

Bridgewater Township
Minutes of Regular Meeting and Public Hearing
July 10, 2006

Location: Bridgewater Township Hall, 10990 Clinton Road, Clinton MI

1. Call to Order 7:34 PM

2. Roll Call Present: Mike Bisco, Glenn Burkhardt, Glen Finkbeiner, Dave Faust, Mark Iwanicki, Randy Klager, Jim Tice, and Dave Woods – one vacancy
Also present: Wanda Fish, Adm. Asst., Jonathan Ringel, Zoning Administrator, Nancy Hebb, Chip Tokar, Tania Kersey, Debra Hauser, Neel Sheth, Aaron Enzer, Jolea Mull, Marcus McNamara, Jim Fish, Brian Gougherty, Gretchen Barr, Earl Klager, Laurie Fromhart, Ron and Joann Finkbeiner
The Chair noted there was an inadvertent quorum of the Board present and that no Township Board matters will be discussed.

3. Review Agenda

Chair added: 17a – master plan hearing; 17b – Farmland Preservation; and under 9b that no response had been received from Aaron Enzer.

Motion to approve agenda as amended: Faust, second by Bisco. Adopted unanimously.

4. Review Minutes of June 12, 2006

Bisco noted a word was missing from page 4 – insert “parking.” between has and Woods, page 4 12 lines from bottom of page.

Motion: Finkbeiner, second by Bisco to approve the minutes of June 12, 2006 as amended. Motion passed unanimously.

5. Public Comments

James Fish, 11691 Hogan Road, Clinton: Had detailed comments regarding the Crego Pelts:

- The comments reflect concerns he raised at hearing that he feels have not been addressed adequately and must be before any decision is made.
- Because the proposed operation does plan to pump out water per se, does not mean that it is not dewatering. Notes various definitions of dewatering. De facto dewatering must be acknowledged.
- Concern about continued supply of water to wells in the area.
- Function of the Planning Commission at this point is to deal with impacts of the proposed Special Land Use. Must evaluate how the additional mining will impact people living close by as well as indirectly on the Township as a whole.
- The Planning Commission needs a totally independent analysis of both the current and future impacts of dewatering. Not doing so will leave the Planning Commission and the Township open to legal challenge.
- Past flow was northerly, not southerly as it is now. Direct impact of the present mining operation will be accelerated when the new area is mined. Wetlands north and northwesterly of the current mining have dried up while other area wetlands have not. Clearly demonstrates the flow has been affected by mining.

Nancy Hebb, 11840 Hogan Road – Crego/Peltcs

- Provided letter attached to the file.
- Stated MDEQ definition of dewatering includes any activity that results in water flow out of where it is, not just pumping.
- After SMR had created a significant flow to the south, MDEQ permitted it, after the fact and no study was done. The permit issued was for 2.0 MGD discharge.
- Since 2004, her home water well to the north of mined site has developed significant problems with water at a lower depth than before the dewatering took place. Underground aquifers/streams pump much slower much of the year – not a rain level issue.
- Large wetland on property is fed by surface runoff and high ground water rising to the surface. The impact of the additional 60' deep lake will lower the ground water and result in less water to this well established wetland that includes remarkable diversity. There are centuries old sedges that have survived because the wetland has not been drained.
- When the DEQ hearings on the lake were held, area residents were assured by the Township Board that once there was an application that could fund an appropriate independent study, it would take place. Now, it appears the Township is not willing to request such a study. There should be reviews by an environmental attorney, a subsurface flow specialist/hydrologist and a wetland expert.
- States that remediation of the 15 – 16 acre wetland will require \$1 million and that Township should establish an escrow account as well as provide monitoring.
- States that if the special land use is approved without proper environmental safeguards, appropriate monitoring and independent analysis, Township will risk a lawsuit.
- States that MDEQ inserted language to the effect that the agency is not responsible for damage, after they issued a permit for activities that had already taken place.

Chip Tokar, Stansley Mineral Resources

States that none of this is new or unaddressed. Have had several studies, and have provided DEQ data since 1995. Stated that no wetlands had been dried up and he has not received any reports of wetlands being dried up. Stated the north wetland on the SMR property had never been dry. Believes people are making accusations with no professional foundation.

