

Volinia Township Planning Commission
Minutes of the June 15, 2023 Meeting

A regular meeting of the Volinia Planning Commission was conducted on June 15, 2023 commencing at 7:00 p.m. at the offices of the Cass County Road Commission, 240 N. O’Keefe Street, Cassopolis, MI.

Present were:

- Ron Butts
- Randy Cuthbert, Chairperson
- Bob Rasmussen
- Frank Ross
- Bruce Buttbaker
- Dave Goodenough

Absent was:

- Jeff Steinkraus

Also present were Township Zoning Administrator and Code Compliance Officer, Douglas M. Kuhlman, Township Attorney Roxanne Seeber; and approximately 125 members of the audience. The chairman opened the meeting at 7:00 p.m.

A prayer was offered and the Pledge of Allegiance was recited.

Roll Call

At Cuthbert’s request, Seeber called the roll. All members were present except Jeff Steinkraus.

Closed Session

Buttbaker, moved, supported by Butts to enter into closed session with the Zoning Administrator and the Township Attorney to consider an attorney-client privileged communication in accordance with section 8(H) of the Open Meetings Act and 13(1)(g) of the Freedom of Information Act. The motion passed by 6-0 roll call vote. The Planning Commission entered into closed session at 7:08 p.m. In accordance with the Open Meetings Act a separate set of minutes of the closed session were taken to be held for one year and one day after such meeting. Upon motion of Buttbaker, supported by Butts, and unanimous voice vote, the Planning Commission reconvened in open session at 7:35 p.m.

Designation of Recording Secretary

Chairman Cuthbert identified Seeber as recording secretary for the meeting.

Announcement of Conflicts

The first item on the agenda was a determination as to whether any Planning Commission member felt that he had a conflict such that he would be unable to set aside his personal feelings and make a recommendation on the matter. No conflicts were announced and there were no challenges.

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Approval of Agenda

Butts moved, supported by Butchbaker to approve the agenda as submitted. The motion passed unanimously.

Statement of attorney

Seeber addressed the audience at the request of the chairman, explaining the procedure for consideration of the site plan and special use request. Seeber indicated that the Township Zoning Ordinance requires consideration of a proposed site plan and special use application by the Planning Commission. The Planning Commission, she stated, was a recommending body only. The recommendation of the planning commission, the application, the minutes of the meeting(s) and the other submitted documentation would become the “record” and would be submitted first to the County Planning Commission. After the required 30-day period for County Planning Commission consideration. The matter would be forwarded to the Township Board, which is the legislative body of the Township and which has the final say on whether the matter would be approved.

Seeber stated that the Township Zoning Ordinance requires that the Planning Commission first make a determination as to whether the application is complete. If the application is incomplete, the Planning Commission must provide written documentation of what is missing in the site plan and it cannot move forward with processing of the application until such time as it has received the required information. She stated that the Zoning Administrator/Code Compliance Officer had provided a written report as to the application and would be asked to provide his analysis as to the completeness of it. If the Planning Commission determines that the application is complete, it will move forward to a public hearing. If the application is found to be incomplete, the Planning Commission would take public comment and likely hold the public hearing on a different date, after the required documents had been submitted.

Seeber stated that a public hearing is required under the Planning Enabling Act and the Township Zoning Ordinance. She invited those that did not feel that they could adequately present their position to submit something in writing to the Planning Commission via Kuhlman. Seeber indicated that one of the standards for consideration of a mineral mining application was whether “very serious consequences” would result from the proposed mining. In this respect, she referred the Planning Commission to the special use standards contained in Section 15 of the Zoning Ordinance, reasoning that the standards were there to provide a baseline for matters to be considered in the “very serious consequences” analysis. The Planning Commission had a big job in front of it, with a lot of technical considerations. Seeber stated that data is required, rather than a statement from the proposed developer that “gravel is necessary” and that there is a certain amount and type of gravel/minerals on site to be mined.

Planning Commission’s consideration of completeness of the application.

The chairman requested that Kuhlman provide his analysis and report, including his comments as to whether he felt that anything was missing in the application.

