

MINUTES

BIG RAPIDS CHARTER TOWNSHIP PLANNING COMMISSION

Tuesday, February 9, 2016 --- 7:30 p.m.

Big Rapids Township Hall, 14212 Northland Drive, Big Rapids, MI 49307

I. CALL TO ORDER: 7:30 P.M.

Chairman Philip Keating called the regular meeting of the Big Rapids Charter Township Planning Commission to order at the township hall on Tuesday, February 9, 2016 at 7:30 p.m.

II. ROLL CALL:

Present: Gordon Oliver, Carman Bean, Philip Keating, Jim Shane, Mark Sweppenheiser and David Hamelund. Michael Hults and Zoning Administrator William Stanek are excused. The record shows a quorum is present. Also Present: Brent Mason, Recording Secretary.

III. APPROVAL OF MINUTES:

The minutes of the January 12, 2016 joint meeting were reviewed and Mr. Bean made the motion to approve the minutes as submitted, seconded by Mr. Oliver. The motion carried unanimously with 6 yeas.

IV. PUBLIC COMMENT: None

V. PUBLIC HEARING:

Mr. Keating called the Public Hearing for SUP 16-001 – Phillip Currie Auction House at 15398 – 220th Avenue to order at 7:33 p.m. Mr. Keating asked if there were any written comments presented to the commission, and was advised that there were none. There were also no staff or engineering reports for this project. Mr. Keating invited Mr. Currie to take the floor and explain his intention for the property to the commission. Mr. Currie advised that he purchased the property from Lake-Osceola State Bank in December in order to operate a live auction house at this location. He will be using the large garage on the south end of the building, and hopefully leasing the offices and the small garage on the north end of the building to a tenant or two. The auctions will be mostly sales from small estates that can be combined to have a greater draw. He expects that he will be having sales 1 to 3 times a month to start, and hopes to schedule them regularly, possibly on Friday nights or Saturdays and maybe on other consistent times throughout the week as his business grows. He figures that he has about 50 spaces for parking on the property at the present time, but there is room to expand the parking area if needed. Mr. Keating asked what times of the day the auctions would be. Mr. Currie replied that sometimes they will be starting at around 10:00 a.m. and run for about 3 hours at the most. Mr. Shane asked if they would only be held during the day, and Mr. Currie advised that the auctions could start at 6:00 or 7:00 p.m. and run in the evening, possibly 1 or 2 days per month. Mr. Keating asked if there would be Sunday sales, and Mr. Currie said there could be Sunday auctions if that were in the customer's best interest. Mr. Keating asked if Mr. Currie anticipated using roadside parking. Mr. Currie didn't know for sure, but did state that he anticipates between 75 and 100 people attending the sales. Mr.