Chair: This is not a public hearing on the Crego/Peltcs application. Will accept written comments, but not get into an exchange. Will limit the time.

Laurie Fromhart, 12831 Hogan Road, Clinton.

- Provided letter that she requested be made a part of the official file, attached to record.
- Stated that berms should be erected prior to any mining operations beginning, cited CTE operation in Clinton.
- Stated that SMR does not adhere to the hours of operation and are using routes that are not the designated haul routes.

- Fromhart referred to a report on well water levels dated October 30, 2004 from Glenn Burkhardt, then Sr. Vice President of Tetra Tech MPS. A copy of the letter is attached to the record.
- Stated that the MDEQ did not hold a second hearing on the lake, but the Township Board had indicated it would be possible to have a study when an application was received for mining.
- States that applicant has a record of doing damage to wetlands and then requesting permits after damage has occurred.

Nancy Hebb: Repeated request for an independent study prior to proceeding with the Special Land Use.

6. Close Regular Meeting, Open Public Hearing Parcel Q-17-01-400-017 Ride4Fun
 Motion: Finkbeiner, second Iwanicki: Close the regular meeting and open the public hearing. Adopted unanimously, meeting closed at 8:09 PM.

7. Public Hearing Parcel Q-17-01-400-017 Ride4Fun

A. Chair summarized the application. The property has accommodated horses historically, dating back to at least the early 1960s. Property has a barn with 15 large stalls historically. The proposal is therapeutic riding operated by a non profit organization.

B. Public Notifications were made as provided by law.

C. Applicant made a brief presentation.

D. Public Comments

Tania Kersey stated that her nephew Anthony, age 12, has Down's and physical handicap as well. He has been in the riding program at Ride4Fun for a few years and it has been very good for him. She stated the facility was clean and well organized and is a credit to the community.

Sally Peters, a registered nurse who works with Anthony said the program has provided great benefits to Anthony and that it is one of the few facilities that will work with severely handicapped people. She also stated that the program was very mindful of safety.

Jim Fish said he had toured the facility and thought it clean and in good condition, supported the concept of having the therapy available in the Hamlet, linking it to the agriculture of the area.

Earl Klager asked where the riding would take place and Deb Hauser said it would all be within the property.

8. Review of SLU for Parcel Q-17-01-400-017

Faust, second by Bisco: Close the public hearing and reopen the regular meeting. Adopted unanimously. The regular meeting reopened at 8:14 PM

Iwanicki: Said he appreciated the quality of Jonathan Ringel's report, attached to the record.

Bisco: Asked if the setbacks will require a variance. Burkhardt: They are a legal nonconformity because the buildings were in place prior to the ordinance that required the setbacks. Burkhardt also noted that all neighbors have indicated strong support to approve the Special Land Use. Bisco: Asked about the number of horses that could be allowed. Burkhardt: As a legal nonconformity, can have 15 horses.

There was discussion of the hours being during daylight, discussion of the amount of parking available and the fact this was a not for profit, not a commercial riding stable. Additional discussion about special Olympics events. Iwanicki noted that the application was for a non-profit, extending the use of a long existing legal nonconformity regarding such things as setbacks. Bisco expressed concern about overburdening the decision with conditions.

Motion: Iwanicki, second by Finkbeiner: Layover to August 10, 2006, meeting and draft any conditions needed for final action. Motion adopted unanimously.

9. Enzer Special Land Use Parcel Q-17-08-100-024

Mike Bisco recused himself from the discussion and left the room.

A. Letter from Chair to Enzer dated June 19, 2006 attached to the record.

Chair stated no response was made, there could be a discussion or the Planning Commission could simply lay over. Woods had reminded the PC of the building code, fire code and other codes that would regulate this activity. Reading the applicable code provisions, for anyone to store, distribute Division 1.36 fireworks display materials, must have operating permit from the local building and fire authority. If the land use is considered, that must occur. Troubling there has been no response back. Willing to give another chance for the applicant to provide the information prior to saying the application is closed.

