

**LOWELL CHARTER TOWNSHIP PLANNING COMMISSION
REGULAR MEETING AND PUBLIC HEARING
January 8, 2018**

PRESENT: Blough, Batchelor, Simmonds, Clements, Edwards
TOWNSHIP PLANNER: Bob Toland
CITIZENS IN ATTENDANCE: 11

The regular meeting of the Lowell Charter Township Planning Commission was called to order by Chairperson Simmonds at 7:01 pm.

APPROVAL OF MINUTES:

The Minutes of the Regular Meeting of December 11, 2017 were presented for approval. Mr. Edwards moved to approve the Minutes as presented. Seconded by Mr. Batchelor. All in favor and the Minutes of December 11, 2017 are approved.

CHANGES OR ADDITIONS TO THE AGENDA:

Mr. Simmonds moved to add the matter of Blue Sky Farms as Old Business, item 7a, with the Special Land Use Standards for Fairgrounds becoming item 7b. Mr. Edwards raised the question of conflict of interest with Mr. Blough in adding the Blue Sky Farms matter to the agenda. Mr. Blough agreed and recused himself. The motion vote was then taken with two in favor, two opposed, and the motion failed. The Agenda remained unchanged. Mr. Blough rejoined the other members of the Planning Commission.

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA:

The meeting was opened to public comment at 7:05 pm. No one spoke. Public comment was closed at 7:05 pm.

PUBLIC HEARING

Tip Top Gravel – Special Land Use

Arrival of the engineer for Tip Top Gravel was delayed due to weather. The Planning Commission postponed commencement of the Public Hearing until the arrival of the Engineer, and moved on to its next matter.

OLD BUSINESS

Special Land Use Standards for Fairgrounds

Chairperson Simmonds indicated that Mr. Toland had prepared Draft #3 of Fairground Special Use Regulations dated January 8, 2018, and that Mr. Edwards had offered a version structured differently. Both documents are intended to direct discussion of the issues involved with

Fairground Standards. After some discussion Chairperson Simmonds indicated that Mr. Toland's document would be used to organize the pending discussions. Mr. Edwards also confirmed that items in the Ordinance for Fairgrounds needed to be repeated in the standards.

With arrival of the Engineer for Tip Top Gravel, Chairperson Simmonds moved to suspend further discussion of the Fairgrounds Standards until after the public hearing. Motion seconded by Mr. Clements. All in favor and discussion was suspended.

COMMENCEMENT OF PUBLIC HEARING

Tip Top Gravel – Special Land Use

The Public Hearing was commenced at 7:18 pm. Chairperson Simmonds explained the procedures for the public hearing to those present. Mr. Clements read the Notice of Hearing into the record.

Todd Olin, Managing Member of Design & Construction Services, LLC presented on behalf of Tip Top Gravel. Al Matthews was also present on behalf of Tip Top Gravel.

The request is to extend current mining operations onto a new parcel South and East of current operations. It was noted that the current mining operation had been in place for over 50 years. There is currently a sand and gravel processor on the old mining property, and 50 truck trips per day. These resources will be utilized by the new parcel so there will be no increase in processing or truck activity. Water on the old land is located on clay 'lenses', allowing mining operations close to the water without a problem. There had been some prior mining on the new parcel, and no underground water was found. There is currently a 50-60 foot drop on the new parcel, from West to East. Operating hours will be as allowed under the Ordinance, which is 7:00 am to 7:00 pm Monday through Friday, and 8:00 am to 1:00 pm on Saturday.

There are plans to move the current processor onto the new parcel, once the new parcel is excavated to a depth that will moderate the sound and sight of the equipment.

The Grading and Reclamation Plan shows the slope that will result. A 1 to 4 slope is expected after grading. There will be a 150 foot setback from the new parcel property lines on the East and South. Currently there are trees on these two sides of the property (25 feet on South side, 75 feet on East side) and these are expected to remain in place. There are two conveyors, a sand and rock processor and washing equipment which would be moved to the new parcel after sufficient excavation. Dust is controlled by application of water. Access to the parcel for sand and gravel removal will be from the North. If water is encountered, they will be required to address it.