Kuhlman introduced himself. He stated that mineral mining is a special land use in all zoning districts in the Township. He reported that the 2016 Volinia Township Zoning Ordinance and the 1997 Ordinance provided in Section 14.07 that mineral mining was listed as a special use.

1 He referred the group to Section 7.9 of the current Zoning Ordinance, which provided special use criteria
2 for consideration by the Planning Commission. He had provided the parameters of Section 7.9, along with
3 his determination as to whether the application met, exceeded, or did not meet the requirements. If the
4 application met the requirements, the matter was shown in green typeface. If the application was lacking
5 in some way, that information was shown in red type face. He addressed the Planning Commission,
6 indicating that some of the requested information in Section 7.9 could be used in making a latter
7 determination as to whether “very serious consequences” existed.

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9 Kuhlman stated that he had received several items after he had prepared his staff report. In some cases,
10 he received written comments from members of the public. The applicant had provided a couple of items
11 at about 3:50 in the afternoon. He noted that in supplement no. 1, which had been provided to the
12 Planning Commissioners at the table before the meeting contained several written communications from
13 residents and the applicant regarding the application. He stated that the matter had been noticed in two
14 newspapers, at least 15 days prior to the date of the hearing, and had been mailed to all property owners
15 within 300 feet of the property upon which the mining was proposed.

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17 Kuhlman stated that he had also received a copy of a field inspection report, in which the County Road
18 Commission had required moving the driveway 250 feet from Decatur Road because the site plan, as
19 submitted had the driveway located too close to the intersection. The field inspection report stated that
20 it needed approval of the Township before it became official.

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22 Kuhlman stated that additional supplements had been prepared and provided on the table at the meeting,
23 as some information had not been received until late in the afternoon. Those items were identified as
24 supplemental information received late in the day on the date of the hearing. He went through the
25 handouts, indicating that a new mailing list had been provided and that only one notice had been returned
26 with an invalid address. He stated that two communications had been received, one from an engineering
27 firm of the applicant and one from Brock Yordy. They would be included in the record, he said.

28
29 Every piece of documentation that he had received to date had been provided to the Planning
30 Commission, he said. The matter had been noticed in the Marcellus News and the Decatur News. He
31 stressed that notice was required to be mailed to all property owners within 300 feet, not 300 yards as
32 had been reported in some media.

33
34 Kuhlman stated that the location of the buildings was not provided and he was unaware as to whether
35 the plan for extrication operations met the 200 feet setback from adjoining buildings. There were no
36 distances of adjacent buildings provided, and the site plan showed no buildings on site. He felt that there
37 would be at least a work office and a crusher, although neither of these items was shown. He had required
38 a more detailed proposal, such as the manner and type of equipment, haul routes, current traffic counts,
39 estimate additional traffic, and whether there would be modifications to the existing roads. As for water
40 usage, there was no indication as to the number of gallons to be pumped and its use. County soil erosion
41 had not been consulted or signed off on the plan. He was advised by the applicant that EGLE did not
42 need to get involved, although he had concerns about the high water table in the area. If EGLE permission
43 was not required, he asked for a document establishing this. Many of these items he had requested from
44 the applicant but he had been told that it would be provided later, or that it was not needed. Kuhlman
45 pointed out that there was a memo on a wash plant and a fresh water slurry; however, no details as to
46 either of these items had been provided by the applicant. He also requested the volume and type of
47 materials to be extracted and had not received documentation of this.

1 Kuhlman stated that the reclamation plan was incomplete. There was no final site grade provided, no
2 landscape plan and no indication of meeting a 3-1 slope after mining was completed. Additionally, he
3 stated, he did not have a determination of whether noxious dust, odors or chemicals were not be used on
4 site. There was no information on public safety considerations, such as dust control, technical application
5 methods and proposed phasing of the reclamation plan.

6
7 Kuhlman stated that he had requested a number of additional documents from the applicant, however,
8 until the day of the hearing, nothing had been provided. He simply did not have enough factual
9 information available to address some of these public health, safety and welfare concerns.