Iwanicki: There have been a lot of questions and without more information, waste of time to go further. Woods: There are a lot of activities going on at the site now, at the pole barn, which does not meet State of Michigan code requirements for explosives. It appears there are fireworks display materials on site that are being sold without the proper permits. There may be a big problem, question of liability for the Township.

Aaron Enzer: Did not respond to request as uncle died just before the deadline for the paperwork. Will fully respond to the letter. Was in Chicago setting off a show as a contractor for a display company. Will be out of town during the August meeting. States that he wants to demonstrate he is complying on state and federal levels. Hobby activity is turning to become a commercial activity.

Chair: Must have answers to questions, such as the type of magazine, the isolation distances, the distances from other residential buildings and potential residential building sites hinge upon knowing quantity, type of material, etc.

Enzer: ATF inspects randomly for construction of magazines, everything relating to storage of explosives. There have been determinations of compliance each time.

Chair: There are requirements that you meet at least minimum compliance with local building and fire regulations and you need to take steps to assure you are not across any lines. Need the information soon. You will need to be available in September meeting.

Woods: Asks if he has product on site now. Enzer: Yes. Woods: Do you know how much? Enzer: Yes, required to have a full inventory. Woods: How much is there? Enzer: 700 – 800 cases. Woods: How much explosives? Enzer: 7000 – 8000 pounds of explosives.

Faust: Asks if the local fire department knows how much explosives are in place.

Enzer: Both the local fire department and the Township have been notified in writing. Chair: Asked to whom the letters were sent: Enzer: Left the letter to Manchester Fire Department there. Letter to the Township was given to Carol Peacock. Stated he thought the ATF had recently notified the Township of the renewed license.

Woods: Where are the 8000 pounds of explosives stored? Enzer: In the magazines approved by the ATF. Woods: The state has not approved the magazines. Enzer: The state relies on federal inspections. Not aware of a building code requirement for a magazine. Chair: Under Michigan Building Code, there are code requirements for storage of Division I explosives. Enzer: Follow the NFPA code, not aware of others for portable magazines. Chair: The NFPA code is referenced. Also cites requirement for local building authority to issue an operating permit.

Motion: Woods, second by Iwanicki: Lay over further consideration until the September meeting. Motion adopted unanimously.

Bisco rejoined the meeting.

10. Bridgewater Commons Final Site Plan Review

Chair:

Reviewed the plans in specific detail.

- At last meeting, understood the ponds area in plan was that considered in the Zoning Board of Appeals ruling and these plans do not agree with that.
- The open space east of the pond is not accessible from the Bridgewater Commons property according to his plan, even with easements from Nelson and Guenther properties.
- Letter from Drain Commission office dated June 27, 2006 to Gary Niethammer indicated that they were not in agreement with the plans submitted to them on June 20, 2006. They want a full set of plans, want to show the freeboard elevation, calculations for basin storage and any impact to the outlet structure.
- The County Drain office has not approved the storm water management for this site.

Chair stated that the Planning Commission is trying to work towards approval, but never know what we are reviewing because there is no systematic recognition of the dates of revision. Every set of plans have the same revision date of May 11, 2006. It is difficult to waste our time trying to make sense of something that has not been thoroughly put together. Single opinion, speaking only for myself.

Ron Finkbeiner: What do you want? Chair: Drain Commission approval. There have been continued discussions about the pond size, setbacks, etc. and that must be resolved. You had a variance from the ZBA. Simply not clear on the drawings what is being proposed. Must meet the intent and requirements of the Zoning Board of Appeals variance granted. Glen Finkbeiner: The ZBA determined a variance of 0 setback, with a condition there be no further changes to the pond without prior permits and approvals. Chair: Can't tell from plan where the high water level boundary will be and what separation distance there is to the easements that have been obtained. Ron Finkbeiner: Drive there. Chair: That won't tell me. You must have a document that allows you to guide what is going to be built. The information

is not being presented in a way that allows us to take the action needed to approve this application. Woods: The Drain Commission needs a large set of drawings with all information consistent, with distances clearly shown.

