



**SAUGATUCK  
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Saugatuck Township Regular Planning Commission Meeting June 4, 2018

APPROVED MINUTES

The Saugatuck Township Planning Commission met on June 4, 2018 at the Township Hall  
on Blue Star Highway, Saugatuck, Michigan

Present: Israels, Rowe, Lozano, Conklin, Prietz, Welk, Lane  
Absent: None  
Also Present: ZA Kushion

Call to Order At 7:01 p.m. by Chairperson Conklin.

**Pledge of Allegiance**

**Approval of Agenda-** Motion by Rowe to approve agenda, Prietz seconds. Motion passes by unanimous voice vote.

**Discussion of April 30, 2018 meeting minutes.** 4<sup>th</sup> page- Last sentence should be “pit already exists” Last paragraph remove second “are.” 5<sup>th</sup> page- 2<sup>nd</sup> paragraph- Remove the word “do.” Page 6- Public comment from Greg Hahn should be Greg Pond in two places. Last sentence- Change opposed to opposing. Motion by Prietz to approve April 30, 2018 meeting minutes as amended; Rowe seconds. Motion passes by unanimous voice vote.

**Public Comment –**

Public comment was closed on the sand mining issue at the last meeting. The Planning Commission amends that decision and states that if someone new wants to speak and hasn’t spoken before, has something new, or hasn’t submitted a written statement, they can speak during the unfinished business portion for the sand mining operation.

**Dale Harrison-** 3108 62<sup>nd</sup> Street- He is disappointed that there’s not more time allowed for public comment. Regarding the sand mine- the Zoning Enabling Act Addresses 3 main points- profit, the need for the sand and that there are there no serious consequences. The applicant has not proven his case there are no serious consequences.

**Mike Larsen-** Ganges Township- Mike is the undersheriff for Allegan Co. and his kids attend school here. He is asking the commission to do the research regarding Marijuana. Learn the difference between THC and CBD and explain what good this is going to bring to our community. What resources will we need to apply to the headaches this is going to bring to the community and its police officers? This community has nothing to gain from this.

**Public Correspondence-** Correspondence received from: Terry Klinge, Allegan Co. Road Commission, Cunningham Dalman and Foster Swift.

**Unfinished Business-** *Request for Special Approval Use to remove 400,000 cubic yards of sand and create a 3.5 acre pond at approximately 6400 133rd Ave (133rd and Old Allegan), Parcel number 03-20-012-005-20. This matter is being re-heard after rescission of the Planning Commission’s prior decision denying the application.*

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ZA Kushion researched bonds for sand mine reclamation-typically \$3,000 to \$5,000 an acre. Most are \$5,000 an acre. Allegan Co. Road Commission did say there could be some deterioration of the local roads and they don't bond them. There are two other approved sand mines in the Township, one on 63rd street and at 62<sup>nd</sup> and M-89 was approved but it never happened. Israels asked for information from the DEQ- ZA Kushion requested it, but received nothing.

**Public Comment:**

**Tom Burgin-** 6117 Ravines Court- The sand mine is inconsistent with the residential use. There will be negative impact such as noise & dust; property values will suffer. There are health and safety issues. Inhaled silica dust can accumulate in the lungs and can cause silicosis. Crystalline silica is a carcinogen. Please protect our health & rights.

**Randy Schipper-** Attorney at Cunningham Dalhman – Believes they have not met the 4 standards. It is not harmonious with the surrounding residential area. Per the economist reports- home values within a third of a mile will drop 30%; within a half a mile 20%. It will place more demands on the roads and the Township will have to fix them. Per the Silva standard- can they prove there will be no serious consequences? There has been no evidence from the applicant that there is not a negative impact. There is evidence of health, noise and potential for ground water contaminations, along with pedestrian & safety issues for residents. They have not met their burden of proof.

**Larry Dickie-** 6108 Old Allegan Road. If the sand mining operation doesn't work out as proposed, (property doesn't sell, they don't get enough sand in the time allowed) how do you deny their desire to mine more or have more time? Their mine on 63<sup>rd</sup> is an ugly mess, but it's in an industrial zone. Neighbors, Ed and Camille Hudyma, retired at 133<sup>rd</sup> and Old Allegan. Both are in their 80s. Camille requires daily in-home care and he worries about the added stress and confusion for them brought about by this project.

**John Parker-** 6113 Ravines Court- Presents a letter on behalf of the Ravines Homeowners Association asking to please deny the special use permit. We are a resort community and this project is not in line with existing land uses; it will drop property values & impact future home sales. RJ Prospects have no intension of developing the property. A ground water study should be done. Child safety is a concern with the increased traffic there are potential health issues from silica dust. Please deny based upon the Michigan Zoning Enabling Act.

**Robert Miller-** 6084 Old Allegan Road- We moved to the area due to the peace and quiet. It's a betrayal to the residents that live in the area to approve this application.

**Eugene Adamczyk-** 6045 133<sup>rd</sup> Ave.- Appeals to the conscience of the board. You've heard the legal and community arguments, now it's up to you. We have to trust in your judgment.