Bean asked how many current spaces there are on the site. Mr. Currie thought that there are between 48 and 52 spots, and the township review suggests between 42 and 48 spots on the pavement, not including a dumpster location that could provide for up to 2 more spaces. Mr. Hamelund asked what is allowed for "along the road parking," and Mr. Shane stated that the township normally hasn't allowed it in these situations. In the Commercial Districts which includes Highway Interchange, roadside parking is not provided for. He continued to advise that precedent has been established with other SUP applications for not allowing on street parking. Mr. Shane also asked if the parking lot was lit. Mr. Currie stated that the parking lot was lit. Mr. Keating asked again about additional space for parking to be provided if needed so that the roadside would not be used. Mr. Currie did reply that there is more space on the south side of the property for additional parking. Mr. Sweppenheiser asked how the goods will be delivered to the location, and whether Mr. Currie envisioned tractor trailers delivering items. Mr. Currie responded by saying that most of the items will be delivered by the clients and dropped off, otherwise there would be a fee for his crew to go pick up the auction items. He doesn't believe that any delivery vehicles will be parked on the site during the actual auction. Mr. Keating asked Mr. Currie what parking requirements might be anticipated from the office tenant(s) and how that might impact available parking for the auction house. Mr. Hamelund wondered about whether there would be auctions during the tenants' business hours. Mr. Currie understood the concerns, and Mr. Keating reiterated that the main concern is that enough parking be provided so that no one would be parking on the roadside. Mr. Keating asked for any other questions. Andrew Archer from New Horizons Landscaping addressed the commission. He stated it is good that someone is interested in the property and putting in a business. He mentioned the previous tenant and issues with them. Mr. Archer mentioned a concern about if in the future the business were to house larger equipment auctions, outdoor auctions or after hours auctions. His business has a lot of product that is stored outdoors, and he is concerned about theft and safety. He stated he was satisfied with the requirements that the Planning Commission is considering for this operation, that there be no roadside parking. Further discussion of the commission continued as to what constitutes a parking area. We have no requirements that it has to be paved, so gravel is acceptable, but you can't just park on the grass. Mr. Shane stated that parking is our primary concern, but he is also concerned about the need for bathroom facilities and whether it currently meets the requirement for the type of use that is proposed. The commission briefly discussed what the classification of this business would be, and no consensus was reached about whether it is a type of public assembly use or general commercial use. Parking needs for varied uses are defined differently, for example mercantile uses require one parking space for every 200 sq. ft. of floor space. Based on the building size, the minimum number of spaces required is 39, and there is currently room for approximately 50 parking spaces on the pavement. Mr. Keating asked who owned the property to the south of this parcel. Someone thought that Gail Wyatt might own it, because she has it listed for sale. Our records show Loni Johnson is the owner of record. Mr. Keating closed the public hearing at 7:51 p.m. and the Commission began discussion on the required questions of the special use:

- (a) The nature, location, and size of the special use shall not change the essential character of the surroundings area, nor disrupt the orderly and proper development of the district as a whole. The use shall not be in conflict with, or discourage the adjacent or neighboring lands or buildings.

The commission does not believe there will be any issues or conflict.

- (b) The special use shall not diminish the value of the land, buildings or structures in the neighborhood.

The Commission raised no objection.

- (c) The special use shall not increase traffic hazards or cause congestion on the public highways or streets of the area. Adequate access to the parcel shall be furnished.

This has been thoroughly discussed previously

- (d) The water supply and sewage disposal system shall be adequate for the proposed special use by conforming to State and County Health Department requirements, and the special use shall not overburden any existing services or facilities.

The property is on a private well with an approved septic system.

- (e) Uses by special permit shall not be significantly more objectionable to nearby properties by reason of traffic, noise, vibrations, dust, fumes, odor, smoke, glare, lights, or disposal of waste than the operation of any principal permitted use, nor shall the special use increase hazards from fire or other dangers to either the property or adjacent property.

The Commission raised no objection.

- (f) The Zoning Board may require that the premises be permanently screened from adjoining or contiguous properties by a wall, fence, plant screen and/or other approved enclosure when deemed necessary to buffer the surrounding uses from objectionable noise, light, etc., created by the special use.

The Commission raised no objection.

- (g) The special use shall be consistent with the intent and purpose of this Ordinance and with the intent of the Land Use Plan for Big Rapids Township. The special use shall be compatible with the natural environment and shall not be inimical to the public health, safety and general welfare.

Mr. Keating thought the use is probably not consistent with the original intent of how the highway interchange district was envisioned, however the purposes for the special use permit do allow for that.

Mr. Keating asked for a motion to approve the request for SUP 16-001 for the auction building as proposed by Mr. Currie. Mr. Bean moved that we approved application SUP16-001. The motion was seconded by Mr. Hamelund. Mr. Keating asked for any further discussion or stipulations. Mr. Shane requested that a stipulation be added to require no on-street parking at anytime, seconded by Mr. Bean. A brief discussion about no parking signs took place, and the consensus was that is a road commission function. It was discussed that it shall be the responsibility of the owner to enforce the no on-street parking requirement, as has been previously required of the antique tractor club for their events. Mr. Bean added the stipulation to his motion. Mr. Currie stated he would do his best to abide by this request. Mr. Keating asked if there were any other additions, stipulations or

comments. None being heard, Mr. Keating asked for the question to be voted on. The motion was approved unanimously with 6 yeas. Mr. Keating thanked Mr. Currie for his application.