Jim Tice: The detention pond area – is that the access to the open space to the east.

Chair: For something to be considered as open space, it has to be accessible to common property owners of that open space. You can't tell if they can walk across the wetlands or can they walk around the southern edge without trespassing on other lands? We can't see that on the plan. We have concerns about meeting the 100-year flood event. Woods: Compares various drawings of various ponds and overflow calculations, lot of questions. Faust: States concern that the pond as indicated will not store enough runoff.

Chair: We cannot take action without Washtenaw County Drain Commission approval. Ron Finkbeiner: We have that. Chair: We cannot approve until we have written confirmation from Washtenaw County Environmental Services regarding the well water supply. There are some other issues that are relatively minor but must be addressed. The pond is critical. We have to deal with 100-year flood lines, access to open space and so on. Bisco: asks for clarification of the contour lines.

Ron Finkbeiner: Asks if he can build the road. Chair: Asks Supervisor to indicate if the road was approved, and Sheth said it had been. Marcus McNamara, OHM: Stated that he had not seen detailed plans for the road, was not sure which plans were final. Chair: That's the problem. We've had plans over and over again, with changes here and there and have no idea of what is the latest, most of the plans have the same revision dates.

Chair: Would not be appropriate to build the private road without final site plan approval. Ron Finkbeiner: Wants to build a driveway. Chair: You have a building permit for one unit and you have WCRC approval for connections on Austin and Boettner. There is nothing to prevent you from building an access that might conform to what has been approved by the WCRC. But, the Township should not take the action to approve building the road itself at this time without Drain Commission and Health Department approvals which you may not get. Ron Finkbeiner: It's my money. Woods: The storm sewers might have to be cut out if you go ahead without Drain Commission approval. Continued discussion.

Chair: Ends the discussion and states that the Planning Commission must have clearly dated large sets of site plans that meet the requirements, Drain Commission approval, Environmental Services approval, a final review of road detail by the Township engineer. States the project appears close to approvals, but that documentation is lacking at this time.

Motion: Bisco, second by Faust: Layover action on final site plan approval. The applicant and consultant will be sent a letter detailing what must be done. Motion passed unanimously.

11. Crego/Peltcs Trust/Stansley Mineral Resources Special Land Use– Parcels Q-17-29-200-008-009 & 10

James Tice and David Faust recused themselves.

- Chair: Letter dated June 30, 2006 from Chip Tokar responding to comments from Birchler Arroyo and to public comments.

- There are quitclaim deeds that document land ownership, demonstrating all the property is under the Crego/Peltcs Trust, a question raised at last meeting.
- Full sized plan depicting the conceptual end use plan for the parcel.
- Chair stated that ultimately, the operating license is issued by the Mineral License Board, which must meet all conditions of Ordinance 59 before issuing a permit. PC must determine if this is an appropriate use of the land and if there are any special conditions that will apply to that land use.

Bisco: Discussion of the direction of water flow, the loss of water from the northern wetlands. Is there a reason that the water can no longer flow that direction? Chair: Have reviewed monitor well information for the existing mine site for several years. Other than what I consider to be minor seasonal changes, have not seen a material change in the direction or gradient of ground water movement on that site since 1996, based on the well data. Keep in mind the well monitors only at the location of the screen. Are there multiple aquifer levels in that formation? Would be characteristic. Does an upper aquifer flow in a different direction from a lower? It does happen. Geology -- sand all the way to the river. Water ultimately goes to the River Raisin. This site is different in that the gradient is steeper than normal. When you construct the lake, you intersect the ground water table and if the lake is wide enough in the gradient where the water is moving, you have a greater risk of depressing the ground water table because water will seek an average. Discussed during the lake permit application hearing three years ago. As a result, SMR altered configuration of the lake to minimize the impact. There will still be an impact. In 1996, there was no man made lake level control structure. The DEQ subsequently required a lake level control structure to protect the wetland on the northeast corner of the originally mined parcel. The level was set as directed by DEQ. The level was higher than what it was in 1996. If you raise the lake level by three feet, you have raised the up gradient ground water table by three feet also. Further changes will require approval by the DEQ. Township cannot change the lake level. Flow leaves the site during some portions of the year, due to the lake level control structure required by DEQ. If you look at flows in the River Raisin downstream, comparing as long a term average as possible, probably will not see a material difference. The flow simply finds a different path.