Mr. Olin indicated that topsoil would be stripped incrementally from the parcel as mining proceeded, and stored on the old mining property for later use in reclamation on the parcel.

Next reviewed was an engineering report prepared for the Township by Land and Resource Engineering dated December 15, 2017.

Mr. Clements noted that discussion of the combination and splitting of land areas in this report is in the form of a recommendation and not a requirement for granting of a Special Land Use.

Mr. Olin pointed out that there is only one house within 500 feet of the parcel, and it is 75 feet below the parcel.

Mr. Edwards asked about a gate to control access. Mr. Matthews outlined the current arrangement, with a gate at the old mine entrance (which would be used to access the new parcel) and a truck holding area off M-21 for trucks waiting for access at 7:00 am. There is also a scale and office located nearby. He noted that there are some people allowed onto the old mining property after 5:00 pm.

Mr. Olin asked that proof of liability insurance of at least one million dollars be made a condition of the granting of the Special Land Use.

Mr. Olin also does not believe that the EPA needs to review the new parcel, as there have been no problems on the adjacent old mining operation, and there is nothing unique about the new parcel. He also felt that the size and location of water features falls under MDEQ regulations. He pointed out that there is a 360 foot Consumers Power Company easement immediately East of the new parcel, and that the tree stands mentioned previously are very dense.

Mr. Olin discussed the absence of trails or pedestrian paths on the property, that no new permanent lighting is proposed, lights on the equipment is only needed in the wintertime, and that there were no security issues. Mr. Matthews noted that the Federal Bureau of Mines has regulations they are required to follow. Those rules allow a 1:1 or 1:2 slope where digging, and require temporary berming.

It was noted that concrete and asphalt were sometimes brought onto the old mine property for crushing.

Mr. Olin advised that the center of the parcel is its lowest point. As the ground is made up of sand and gravel, any water would naturally flow through.

Mr. Toland then presented the results of his Site Plan Review dated January 8, 2018. On Sheet C-3 he questioned the note indicating that the lowest point of the old mine was 690 feet, while the contour lines indicated a maximum depth of 666 feet. Mr. Olin indicated the correct figure is 666 feet. The maximum depth to the North would be close to this depth also, although it may be higher than this.

There is a 150 foot setback required under the current Ordinance. Tip Top Gravel would prefer a 100 foot setback be allowed in this case, referring to the current Timpson mining operations. Chairperson Simmonds answered that the Timpson property received a Special Land Use in 2004, in compliance with the Ordinance requirements in place at that time. Setback distances have since been changed to 150 feet in the ordinance.

Mr. Edwards presented a prepared list of questions to be entered into the record. Some minor editing of questions has been made for clarification. Applicable responses and comments have been added to the end of each question.