**Tom Shashaguay- 6153 Old Allegan Road** – Would like to know how Ross vote if his mom lived downwind of the proposed sand mine.

**Ross Veltema-** RJ Prospects / Top Grade Aggregates- The property is a sand mine today. It was purchased by *The Ravines* to finish their project. It's an open sand mine now and any adverse health symptoms (asthma) would be occurring now. He purchased the lot because he has experience with sand mining and sand mine restoration. He wants to make the pond, sell some lots on hole 14 and make it harmonious with the area. Initially they asked for 125,000 yard project. A hydro report was done and the site can support a pond but it needs to be deeper. The pond

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would not create any issues with the wells. A study was done previously on noise & dust in an open field and it's showed very low impact. They don't need a permit to use the roads today with their trucks. They have made concessions for safety concerns.

**Jim Dusma**- Attorney- Standard and burden of proof has changed. And it's easier to obtain these permits. A lot of studies have been conducted (noise, dust, water) and there are not going to be very serious consequences. The property value studies they have turned in have been done by appraisers, not economists. Your planner and Township attorney recommend approval. You can put reasonable conditions on what little impact there will be.

**Board Discussion-**

Conklin- Initially we agreed it didn't meet two of the SAUs but the State has a trump card. We have basically 3 options: 1. Postpone with good reason; 2. Approve the sand mine with parameters & conditions; 3. Deny it and let it go to court and if it's approved in court, we wouldn't be able to impose any conditions.

Prietz- Read the property value reports that have been submitted and the report using the Hite Report was completely contradicted by Top Grade's property value reports which is supported by other sand mines in the area that Top Grade had done.

An audience member is ejected who swore loudly.

Prietz continues that surrounding properties maintained their value then actually rose in value upon completion. Noise and dust per the report has minimal impact and the parcel is zoned agricultural- if there was a farm there, noise and dust would be similar. He believes we should approve the permit so we can have the conditions on it.

Lozano agrees that it's in our best interest to have some control over what happens. Rowe agrees we need to have some say. There's a legal memo and a ZA memo encouraging approval. If it goes to court it's out of our hands.

Israels- Believes we represent the Township and if it goes to court, we will have the ability to put controls on the project. She discusses some of the conflicting data in on the Phoenix Center paper #53 and its attempts to discredit the Hite Report. The report states that homes are best located a mile or two away from quarries. In looking at the four standards, harmonious is an ambiguous term and essential character of the area will be changed; property values will decrease, the roads will be impacted and noise is an issue. Silca dust will affect the neighbors. She is not satisfied in saying the burden of proof has been met.

Conklin agrees with all of Israels points and ZA Kushion and the Township attorney still say it should be approved. Lane states Top Grade knew the zoning of the land when they bought it. If they are denied today and take it to the court, maybe the court will deny it as well.

Welk- Makes a motion to approve *Request for Special Approval Use to remove 400,000 cubic yards of sand and create a 3.5 acre pond at approximately 6400 133rd Ave (133rd and Old Allegan), Parcel number 03-20-012-005-20*. Subject to conditions A-G in the *Dickinson Wright* memo.

Conklin suggests adding a berm for noise reduction. Veltema states there's an existing berm along 133<sup>rd</sup> and they will be digging below grade already, muffling some of the noise. They are planning on putting trees on the berm along 133<sup>rd</sup>. To the East, it's wooded. If a berm is added, the slope to the pond would be steeper.

Discussion regarding the Dickinson Wright memo: the date for project completion date - May 1, 2020 is stated, but

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the actual date is January 1, 2021.

There's nothing in the proposal about the bond. Let's amend and add a condition- *Letter H* for \$5,000 per acre bond for (10 acres approximately) of disturbed area. Prietz suggests adding a 2 million dollar liability policy if area wells were to be contaminated. RJ Prospect already has a liability policy already. The *Crockery Township Ordinance Page 19-42 Letter U* is referenced as an additional condition. *Letter I* is added in the revised motion.

*U. Insurance - Prior to the issuance of a PMR permit, the applicant shall file with the Zoning Administrator a site-specific liability insurance policy of not less than Two Million and no/100 Dollars (\$2,000,000.00) per occurrence for all liability claims arising out of the mineral removal activities. The liability insurance shall cover property damage and bodily injury resulting from surface and/or subsurface mineral removal activities and shall name Crockery Township, its elected and appointed officials, and employees as additional named insureds. Said insurance shall provide an endorsement that provides that the general aggregate limit of the operator's commercial and general liability apply separately to the site. Failure of the operator, or any persons, firm or corporation named in a policy to maintain such insurance policy shall be cause for revocation of the PMR permit.*

Conditions to be added to the Special Use Permit:

- A. Before excavation commences, the applicant must obtain all required federal, state, county, and local permits and approvals needed to conduct the mining operation, including but not limited to: (1) a wetland permit from the MDEQ or a letter stating that such permit is not needed; and (2) a driveway permit.
- B. Trucks traveling to and from the site must take 133rd Avenue to 60th Street. Truck travel to and from the site shall occur only between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. The applicant shall keep 133rd Avenue free and clear of sand spillage from its trucks.
- C. The applicant must construct a fence or post warning notices in the vicinity of the pond, in accordance with the Township's man-made pond ordinance, Section 40-637.
- D. By January 1, 2021, excavation on the site shall have ceased and the site shall have been seeded and graded in accordance with the S.E.S.C. & Grading plan dated December 4, 2017.
- E. The mining operation shall comply with all other applicable Township ordinances, including but not limited to Section 40-740.
- F. The mining operation shall be developed in accordance with the site plan submitted in conjunction with the application.
- G. The mining operation shall be conducted in accordance with all representations made by the applicant in the special use application dated September 19, 2017, except as expressly modified by these conditions.
- H. A bond shall be obtained for \$5,000 per acre of disturbed land of approximately 10 acres.
- I. The applicant shall have a 2 million dollar liability policy (reference Crockery Township Zoning Ordinance Page 19-42, letter U) with Saugatuck Township, as additional insured to cover any area water wells that are contaminated.

Motion made by Welk; Seconded by Prietz

Roll Call Vote - Rowe, Lozano, Prietz, Welk and Conklin all vote yes. Israels & Lane vote no.

Motion Passes 5:2

**New Business:**

*Public Hearing to amend zoning section 40-72 of the code of ordinances, regarding jurisdiction of the Zoning Board of Appeals.*

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ZA Kushion- SAUs, PUDs and rezoning are currently appealed to the ZBA. He would like to change this. The effect is the ZBA becomes a second planning commission without all of the information and public hearings the Planning Commission has. The matters can go direct to Circuit Court and it would be a time and cost savings to the applicant and Township. Various local municipalities do this already.

**Public Hearing:**

**Dale Harrison**-3108 62<sup>nd</sup> Street- The Township wants to eliminate the right to appeal of the residents. Does this eliminate the state standard? What's the rights to appeal? Conklin asks if there is a Michigan Statute that says these have to go to the ZBA. Harrison replies no, the Zoning Enabling Act delegates to the Township how to handle these issues. Conklin clarifies that Mr. Harrison agrees PUDs and rezoning should bypass the ZBA but not the SAUs. He answers yes.

**Jim Dusma**- When we looked at the Saugatuck Township ordinances it was a surprise that they had to go to the ZBA to appeal the Planning Commissions' decision. The ZBA should review dimensional items like side setbacks etc. What happened in the past regarding rezoning is petitioners went to court to challenge the decision and the courts did not like it. On the special land use- I don't see many ordinances where you go from the Planning Commission to the ZBA.

**Public Hearing is closed.**

**Board Discussion-**

Do we need more examples of municipalities who do this? ZA Kushion is willing to find more. Most board members support this as written. Rowe doesn't recall a single time when an SAU or zoning change has come to the ZBA. Given recent developments, ZA Kushion is trying to avoid these issues in the future. Rowe makes a motion to approve as written; Welk seconds. Motion approved by unanimous voice vote.

**Public Comment:**

**Terry Breen**- 6093 133<sup>rd</sup> Ave., roughly 50 yards from the sand mine. His wife is the one with chronic asthma and his 90 year old mother lives with them. He's angry and scared for his wife and mother and doesn't think they have proven that there wouldn't be serious consequences.

**Board Discussion-**

ZA Kushion- The only thing on the agenda for the next meeting is to look at site plan review for North Shore parcels that were zoned commercial. Medical marijuana will be heard in July at the earliest. ZA Kushion wants to have a Michigan State Police Drug Enforcement officer speak to the commission regarding the medical marijuana issue so we can hear both sides of the story. ZA Kushion will check to see if he can come to the June 25<sup>th</sup> meeting. Israels and Lane will not be here on June 25<sup>th</sup>.

The person, a local realtor, that was ejected from the meeting threatened anyone that voted yes on the sand mine proposal. Please watch for and report any property damage. He also verbally threatened chairperson Conklin and she's advised to file a report with the police.

**Next Planning Commission Meeting- June 25, 2018 at 7:00 p.m.**

**Meeting adjourned at 8:55 p.m.**

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Brenda Williams, Recording Secretary

1. Motion by Rowe to approve agenda; Prietz seconded. Motion approved by unanimous voice vote.
2. Motion by Prietz to approve amended minutes; Rowe seconded. Motion approved by unanimous voice vote.
3. Motion by Welk to approve *Request for Special Approval Use to remove 400,000 cubic yards of sand and create a 3.5 acre pond at approximately 6400 133rd Ave (133rd and Old Allegan), Parcel number 03-20-012-005-20 with the addition of conditions A-I as discussed.* Prietz seconds. Roll Call Vote - Rowe, Lozano, Prietz, Welk and Conklin all vote Yes; Israels & Lane vote No. Motion Passes 5:2
4. Motion by Rowe to amend zoning section 40-72 of the code of ordinances, regarding jurisdiction of the Zoning Board of Appeals. Second by Welk. Motion approved by unanimous voice vote.
5. Meeting adjourned at 8:55 p.m.