Finkbeiner: Asks if the monitor well showed changes in the direction of the flow.

Chair: The monitor well is a distance from the lake; doesn't mirror it, but it has always shown a flow to the south south east, 45 degrees. Gradient has been consistent since 1997. With the advent of the lake level control structure, there was change consistent with the lake level prior. Piezometric pressure can do odd things, however.

Have there been changes? Yes. Clearly, the path of storm water drainage from the original parcel towards the north has reduced drainage to the wetland on Ms. Hebb's property. Had the 52 acre lake been permitted by DEQ, it would have had significant adverse impact because it would have lowered the groundwater table upstream. With the change in the size and location, the DEQ believes there is enough separation to manage the change that could occur in ground water level.

Bisco: Will new lake have a control structure? Chair: All lakes subject to permits do. Discussion of what protections there are for the public if for example, the ground water supply is damaged or becomes less available. Chair: The protections are contained in Ordinance #59. Under the National Environmental Protection Act, if there is damage to a regulated wetland by a riparian property owner, he or she would have to make it whole. Nancy Hebb: Was told by an environmental lawyer that NEPA applies to the property owner impacting wetlands on his/her property. Chair: Cited the Nestle case law, where groundwater extraction had negative impact on an adjacent wetland and adjacent navigable body of water, Nestle was found liable for that. Hebb: After extensive and expensive litigation, and I don't have the money to do that. Chair: Ordinance #59 identifies actions that provide a degree of protection. Gives the Township a degree of authority to view the operation and assess impacts throughout the operation, assesses a bond for ultimate reclamation. Can anybody anticipate anything that is possible to have happen? Probably not.

The question has to be if this is an appropriate land use, considering adjacent land uses. Mineral extraction in that area for a long period of time. There may be times when noise, other things that are measurable and controllable may be an issue. Should there be continuous monitoring of everything that could possibly be wrong?

Fromhart: The problem is, there has been very little monitoring. There have already been impacts; the outlying, non site areas have not been studied. Requests the Planning Commission to recommend to the Board of Trustees a study to measure impacts. Wetlands that had water for years are now dry.

Hebb: Urging study to protect owns self, the Planning Commission and the township. There is no baseline to determine adverse effect. All we have are the Stansley Mineral Resources numbers. We all need a baseline study to confirm how things actually are, the groundwater conditions. Chair: Asks if she has looked at the records. Hebb: Yes, points to an area of a map, there has been no monitoring to the north. All the monitoring wells have been on high ground, not near the wetlands. How can we determine the detrimental effects if we have no baseline from which to work? Chair: After there was the study requested by the Stewards of Bridgewater, did you have a review of the data? Hebb: No, we didn't have the funds, we were told repeatedly that once the application reached the Township level, a study could be done at the request of the Township, at the expense of the applicant. That's what we are asking for now, is for this study to be done at this, the broadest level of impact review. It is our understanding that it is the Planning Commission, not the Mineral License Board or the Township Board, that is charged with the responsibility to provide the most sweeping review of area impact. We need a good baseline study to determine adverse effect, something we had understood would be done.

Chair: Planning Commission determines if the Special Land Use is appropriate. Mineral License Board determines if there are sufficient grounds to issue an operating license and whatever other special requirements there might be of that operation. The Planning Commission asks if it is an appropriate use and if there is sufficient information to make that determination.

Chair: Asks PC members if there is insufficient information to determine if this is an appropriate land use. Bisco: Are we looking at special conditions or if it appropriate land use? Chair: First, determine if it is an appropriate land use, then we can decide the conditions.

Further discussion with audience.

Chair: Calls for decision to deny, layover for further study or additional information or approve with conditions or approve as submitted.