VI. SITE PLAN REVIEW – Dean’s Excavating Mining Operation

Mr. Keating announced the next item of business and invited Zach Wall from Dean’s Excavating to give his report to the commission. Mr. Wall gave a report about the activity that has occurred in the mine since the initial application approval. Production of sand and stone has been occurring. Reclamation of the south slope has occurred and there has been grading of the excess soil area to keep it looking good. This material will eventually be used to reclaim the north slope. Material hasn’t been used as fast as was originally believed, so the current pit is not as large as was originally projected. Mr. Wall showed the commission on an aerial map where the current pit face is. Mr. Wall mentioned an incident that occurred late last year on a rainy day when dirt and mud got tracked out onto the roadway and did not get handled in a timely manner. A complaint was made at the Township to Bill Stanek, and he forwarded it to Mr. Wall. A broom was available, but did not get utilized as early as it should have. Mr. Wall stated that he did still have a soil erosion permit in place through the Drain Commissioner office which was reviewed earlier this summer. The reclamation bond is still in place as well. Mr. Wall stated that there are no major changes from the original site plan but they did experience a surprise as they worked into the bank to the north, they ran into a large vein of clay/silt and had to adjust the sand cut height up about 13 feet from 884 to 897 elevation as they move to the north. They plan to utilize the stone this coming summer as both a crushed stone product and some will be hauled away for washing. Mr. Keating asked if things were going well, and Mr. Wall replied that they were. Mr. Keating informed the Commission about the history of this particular mining request and the process that occurred for the approval under the Mining Ordinance 38 in 2013. The planning commission approved a Special Use Permit for a period of 10 years to go to 2023 with certain provisions suggested from the planning commission to the Board of Trustees for consideration prior to issuing a mining license. Those provisions were: 1. Adequate dust control be provided as outlined in Ordinance 38. 2. Access to the site would only be from Old Millpond Road and not from 15 Mile Road, which is south of the property. 3. The Township Board carefully review the requirements of Ordinance 38, and that the setback requirements of the zoning be adhered to, being 150 feet from the property line of adjacent properties. Those were the items that were approved with the understanding that the ultimate approval would come from the Township Board. The process then went to the board for the issuance of the mining license. The license was issued to Dean’s Landscaping and Excavating for that particular site with the landowner being Western Concrete Properties. A \$20,000.00 bond was required. The initial term for the license was for 2 years, from March 4, 2014 to February 10, 2016 with the following conditions: 1. A paved road from the entrance and exit a distance not less than 300 feet from the right-of-way line into the area of operation would be constructed by June 1, 2014. 2. Fencing according to the minimum specifications in sec 9.A of ordinance 38 shall be installed by June 1, 2014. 3. A gate shall be placed at the entrance and exit of the site, understood to be the entrance and exit of the pit, not the road, to be completed by June 1, 2014. Subsequently, it was Mr. Keating’s understanding, after talking to the Township Supervisor, that the requirement for the 300 feet of paving would be waived because the property that would be required to be paved is owned by L.C. Redi-Mix and is not part of the lease agreement. It has been suggested that this change should be documented in