10
11 Kelly Kuiper reported that she worked as a consultant on the project management side of this application.
12 She wanted to point out that the Zoning Administrator’s review was different than what had been
13 provided to her earlier. She had worked diligently in addressing the criteria required by the Zoning
14 Administrator in the February 2022 analysis. She had submitted a lot of the documentation that Kuhlman
15 had stated was incomplete. She stated that information as to what was not available was needed to be
16 documented. She indicated that there was a setback document provided, and that there was a detailed
17 reclamation plan submitted. She knew the critical nature of the requirements of the zoning ordinance.
18 She asked for a more up-to-date determination of what would be needed. She also wished to make a
19 more involved presentation. The chairperson indicated that the Planning Commission would consider
20 first whether the application was complete, as required by the Zoning Ordinance.

21
22 Amber Hoover stated that a project narrative had been provided with the application package. This
23 narrative, she said, considered a 10,000-foot view. The parcels in question were located on the southeast
24 corner of the Decatur Road/Fosdick Street intersection. The project, she said, was proposed in three
25 phases. She addressed the various parcels that made up the application, and the parcel sizes, indicating
26 that in total, there were 106 acres out of 134 to be mined.

27
28 Hoover indicated that sand and gravel were needed to supply the business’s Kalamazoo and Benton
29 Harbor plans. There was a high demand for concrete, she stated. As to the application, she noted that
30 the proposed hours of operation were to be consistent with the requirements of the zoning ordinance.
31 The mining would take place with a traditional 40–50-foot depth, or until groundwater was hit, whatever
32 occurred first. She stated that EGLE is not involved in mining activities, and that their only purview in the
33 matter was if an inland lake of more than 5 acres in area was created.

34
35 Hoover continued, stating that they had been in talks with the road commission about increasing the
36 pavement on a portion of Fosdick Road, and had considered making a grant application with the County
37 Road Commission for upgrading it to a Class A road. Hoover stated that she had an issue with the
38 permitted 5-acres of mining area at any given time. She indicated that 5 acres is too small for an operation
39 of this size. If they are required to only mine 5 acres at a time, the duration of mining would be
40 considerably longer, with a resultant impact on county road systems.

41
42 Hoover stated that they had met with the County Road Commission and attempted to find routes to the
43 Kalamazoo and Benton Harbor plans. They had done their outside agency reviews to the extent that they
44 were necessary to submit with the application. They had received a driveway permit. They had applied
45 for soil erosion permits and anticipated receiving them within the next week.

46
47 Hoover stated that under the Michigan Zoning Enabling Act, mining is a protected use. The Township
48 cannot prevent mineral extraction, she said, unless “very serious consequences” would result. She stated

1 that there are no very serious consequences. There were 13 adjoining properties in agricultural
2 production wherein similar uses were permitted. There were 3 improved properties nearby. The closest
3 house, she said, was on Crane Road and the 200-foot setback was maintained. The use should be looked
4 at as temporary in nature. Mining is not considered a health hazard under the Federal Fair Housing Act.
5 An appraiser, she said, would not mark down a property due to its proximity to a mine. She stated that
6 there is an overall need for the aggregate and interest in the overall project. They needed to get aggregate
7 to their plants. They might not have chosen this location except that there is aggregate to be mined and
8 haul routes to get them to their plants.

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10 Kuhlman indicated that the room was not full because no one had anything better to do on a Thursday
11 night. He stated that he needs the information, in writing, in order to proceed on the application. If
12 something was missing and he did not call it out, the first one to be accused of not doing due diligence
13 would be him. He did not feel that he was asking for too much. He needed the data, plans, and hard
14 facts. If EGLE did not need to be involved, he wished to get that information in writing.