Tokar: States that every effort has been made to address the issues that concern residents.

Motion: Bisco, second by Woods: Planning Commission grants a contingent special land use for mining on Parcels Q-17-29-200-008-009 & 10, assuming that the Planning Commission will approve several conditions at the August 10, 2006 meeting. Motion was adopted unanimously.

In further discussion, members agreed Mike Bisco will work with other members to draft the conditions for consideration at the August 10, 2006 meeting.

Faust and Tice returned.

12. T-Mobile Special Land Use

Glen Finkbeiner recused himself.

Chair summarized the application:

- Stand alone tower.
- Under wireless ordinance, applicant must prove cannot co-locate with existing tower or structure.
- Then must try to locate with a 3-tier order of preference.
- 150' monopole, located 85' from right of way limits of US 12 and 115' from limits of Willow Road on property that is part of the Rustic Glen Golf Course via an easement that would be non-conforming to the Zoning Ordinance.
- At this point, the application does not conform to the standards of the ordinance.

Mark Jones, representing T-Mobile

- Presented the contents of the application, went through the reasons for determining why this site would work the best for T-Mobile, primarily issues of distances and topography between towers.

Chair: Discussion of the ordinance regarding the size of the parcel that must be under effective control of the cell tower operator, issue of catastrophic failure and fall down zone. The issue of risk to the Township was discussed..

Jones, what about if we indemnify the Township? Discussion that a variance would be needed to deal with setback requirements that are not being met.

Question becomes: can the Planning Commission grant a special land use that requires a variance to make it fit the ordinance? We could deny the application, you can then apply for a variance, but we cannot predetermine if the Zoning Board of Appeals would then approve the variance. One of the criteria is that the need cannot be self created by the applicant.

The question is, is there another location for the tower that meets your criteria and does not require a variance?

Jones: Explains the difficulties.

Bisco: Asks if the minimum size lease would have to be 50' square? Chair: 100' feet, the setback from any residential property has to be 50'. Have to consider that a property may be split, creating a residential parcel that would be adjacent to the tower and within the setback. Cannot grant a use that has the potential of denying appropriate use to an adjacent property owner. Golf courses have become subdivisions.

Jonathan Ringel: Brings up what the ordinance states, appears that Chair may be working from an out of date ordinance that he just downloaded from the website. Chair and members look at their ordinance books, appears that the most recent amendment is not on the website or in their Zoning Ordinance books. Ringel: Reads the section of the amended ordinance. Chair: Then a variance would be needed. Ringel: Yes.

Woods: Points out that a separate parcel had to be created to build the Sprint tower on the Baker property, due to tax issues. Continued discussion of other areas where they can locate.

Tice: Brings up Detroit Edison tower possibilities. Jones: Can't get high enough on those, only put up a mast.

Motion: Bisco, second by Iwanicki: Layover further discussion to the August 14, 2006 meeting, while the applicant seeks other sites that would not require variances to meet the ordinance. Motion passed unanimously.

Finkbeiner rejoined the meeting.

13. Bridgewater Farms

14. Election of Officers

Agreement to defer.

15. Zoning Administrator Report attached to record

There were no comments on the Zoning Administrator's report.

Chair announced that Jonathan Ringel, the Zoning Administrator, had resigned effective July 24, 2006. Burkhardt stated the reason was a career move to a full time position in his field, a move to another area and marriage. The Planning Commission members congratulated Jonathan and commented he had done an excellent job during his service to the Township.

Faust: Asked about the DEQ comments on the Knight pond. Ringel said he would ask again.

16. Reports

17. Other Business

Chair asked to set a public hearing for the amendments to the Master Plan. Said that he had talked with Mark Roby from the County and would have the County comments in time for the hearing.

Motion: Finkbeiner, second by Faust: Hold a public hearing on the amendments to the Master Plan on August 14, 2006. Motion passed unanimously.

Farmland Preservation will meet on July 24, 2006, at Township Hall

18. Public Comments

19. Motion to adjourn: Bisco, supported by Faust: Meeting was adjourned at 11:10 PM.