Mineral Mine Licensing Ordinance

- 1) Article 5 (B) existing mine to be exempt from this ordinance, that mine must have been in full compliance with the ordinance as amended when the ordinance became effective. How do we know? Do we have a report?
- 2) Article 6 (5) the question is are we going to waive “no on site crushing of materials such as gravel, stone and rocks shall be conducted on the property.” If we are going to waive this requirement and Sec 22.02 (d) (5) of the Township ordinance which says the same thing, why is this provision in the ordinance and in the licensing for Mining Ordinance? Applicant indicated they may request a variance to allow crushing on this property, if needed.
- 3) Article 7 APPLICATION CONTENT: A.5 “a description of the mineral to be removed and the estimate of the total quantity and annual quantity to be removed is missing from application. However in one of letters it states 420,000 cubic yards are to be mined. What is being mined? Needs to be stated. There was some discussion of whether responsive letters are part of application.
- 4) Article 7 A.12 “state whether materials will be brought onto the site? If I recall the applicant stated that concrete was brought onto site? We should make it a condition that no outside materials are brought into new mine. Applicant stated it will not bring concrete or asphalt onto the parcel for crushing.
- 5) SITE PLAN scale is acceptable but needs to be certified by Registered Civil Engineer. Applicant said they would get the Site Plan certified.
- 6) Site Plan (d) Natural features of the parcel including wooded areas, wetlands, bodies of water and the location and direction of all water courses which may be affected or created by mine need to be shown. Will Creek be affected? Applicant response is that there is no water on the parcel, just surface flow to the East towards the abutting Consumers Power Company property. Excavation on North will drain water that direction where it will soak into the ground.
- 7) Site Plan (g) Estimated water table depth. This seems to be a point between both applicant and Township engineer. Applicant stated that there is no water on parcel.
- 8) Site Plan showing how the mine or new mine is going to be mined including (b) phasing - place of beginning and direction of mining needs to be shown. It was noted on the Site Plan that mining would begin at the North end of the parcel. Reference Applicant letter of January 4, 2018.
- 9) Site Plan (c) Is the grading plan the FINAL elevations? Requirement in the ordinance is 2’ intervals, my drawing shows 5’? Applicant needs to verify and change if necessary.
- 10) Reclamation Plan is completely absent. We now have it.
- 11) Article 9 REVIEW AND APPROVAL or DENIAL (D) (1) all requirements of this ordinance will be met (4) will not negatively impact ground water - wetlands - this is a point that needs to be resolved by MDEQ.
- 12) Article 14 - entrances shall have a gate and there will be room for trucks waiting to get into the mine, it shall be locked during evening hours and name and phone number will be posted. The existing gate at existing mine will be used.

- 13) Article 15 2nd paragraph - Mineral crushing, processing and transport operations - this does not coincide with Article 6 (5). Need to resolve question of what is 'crushing'. Mr. Blough advised that there was a difference between rock crushing and rock processing. Mr. Batchelor agreed that the operations proposed are probably rock processing, and that a letter from Mr. Olin should correct the prior references to rock crushing. The crushing operations will be only on the old mining land, will be of concrete and asphalt only, and will use hired equipment once a year.
- 14) Article 16 The driveway shall be a 66' easement in width minimum right of way - this is hard to ascertain based on the drawing - if scale is correct the drive is woefully short of 66' in width. Chairperson Simmonds pointed out that all of the drive is on the old mining property.
- 15) Article 17 Access road in to the site, is this now a licensed site?
- 16) Article 22 - show location of materials being brought into mine. Concrete and asphalt will not be brought into new mine. This should be included as a condition.
- 17) Article 22, again - crushing in Article 22 does not match up with Article 5 - this begs the question is there something about crushing, stones, gravel and rocks?
- 18) Article 36 Duration - this is an optional requirement on the license. (A) Not to exceed?
- 19) Article 41 Renewal of license or permit License will be five (5) years. Annual review will be in one (1) year intervals. Items A through G of Article 41 talk about the required documents needed to renew license. Question is, do we want to have the review of the SLU Permit coincide with the renewal of the license? Chairperson Simmonds stated that there would be annual reviews in addition to 5-year renewals.

Design Consultant letter (January 4th-2018)

- 1). Page 2 first paragraph, "WE do not believe ground water will be encountered on the subject property, and there will be no lake created as a result of mining. "Mr. Matthews indicated at last meeting that he wanted to retire onto this property and have a lake." Mr. Matthews stated that no lake will be on the parcel.
- 2). The new land is a relatively small increase in the land being mined for gravel. Article 7 of the Mining ordinance indicates that quantity of minerals to be mined needs to be indicated. Right now based on information provided the new parcel represents 20% increase in mining operations $15.7A/78A = 20\%$ The 78A is when you take $130A \times 60\% = 78A$. So without knowing what is being mined currently we cannot tell if this is a "relatively small increase" in land being mined for gravel or not? It would seem that it would be? It was determined that this would not be an issue.
- 3). The entrance was constructed and conforming in accordance with MDOT and KCRC standardsthis was in 1978.....our ordinance says 66' wide easement. My recommendation would be that since it is a State highway that MDOT review the drawing and make their recommendations based on MDOT standards of at least 2001 or the Task Manual of 2016. Chairperson Simmonds stated that the entrance to the new mine is via the existing mine therefore access from M21 does not require an MDOT review.
- 4). On 3rd page (5) applicant is indicating that there are small, non regulated pockets of wetlands to the west, but this proposal will not impact existing waters .Mr. Edwards recommended that there be an MDEQ review. Applicant responded by saying there are no wetlands on the parcel.