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16 The chairman redirected the matter to the Planning Commission members. He inquired as to whether
17 there was any comment or deliberation on whether the application was complete, which was the
18 threshold question to be answered. Seeber stated that if it was determined that the application was
19 incomplete, the Planning Commission would be required to provide a list of documents, data and/or items
20 that were missing. She indicated that at the time of special use approval, the Planning Commission may
21 request additional documentation, engineering studies and the like. If the applicant did not provide the
22 requested information, the Township could get the work done by consultants and charge the costs to the
23 applicant. Butchbaker moved, supported by Butts that the Planning Commission finds that the
24 application was incomplete. The chairperson asked for details on what information was needed. The
25 members agreed that the following were needed to evaluate the site plan:

- 26 • Traffic study, current traffic volume, proposed additional volume of traffic per day and
27 information on impact of additional traffic on area, distances to schools and impact on school
28 routes; the impact of additional traffic on the road surfaces, and the number of trucks per day;
- 29 • Proposed haul routes;
- 30 • A hydrogeological study. The water table in the area is quite high. The applicant is indicating that
31 it will go to the water table or 30-40 feet. What would be the impact on the existing wells? What
32 would be the impact on groundwater and underground water flows?
- 33 • A property values study for assessment of economic impact on property values if the mine was
34 placed in the area.
- 35 • Additional soil borings and data. Information on the type of aggregate to be mined, how deep it
36 was to be mined, and the need for the particular product in the market.
- 37 • Wildlife impact study.
- 38 • Endangered species study.
- 39 • Detailed reclamation plan, including details of resultant property after reclamation has taken
40 place, timeline.

41 The chairman called the question and the motion passed unanimously.

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43 **Public comment.**

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45 The chairperson explained that since the Planning Commission had made a determination that the
46 application was incomplete, the matter would not be moving on to public hearing at this time. There
47 would be no decision on the application at this meeting. He invited members of the public to comment.

1 Mary Fosdick stated that she lives on Fosdick Street. She and her family have farmed the area for 150
2 years. Her children and grandchildren would inherit the farm and keep on farming. It breaks her heart to
3 think of a gravel mine making an invasion on their property and wells. Her granddaughter lives right on
4 the path of the proposed mine and she would live with a giant hole in the ground next to her.

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6 Cynthia Hemmingway stated that she was opposed to the gravel mining operation.

7
8 Kay Blough stated that her mother that lives near the site has a medical condition in which she requires
9 breathing treatments. She lives on the corner of Fosdick and Decatur Roads. If a gravel mine were to be
10 approved in the area it will be detrimental to her mother's health. Presently, her mother has not been
11 outside in years because every time she goes out, she ends up in the emergency room with an inability to
12 breathe. Her father had Parkinson's and dementia. Her mother had lymphoma from the use of Roundup.
13 At one time, Roundup was considered safe and now we know that it is not. While Blough is not one to
14 get actively involved in matters, the health of her family caused great concern. The applicants have no
15 morals. It is all about greed. She does not live in the area any longer. She asked the current members of
16 the board not to approve the application by manipulative people. It was a blatant grab for greed in her
17 mind. She was concerned about traffic. The large gravel trucks will be a detriment to the intersection
18 and will cause death. She asked the Planning Commission to do the right thing and stop the plan of
19 destruction. The evil men will live after them. They will be held accountable.

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21 Brenda Blough stated that she and her husband live directly across from where the aggregate mine was
22 proposed. First, she inquired, would the members want a gravel mine in front of their house? There
23 would be noise, dust, and harmful silica dust exposed. She inquired as to dust control measures. She
24 was worried about her animals breathing in the dust. She was concerned about the traffic. Large trucks
25 would be hard to see around and she would probably end up with a car in her yard or house. Her mother-
26 in-law lives across the street. It is hard to turn onto Decatur Road already. She voiced concern about air
27 quality, water quality, wells running dry, and the location of the driveway. One board member, she stated,
28 had already been given a personal tour. That is being kept quiet. One neighbor is on oxygen. No one
29 wants to live across from an ugly pit. She will be dead before the mining is done. She doesn't want to
30 look at a berm. Greedy people were inflicting property value loss on economic detriment on innocent
31 people.