writing to indicate that change, so that the Planning Commission and anybody else could look at that and understand that the paving requirement has been waived. It was assumed that the township board had approved that change. Mr. Keating addressed Mr. Wall and brought up the issue that the Planning Commission requested that there be adequate dust control as outlined in Ordinance 38. Since the paving is not required, there needs to be attention given to dust and mud, and frankly, it wasn't happening. Mr. Keating believes that Dean's people pulling in and out of the site could make a decision as to whether or not something needs to be done about mud and dust prior to the time that anyone would make a complaint to the Township. Mr. Keating spoke on a personal note about living in Indian Village, and how an issue went on for about 10 days, and he was having trouble keeping his car as clean as he normally likes to. Mr. Keating feels that Dean's drivers should be able to alert someone to make sure the roadway is kept clean. Mr. Keating did state that he appreciated the way it was cleaned up, but it just took a while to get it done. Mr. Wall accepted full responsibility for the roadway issue, and defended his drivers by advising that they do operate in many different places in West Michigan, each with their own different requirements. Everyone agreed that this incident was a mess. Mr. Keating stated that Section 9 fencing minimum requirements are not in place at the site, that snow fence is what is being used. Mr. Wall said the fencing was modified for multiple reasons including the fact that his insurance company will not let him put up a fence of those specifications due to the danger posed by the wire. That requirement was modified to allow a fence at the top part of the bank and construct a berm the rest of the way around the pit. This change was documented in a committee report to the Township Board. Mr. Keating doesn't have an issue with the change, but is concerned that the license that he has in front of him doesn't show the changes that were agreed to by the Board of Trustees. Mr. Keating wants the license updated to show what was agreed to, so that we don't have these questions going forward. Mr. Hamelund said that one of the biggest concerns in 2013 was that the Township was not following the ordinance, and was cutting deals. There is still a concern about the ordinances conflicting on certain subjects. Mr. Shane thought that ordinance 38 was going to be repealed when the new zoning ordinance was enacted. Mr. Hamelund stated that Dean's has done an admirable job while operating at this pit, except for the let down on the roadway in December. He continued by stating that Dean's has tried to do everything that Big Rapids Township has asked. He continued by advising that in 2013, it was a hornet's nest trying to get the mining permit approved. A committee was formed to develop an ordinance which would allow a simpler process to be followed for future mining license requests, but we still had Dean's to deal with, because they were existing and everyone wanted to move away from Ordinance 38 in order to get them operating under the most current zoning structure. That was agreed upon, at least verbally. Mr. Hamelund said that in March, the Township Board was led to believe that they were going to give a short term mining license of a year, although I don't have a problem with two, in order to get Dean's to reapply under the new zoning ordinance and verbally the commission had agreed to allow previous documentation to be used for the new application to save time and money to get everybody on board with the new ordinance, so that Ordinance 38 could be voided. Mr. Hamelund couldn't understand why Dean's hadn't been before the commission to reapply earlier; as he thought the initial license was for only one year. Mr. Hamelund talked with the Township Supervisor after seeing Dean's operating this winter, and was surprised to learn that a 2 year license had been issued. Mr. Hamelund stated that if Dean's is operating under the provisions of Ordinance 38, the reapplication process should have begun in December of 2015. Mr.

