under the same Entity. But they need to be operated as one Mining Operation if they did sell. Ms. Rodez are we in agreement to move forward with a Motion on these Conditions. Mr. Taylor are we going to hear from the Applicant to make sure they are in agreeance with the Conditions we just set forth to move forward with a decision? Mr. Binger and his Attorney have agreed to all (11) Conditions made by the Planning Commission Board. Attorney advised he does not see this happening, but to make sure what is the process if all Mining and Construction Activity on the front parcel of the property were strictly Cabins for example would you still require the common Ownership or for so long as the Mining Activity is going on? Mr. Davis that is a good question, and to state why it is so important to stick with that Condition is because of the point of access to this property. If there is no Mining Activity on this property and it would be all limited to the back of the property, then there would be an Easement and they would come back and propose this situation. Mr. Bennett he thinks if this is a possibility then Millburg Equipment would have to come back to the Planning Commission with a New Application, as the Building Department would like to limit the access to the existing drive as it is now. He does not want to disturb the Residential Areas any more than they already are. So, if there is any changes being made, they would have to come back to the Planning Commission for further approvals. Ms. Phillips agrees Millburg Equipment needs to reapply for any further changes they plan to make on this Project to get Planning Commission Board of Approvals. Ms. Rodez, are we ready to vote on this Project at this time, or is there anything further to be discussed.

Mr. Davis if there are no further comments, he would like to make this into a Motion with all the Conditions listed above. Ms. Rodez to support. Motion passed.

BUILDING DEPARTMENT REPORT:

2. (Update) Bruce Binger (Millburg Equipment Co), owner, 1171 Milton St, Benton Harbor, MI 49022 is seeking a special land use permit to build vacation cabins on the property located at 4545 Territorial as shown on his submitted site plan (property ID#: 11-03-0013-0032-03-5; 11-03-0013-0031-04-7; 11-03-0013-018-08-3) (public hearing).

Mr. Bennett what this is, is we finally have a Sealed Finalized Site Plans for a Resort Style Cabin and shows well and septic locations. So we now have the location of the septic system over here, and well location here. The entrance location is now coming in between the two properties now. What Millburg Equipment did do is added a small section for RV Parking now, for no more than (4) potential RV's coming in to use this property. Really no major changes, but now we know the locations of the well and septic systems on the property. They do have the potential of maybe brining in (4) temporary Park Models, to start building out to start generating revenue. After this is built out those Park Models will be removed off site. Mr. Bennett requested for Mr. Binger to show them designs of the Park Models on the screen. Mr. Bennett they still fall under the Single Family Residential Zoning, so they still will only be for Single Families, but this is a way to have them generate revenue to help them build it out. So this is just to update the Planning Commission on the Scope of Work for this Project's Site Plan.

Ms. Seats referencing Item No. 2 – this item has already been approved by the Board of Trustees on January 4, 2024, so would this be an additional request as an Expansion of that Application that was already approved? Since that was not in the initial approval? Mr. Bennett so the initial was for a Single Family Residential, and that is what these are. But these Resort Park Models are still considered Single Family Residential, and it is a temporary. So the change is that it is not on a foundation but a temporary situation that will be sitting on a slab. Ms. Seats, so what is the normal process, when individuals add stuff to the original Special Use Application that has already been approved. Mr. Bennett we could request for the Planning Commission to do an Amended back to the Township Board of Trustees to add and include the (4) temporary Park Model Cabins. Mr. Binger does not feel he was adding anything, as the State of Michigan states he can have up to (4) temporary Park Model Cabins, you can not go over (5) Park Models or tents and then it is considered camping and a Campground, and then you have all those requirements you have to meet with the State. But you can register anything under (5) and just deal with the Local Municipality. Ms. Seats wants to know why is it on the Agenda again for the Planning Commission then? Mr. Bennett he just wanted to update the Planning Commission Board on what the status is of this Project because part of the Conditions of the Planning Commission was that we had an Approved Stamped Site Plan for this Development. This was all just informational items for the Planning Commission to keep you updated on the Project. I feel the more information everyone has the better off we are moving forward. Mr. Davis stated he knows the Campgrounds are regulated by the State of Michigan and not from the Township, so as long as he does not go over the (5) Park Models, we should be in good shape moving forward. So is this an Amendment to the Site Plan then and a change of use for the Amendment of our Approval? Mr. Bennett that is why Millburg Equipment is staying with no more than (4) Park Models, as any more than (4) has to be regulated by the State. If you would like to see an Amendment, we are happy to make that Recommendation to the Township Board. Mr. Davis it isn't a significant change, but it is a change. He would like to hear others thoughts on it. Ms. Rodez she does not need it. Ms. Phillips she does not think the Township Board will care about it, but it may be a good idea to present it to them as a Recommendation from the Planning Commission. Mr. Taylor will concur with Mr. Davis and we can Amend it. Ms. Phillips the Township Board can Amend it also, they do not need the Planning Commission to do that.

NEW BUSINESS:

1. AN ORDINANCE TO AMEND CHAPTER 82, ARTICLE I, SECTION 82-8; CHAPTER 82, ARTICLE V.7, SECTION 82-508 THROUGH SECTION 82-510; CHAPTER 82, ARTICLE VI, SECTION 82-520 THROUGH SECTION 82-550; CHAPTER 82, ARTICLE VII, SECTION 82-557; CHAPTER 82, ARTICLE VIII, SECTION 82-612; CHAPTER 82, ARTICLE IX, SECTION 82-650; CHAPTER 82, ARTICLE XI.5, SECTION 82-81 AND SECTION 82-817 THROUGH SECTION 82-819; AND CHAPTER 82, ARTICLE XI.6, SECTION 82-823 AND SECTION 82-825 THROUGH

SECTION 82-835 OF THE BENTON CHARTER TOWNSHIP ZONING ORDINANCE. (Public Hearing).