5). On 3rd page item (6) applicant makes the statement that “there will not be any significant impact on the natural environment. Please note that this property was already mined at one point in the past.” Question is, WHEN? Pre or POST October 2011?

Design Consultants letter of December 4, 2017

- 1). First page, clarification needs to be made in actual size of parcel. Is it 13.7 or 15.76 Acres? Consultant indicated that it was a typo and the parcel is 13.76 acres. This correction should be documented.
- 2). Page 2 third paragraph, clarification needs to be made as to where the overburden material will be stock-piled. Overburden material will be placed in the existing mine on the north lot line of new parcel.
- 3). Page 2 again in third paragraph, if we have determined that “crushing” will be allowed - HOW OFTEN? Mr. Clements asked how often crushing currently occurred. This happens once per year. Chairperson Simmonds stated that this activity happens on the old mining property only.
- 4). Page 2, 4th paragraph...applicant states that no anticipated significant fluctuations in the number of trucks - is this an MDOT issue? How do we know how many trucks are entering and exiting? Or do we care?
- 5). Bottom of Page 2 the last paragraph....I want to draw to the attention of the applicant that the new property cannot be developed for residential use based on our existing ordinance. Article 19 states that a “private streets serve a minimum of 5 lots. Based on the number of acres of land the maximum number of 4 acre lots will be 3. $3 \times 4 \text{ acres} = 12$is it 13.7 acres or 15.7 acres? Applicant said that the entire mine would be perhaps residential AG2 not just the new parcel.

Township Engineers report

- 1). 7.A.10 if crushing is allowed the applicant shall indicate type of equipment being used. Planning Commission may request a manufacturer data sheet if it is determined the activity proposed on the new parcel is ‘crushing’.
- 2). 7.A.12. Applicant shall indicate if offsite material is being brought in and where it is being stock-piled. Applicant said it would not be stored on new parcel.
- 3). 7.B.2(d) the stock pile locations shall be on the new parcel. Question/Comment: if the processing areas or stock-pile areas will be processed on the adjacent existing mine will this not then make the existing mine or that portion of the existing mine used for processing or stock-piling subjected to reclamation plan?
- 4). 7.B.2(g) Why the difference in their report? Based on the Township engineers report and the conflicting info in the applicants report, shouldn't the MDEQ weigh in? Applicant said water is not an issue on new parcel.
- 5). Article 22 on page 3, if we determine crushing is going to be allowed of stones, rocks and gravel, then shouldn't we limit the number of times crushing shall be allowed? Or is this an ongoing activity? Applicant advised that crushing of rock would occur daily.
- 6) Article 23 - Drainage. I agree with Township engineer. The applicant has indicated that neighbors are to every location with the exception of the East, but Consumers is to the East and

run-off shall be prevented from running onto Consumers property. The Applicant again noted that water from the parcel was not an issue.

7). Last page of Township engineers report, second paragraph.....”The applicant may also need to obtain a permit for the creation of the on-site lake/pond from MDEQ and if not that permit, the 303 for the determination of the wetlands.

8). Soil erosion permit from KCRC will be needed. Applicant said he was aware of the requirement. Acquisition of this permit should be a requirement.

Mr. Matthews noted that OSHA checks the mining operations every two years for sound levels and dust.

Mr. Batchelor asked how much of the parcel would be disturbed. He was told all of the parcel except the setback areas. Mr. Matthews stated that all mining on the parcel could be done in ten years, depending on demand.

Mr. Clements asked that matters such as property line and setback fencing be documented.

There being no further questions or comments from members of the Planning Commission, the hearing was opened to public comment at 8:57 pm.