Wall acknowledged that information. Even under the new zoning ordinance, the application process should have started 90 days ago to apply for a special use permit for 2 years. Mr. Hamelund stated that he is frustrated, and he continued that a lot of the information is verbal and he is recalling it from memory, which is the last thing he wants to do with this hot topic. Mr. Shane stated that he went through the minutes that he could find, from 2014 and 2015. Mr. Shane could not find any mention where Ordinance 38 was repealed. Mr. Hamelund replied that it was not repealed. Mr. Shane then asked if both 38 and the zoning ordinance were in effect. Mr. Hamelund replied that they are both in effect. Mr. Shane responded, "That is ridiculous." Mr. Shane and Mr. Hamelund advised that both ordinances are currently on the township's website. Mr. Hamelund continued by stating the license Dean's is currently operating under says Ordinance 38. Mr. Shane gathered that Dean's is grandfathered in and is operating with a SUP that was issued for 10 years, and there is nothing that the Planning Commission has done to stop that SUP. If Ordinance 38 were repealed, because he is grandfathered in, Dean's would not have to meet the requirements of the new ordinance. Mr. Shane continued by saying Dean's probably has to renew their license, but there is no license requirement in the zoning ordinance. The license requirement is in Ordinance 38, which is apparently still in effect. There was agreement that this situation is not good, but the Township Board needs to resolve it. Mr. Wall spoke about the fact that other townships have a redundant system where a SUP may be issued for 10 years and a review occurs between one and three years to maintain the license. Mr. Keating reiterated that he recalls that at least every two years, Mr. Wall was going to provide an update to the Planning Commission, regarding what is going on at the site. Mr. Hamelund continued that the citizens had an expectation that every two years they would have a public hearing to voice their concerns about the operation. Mr. Keating asked where that requirement came from. Mr. Hamelund advised that it is part of the new Zoning Ordinance change regarding mining. Much discussion continued about this situation and that after March 2013, the Township Board didn't follow through with all they needed to do. The license was issued by the Mining Administrator, Mr. Stanek, but was never presented to the Board of Trustees. Mr. Hamelund stated that he just wants the policy to be streamlined, so you can't argue about what is supposed to be done next. Mr. Keating reiterated that the next step is for the Township Board to get rid of Ordinance 38 so that the Zoning Ordinance language can be effective. Mr. Shane stated that Dean's should still be able to relicense under the provisions of Ordinance 38 with the idea that 38 will be eliminated and that any further licensing will occur under the Zoning Ordinance, otherwise there will continue to be 2 slightly conflicting ordinances. Mr. Bean stated that there should have been some method for tracking the changes, not unlike as engineering change documentation, so that we could determine which version of the agreement we were viewing. Mr. Keating stated that the issue with ordinance 38 needs to be taken up with the Township Board, whether the Planning Commission raises it or another entity brings it up. Mr. Sweppenheiser stated that the first person who should be contacted is an attorney. He further raised the point that Dean's is operating under Ordinance 38 as a permitted use, but repealing 38 might create a situation where Dean's operation would become a non-conforming use and therefore, enforcement would be eliminated because the ordinance no longer exists and a non-conforming use can continue as long as the use doesn't change. Mr. Keating stated that as far as the Planning Commission is concerned, Dean's has reported on their operation, and it is what they are supposed to do. Mr. Keating did state that the township board needs to determine what they need to do in this situation. Mr Keating also requests that a couple of signs should be posted on

the east side of the property identifying the danger of the drop off. Further discussion about the status of a mining license continued, and Mr. Keating advised that Mr. Wall has met his obligation with the Planning commission, and further discussion with Mr. Stanek will need to occur regarding reissuing the mining license. Mr. Keating suggested that in the relicensing process, the stipulations should reflect what actually is being required of Dean's Excavating. Mr. Shane read the motion from the March 4, 2014 meeting of the Township board that issued the mining license in compliance with Ordinance 38. Mr. Bean asked about what will happen in the interim. Mr. Keating said frankly that is not our call. Mr. Bean agreed that the Planning Commission is not authorized to do anything. Mr. Shane read the minutes of the February 11, 2014 Township Board of Trustees meeting. A motion to have the Mining Ordinance Committee move forward toward steps necessary in changing Ordinance 38 to a zoning issue for submission to the township board was made by Zimmerman, seconded by Hamelund, carried unanimously. Mr. Shane did find a June 3, 2014 Township Board motion to extend the deadline for full compliance with Big Rapids Township Mining Ordinance 38 by Dean's Excavating until the new zoning ordinance requirements for mineral extraction has been approved. At that time, Dean's Excavating would have to reapply to the township Planning and Zoning Commission for a new special use permit. At that time, it would be the expectation of the Township Board of Trustees that all provisions of the new ordinance would be complied with by Dean's Excavating. Any conditions or items in the new zoning ordinance that are not already being complied with when the new SUP is applied for may be grounds for denial of that permit by the Planning Commission. Motion made by Hamelund, seconded by Toogood. An amendment stating that Dean's comply or stop all mining operations by June 14 was made by Zimmerman, seconded by Hamelund. Motion carried on roll call vote, although Mr. Shane is not sure which motion was voted on. Mr. Hamelund explained that because the gate wasn't done by the June 1st, the township board amended the language so as not to shut the operation down. The gate was up on June 4th. After that, all the concerns seemed to cease, and the process came to a halt because the Township didn't receive any more complaints. Because Mr. Stanek was out of town for an extended time, Mr. Bean asked the Commission if Mr. Stanek could temporarily authorize Mr. Mason to approve a mining license so that Mr. Wall could continue his operation without having to come back before another board. Discussion came back with no certain answer for this issue. Mr. Keating asked if Dean's was operating today, and Mr. Wall advised that they did have one truck hauling from this pit today, but in about 2 weeks, they will be operating from this pit for a couple of months. Mr. Bean asked Mr. Mason if he had functioned temporarily as the zoning administrator. Mr. Mason advised he did not, and mentioned that he will be reporting on that issue later in the meeting. Mr. Keating stated that as far as the Planning Commission is concerned, Mr. Wall has completed what he has to do, and Mr. Keating expressed his confidence that Mr. Wall will take care of any concerns that may develop before they become township issues. Mr. Keating advised that as far as the mining license is concerned, the township board will need to act upon that issue. Mr. Keating thanked Mr. Wall for his report, and moved onto the rest of the agenda.