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33 Amber Hoover from Hy Grade Materials thought that she would have longer to talk. The Planning
34 Commission does not operate in a normal fashion. She stated that she appreciates the concerns and cares
35 about the feelings of the neighbors. She grew up in gravel pits. This is a family-owned business started
36 by her father, and she and her brother took it over. It is hard for her to hear personal attacks on her
37 family. Sometimes the applications go poorly and sometimes they go smoothly. Most of them go
38 smoothly. The gravel mine is not as bad as everyone is expecting. There would be no ground water
39 effects from the operation. She wanted to share some details. No wells would be drawn down. The
40 people working in the pit are checked and monitored twice a year for silica levels and dust. She will get
41 an official study if one is required. Her family's gravel pits have never had a problem. The state "MSHAW"
42 heavily regulates the pits. If anyone drove to the meeting on a road, they need gravel. There are great
43 people that have entered into the application process thoughtfully. Gravel is protected for a reason. She
44 wouldn't choose a pit in this location.

45
46 Todd Courier and Chris Courier declined an opportunity to speak when called upon by the chairman.

1 Michael DuPaul stated that he wanted to second some of the things that have been mentioned. Fine dust
2 travels and can aggravate asthma. This property is very close to Russ Forest, which is a lovely park that
3 is heavily used since the advent of COVID. He was concerned about the affects on the park. There would
4 be additional noise. He did not believe that there was no impact on property values. People can look up
5 houses for sale on google earth and are likely to pass over one that is located near a gravel pit. He was
6 concerned about dust control and groundwater effects. The chemicals might seep into the ground and
7 affect the groundwater that way. Diesel fuel spills will affect the water table, as will salts used on the
8 roads. He asked the Planning Commission to look carefully at the application.

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10 Andy Monroe stated that he has been working on a crusher since 2000. He is pretty aware of what goes
11 on at a gravel pit. None of his concerns were covered. The state says that the Township can only regulate
12 the hours and dust control. He was concerned about aggregate stockpiles and the affect of high winds
13 outside of the hours of operation.

14
15 Brock Yordy stated that he grew up in Volinia Township. At some point he will own the property he grew
16 up on. His family is in the business of drilling wells. Well drillers have significant environmental
17 regulations. There are good studies that can be requested and that should be done. The Planning
18 Commission and residents can trust the science, but they have to have the science in order to consider it.
19 He stated that Volinia Township residents need clean air, clean water and a good quality of life. There
20 are OSHA behavioral standards for the safety of ground water. The applicants need to provide the science
21 so that the Township can consider it. Everyone needs roads, and therefore gravel. He urged the group to
22 require the studies.

23
24 Michael Dell passed on an opportunity to address the Planning Commission.

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26 Sherry Shelby recently bought a farm in the area. She did not think there was another community as
27 warm and homey as what she has found in Volinia. The big boys can laugh at the area. She does not have
28 a fancy house. If she wants to sit inside and watch I Love Lucy reruns she should be able to. She voiced
29 concerns about herbicides and pesticides.

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31 There were no other persons wishing to address the Planning Commission. Kuhlman announced that all
32 of the written correspondence would be retained as part of the record. Butchbaker moved, supported
33 by Ross to table consideration of the application to July 19, 2023 commencing at 6:00 p.m. at the Cass
34 County Road Commission offices. Seeber stated that the members of the Planning Commission were
35 appointed, not elected. They were in a sense volunteers. They have a lot of heavy lifting to do and a lot
36 of technical matters to be considered. Kuhlman announced that since there was a recess to a certain
37 date, that no new notices would be sent and the public hearing would not be re-noticed in the paper.
38 The chairman called the question and the motion passed unanimously.

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40 The Planning Commission meeting was concluded at 8:40 p.m.

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Synopsis of Actions
Volinia Township Planning Commission

The Volinia Township Planning Commission undertook the following actions at its meeting of June 15, 2023:

Determined that the mining/mineral extraction site plan application of Top Grade regarding the property owned by the Robinsons at Fosdick and Decatur Roads within the Township was incomplete and directed the Township to provide a list of additional information required for the site plan review.

Took public comment on the application.

Recessed consideration of the application and the public hearing to July 19, 2023 at 6:00 p.m. at the offices of the Cass County Road Commission.

Respectfully Submitted,

Roxanne C. Seeber, Recording Secretary

Approved: 7/2/2024