Mr. Bennett advised this is for the Zoning Side of the Ordinance, and remove the Criminal Infraction to a Civil Infraction, so it does not follow someone around for the rest of their life on their Record. It is really a basic change, (1) it will be easier for the Township to enforce, and you do not have to go through the Court System. And we would like to decriminalize the trash and weeds, it will no longer be a Felony Offense, and it will just be a Civil Infraction. Pretty simple change that makes it easier to enforce by the Township side. Ms. Phillips it was advertised as a Public Hearing Notice, so we need to ask for Comments, Concerns, Questions. Motion to go into a Public Hearing by Mr. Davis, and approved by Ms. Rodez. Motion approved. Public Hearing started at 6:26 p.m.

PUBLIC HEARING COMMENTS, CONCERNS, QUESTIONS OR REQUESTS ON THE ORDINANCE:
None.

BOARD COMMENTS, CONCERNS, QUESTIONS OR REQUESTS:

Mr. Davis advised there are some fees related to Property Management, Tenants, Contractors and Architects and he does not know if there is a problem with it being in there or not, but wanted to mention it. And what would the contractual relationship the Township would have regarding that. Would the Township propose a fine and collect fees? Mr. Bennett he thinks what they are going for is if a Contractor is doing a job, and they leave behind trash and debris then we can go after the Contractor direct, and not the Property Owner. He thinks they are trying to hold the people responsible for the Action that is getting enforced instead of the Property Owner. Because typically the Property Owner hires someone to do the job, so it is just a matter of holding someone accountable for their actions is what the Policy is going for. Mr. Davis stated what if the Property Owner states, oh that was my Contractor who left all of that debris behind, as we would have recourse with the Property Owner and put a Lien on their property if it was not taken care of. Mr. Bennett and ultimately it could fall back on the Property Owner.

Ms. Seats how many Amendments to this Ordinance has there been over the years? Ms. Phillips this is the first Amendment made on the Civil Infraction. Ms. Seats can you explain the Section 82-508 and Section 82-510 that states what reserves means? Mr. Bennett that would mean for any future Acceptations' or Amendments. Ms. Seats so within your Ordinance do you all keep records of what the Original Amendments were? Ms. Phillips yes we keep copies of all of them, and what the Amendments are each time it is requested. Mr. Bennett yes that would be on the Original Copy of the Ordinance. Ms. Seats that is the language and everything on each Ordinance or what was eliminated and what was then added. Mr. Bennett yes.

Mr. Davis questions on (2) Sections in there, (1) dealing with Semi Trailers for storage and the (2) was about paved parking. Are those changes, or are those statements that are currently re-entered? Mr. Bennett those are statements of current items, the only things that are changing are for the Infractions themselves. Not changing or Amending any of the Ordinance, just the Infraction side of the Ordinance, taking it from a Criminal to a Civil Infraction. Now it does not follow someone around for the rest of their life due to tall grass, or weeds growing along their fence, or rubbish, or vehicle storage, etc.. There is no need to keep a Felony background on someone for items like these. Mr. Taylor so a car has to be on pavement then? Mr. Bennett yes, or hard surface. Mr. Taylor like rocks or crushed asphalt, gravel, etc.. Mr. Bennett we are not changing any of that. Mr. Taylor even the RV's should be like that as well then? Mr. Bennett correct, yes they should be. That is actually already in the existing Ordinance. Mr. Taylor so do we enforce this stuff, and I only ask because I drive around and see a lot of non-enforcement items. Mr. Bennett so that is a question for the Ordinance Officers, that has nothing to do with the Building Department and what we can enforce. That is the Ordinance and Police Department side of the Township, but not that the Building Department does not get involved from time to time, but that is the Ordinance Department who handles these types of citations. Mr. Taylor, Madam Clerk as a Citizen are we doing anything to follow these Ordinances and enforce these items within the Township. Ms. Phillips this will help make it easier for us to enforce, especially with the Tickets and Court Appearances. But yes I think this will make things easier. Mr. Taylor if you see someone with a vehicle parked for (6) months on the grass, the Ordinance Officers should attack them. Ms. Phillips there is a process for this, the 1st time they are given a Warning, then you give them a ticket within so many days, then there is Court and they get tied up in Court for a while, because Judges do not like to get tied up in Court for Ordinance

Issues. They have more important things they have to deal with, so sometimes it can be a year to get a Court Case taken to Court for an Ordinance Violation. Mr. Taylor so this will be accelerated. Ms. Phillips yes.

Ms. Seats so the first conversation regarding the Landlord or Tenant would just be a conversation, because we can not just take for granted that everybody accesses Social Media, or Township or City Ordinances and reads them through the fine details described. It would be nice to get them this information so that the Citizens know and understand the Ordinances have changed. Ms. Phillips they will be contacted verbally to make them aware of the changes made.

Ms. Rodez needs a Motion to adjourn the Public Hearing. Ms. Phillips moves to close the Public Hearing. Mr. Davis supported. Motion passed. Adjourned at 6:34 p.m.

MOTION TO ADOPT THE CHANGES TO THE ORDINANCE SECTION No. 82

Mr. Taylor moves to the Board Adopt the Changes to the Zoning Ordinance Amendment. Ms. Rodez supports. Motion passed.

TOWNSHIP BOARD REPRESENTATIVE REPORT: None.

ZONING BOARD OF APPEALS REPRESENTATIVE REPORT: Mr. Davis is willing to support and would be valuable to Amend the Signage Height along the I94 Corridor.

ADJOURNMENT: Public Hearing is now adjourned at 6:36 p.m.

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

Loyall Bennett, Building Inspector