VII. REVIEW OF BY-LAWS and RULES OF PROCEDURE:

Mr. Keating feels that it is important to regularly review the By-Laws and the Rules of Procedure. He continued by reading the text of the By-Laws which are attached to these minutes. He especially requested that everyone pay close attention to the section on conflicts of interest. Mr. Hamelund stated that at another board he sits on, one of the first

things the Chair asks the members is whether there is a conflict of interest with any of the items on the agenda. Mr. Bean suggested that this become an agenda item directly after the roll call. Mr. Mason stated that could be done each meeting. Mr. Bean stated that no one wants even the notion of impropriety present in the commission. Mr. Keating continued by mentioning the rules of procedure, and stated that everyone has a copy. It is the method that the Planning Commission will use in conducting meetings along with the agenda and the list of questions that are required when a Special Use Permit is considered.

VIII. OTHER BUSINESS:

Mr. Keating asked the members of the commission if there were any other items that needed to be discussed before the board tonight. Mr. Hamelund asked about the Fire Department expansion and the questions that Mr. Bean presented to the members of the Planning Commission and the Board of Trustees, wanting to know what responsibility the Commission might have. Is it prudent for the Planning Commission to weigh in on the process? Do we have a responsibility to review the site plan for this project, even though it is in the commercial district, because it is a governmental use? Mr. Keating stated that it would be interesting to find out what might occur if the parking requirements for the site could not be met as per the zoning ordinance. Many comments were exchanged, and Mr. Keating suggested that the site plan should be referred to Mr. Oezer for engineering review and zoning compliance as any other commercial plan would be, then the planning Commission would make a recommendation to the Township Board of Trustees based upon his report. Mr. Keating asked Mr. Hamelund how the township board would respond if the Planning Commission recommended that the site plan be submitted to the engineer for review and compliance with the zoning requirements. Mr. Hamelund doesn't know how the Board would react. He hopes that they would think that request to be reasonable and prudent. Mr. Shane asked, "Why wouldn't we be involved in site plan review?" Mr. Bean stated that it is our duty. Mr. Keating asked Mr. Sweppenheiser if the City has their projects reviewed by the Planning Commission. Mr. Sweppenheiser said that they usually did not. Further discussion continued along the line that it would be preferred that the project come before the Planning Commission for review and compliance.

Mr. Mason advised the Commission that he will be attending the MSU Extension Zoning Administrator Class in Muskegon on February 23-25, with the intent of proposing to the Township Board to name him to the position of Zoning Administrator.

IX. ADJOURNMENT:

Mr. Keating entertained a motion to adjourn at 8:58 p.m. The motion was made by Mr. Bean and seconded by Mr. Oliver. Motion carried with 6 yeas.

Motion to approve the Planning Commission minutes of February 9, 2016

by: Mr. Shane, Seconded by: Mr. Bean. Roll call vote carried with 7 yeas:

Philip Keating, Chairman
BIG RAPIDS CHARTER TOWNSHIP
PLANNING COMMISSION

Date Approved