Steve and Linda Uzarski – provided a history of past mining practices when the parcel was first mined by Tip Top Gravel, and a history of ‘not following the rules’. They expressed concern about sand flow and washouts occurring in the spring, from the parcel into Canterbury Creek on the Consumers Power Company land, which they lease. They indicated that there are trout in this creek. In the past there was a trespass by Tip Top Gravel onto one corner of their land, with gravel being removed without permission. When the Township became involved the gravel removal ended, but the hole left was filled in with scrap tree trunks. They are concerned about the company following the Ordinance this time, and about a gravel crusher being moved onto the parcel. They asked that a survey be conducted on the South and East sides of the parcel, clearly marked, and that there be a fence.

Marsha Henschke – suggested that the Uzarskis invite the Planning Commission to look at their property first-hand.

Tim Boltz – current owner of parcel under discussion. Has owned property for 15 years, and believes Tip Top Gravel did dig gravel from Uzarski land. He stated that there has been runoff from the parcel for a long time, and he doesn’t think that it reaches the creek.

Mr. Olin addressed the concerns of the Uzarskis. He agreed it was reasonable to survey the property line and the setback line. Mr. Batchelor asked that something be placed to show the property line. Chairperson Simmonds received clarification that there would be visible property line stakes placed, as well as for the 150 foot setback, which eventually would be fenced. He also noted that the Ordinance requires a 4-foot fence, with Mr. Olin indicating a 6-foot fence would be installed. Mr. Blough raised the point that various types of fencing were allowed (woven wire and chain link being among them). Mr. Batchelor supported putting a fence at the

property line. Mr. Olin agreed but asked that the fence be two feet back from the Uzarski property. Use of berms to mark the setback was suggested, but not liked by the Uzarskis. They emphasized their desire for clear definition of property and setback lines.

Mr. Matthews explained that the problems with the Uzarskis occurred when his father was still running the business. He apologized for the acts of his father, and indicated that he wanted to be a good neighbor, and would follow the regulations. He is also fine with annual reviews.

Mr. Edwards stated his appreciation of the apology offered by Mr. Matthews. He also returned to the consultant's letter and noted that a private street to the landlocked parcel would require five houses be served, and that the minimum lot size in this district would not allow that many lots on the parcel. Comment was also made about water flow reaching the creek. Mr. Olin indicated that there would be no runoff from the new property.

There being no more public comment offered, the public comment portion of the Public Hearing was closed at 9:27 pm.

There being no further questions or comments from members of the Planning Commission, Mr. Simmonds moved to close the Public Hearing. Motion seconded by Mr. Blough. All in favor and the Public Hearing was closed at 9:28 pm.

Tip Top Gravel indicated they would like to have a decision made at this meeting. Mr. Batchelor stated that he would like to see the fence added to the Site Plan as well as other matters discussed. Chairperson Simmonds also indicated that he was not ready to make a decision this evening. After discussion about available dates, Chairperson Simmonds moved to table the request of Tip Top Gravel for a Special Land Use for mining on the subject parcel, and to set a Special Meeting for January 24, 2018 at 7:00 pm at the Township Hall for purposes of discussion and possible decision on the requested Special Land Use. Mr. Clements seconded the motion. All in favor and the matter will be taken up again at a Special Meeting on January 24, 2018.

Return to Regular Meeting

Continuation of discussion of Special Land Use Standards for Fairgrounds

After brief discussion, it was decided to not pursue this discussion further this evening.

In response to public inquiry, Chairperson Simmonds summarized the status of the fairgrounds standards review, and added that it was expected to take a long time to complete these standards. He also indicated that no decisions had yet been made about a buffer zone at the front of fairgrounds property.

Items for Potential Discussion

None of these matters were discussed.

Commissioner Comments

There will be no workshop meeting this month.

There will be a Special Meeting on January 24, 2018 at 7:00 pm to address the Tip Top Gravel Special Land Use request.

ADJOURNMENT:

Mr. Batchelor moved to adjourn. Seconded by Mr. Blough. All in favor and the Regular Meeting of the Lowell Charter Township Planning Commission was adjourned at 9:56 p.m.

Submitted _____ Secretary

Timothy Clements

Approved _____