

Mason County Planning & Zoning Department

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June 6, 2017

Minutes of the Mason County Planning Commission special meeting held at 171 S. Amber Rd., Scottville (Amber Township Hall) on June 6, 2017 at 7:00 p.m.

MEMBERS PRESENT: Michael Shaw, Tom Hooper, Doug Robidoux, Janet Andersen, Frank Redmond, Cary Shineldecker

MEBERS ABSENT: James Wincek

OTHERS PRESENT: Mary Reilly, Cayla Christmas

The meeting was called to order at 7:00 p.m. by Vice Chairman Doug Robidoux.

The meeting minutes from May 23, 2017 were approved as presented with a motion by Janet Andersen and second by Tom Hooper. Motion carried, 6 yes 0 no.

Addition or deletions to the agenda: None

Conflict of Interest: Cary Shineldecker recused himself from item 3, Consumers Energy-Gloss Mitigation plan, and item 4, Consumers Energy- update on LWEF spring sound testing.

Public Comment:

Evelyn Bergaila stated she didn't understand why glare was not considered under mitigation. Ms. Bergaila stated the entire tower should be considered under mitigation as the tops of the tower have glare. Ms. Bergaila stated she was distressed by the sound testing letters and is concerned with the turbines being "throttled back." She stated Consumers may not know when the towers aren't working, which is concerning, or they may have "throttled" the towers back when they knew sound testing was being done.

Will Parsons asked when the roads are going to be fixed. Mr. Parsons stated the roads have been "torn up" from the trucks used by Consumers. Mr. Parsons is also distressed by the glare and noise at his property.

Jeanne Parsons quoted Consumers Energy's statements including, "no flicker... no noise." Ms. Parsons stated they are dealing with it now and Consumers should "tell the truth" about their towers.

Doug Robidoux closed the floor to public comment.

Mary Reilly stated she received correspondences related only to the applications.

Doug Robidoux opened the public hearing for application PZ17070, Jay Shillinger has

requested a special land use permit to conduct top soil mining in Amber Township at 180 S. Amber Rd. in the C-3 zoning district (parcel 001-014-023-00). Mary Reilly presented the proposed site plan, photos, and correspondence. There were 2 letters against, 2 letters in support, and 1 letter referring to effect on property values (Klemm). A portion of the staff report is below.

PROJECT DESCRIPTION: Jay Shillinger has filed a special land use to mine top soil on the parcel, where present. Approximately 6.7 acres will be retained as a forested area. Mr. Shillinger plans on leaving approximately 4 inches of top soil throughout the parcel. When the project is complete, he plans on selling the property for residential use (2-6 homes dependent on zoning approvals).

FINDINGS OF FACT:

1. This property has historically been used for row-crop farming involving planting, harvesting, etc.
2. Of the 29 acres, approximately 21 acres will be mined for top soil.
3. A 25' setback will be maintained to property lines, which accounts for about 1.5 acres of the total parcel.
4. The property will be disked to incorporate organic matter.
5. Topsoil will be mined and then stacked, sifted and hauled.
6. Stockpiles will be located generally near to the area being mined (within 100')
7. Approximately 6 months of materials will be stockpiled at a time.
8. Stockpiles will be seeded with a temporary cover crop.
9. The remainder of the field will be planted in a cover crop (rye, oats, etc.)
10. There will be "processing" of topsoil at this site with a shredder and/or screen (see attached photo of the machine).
11. Hours of operation (proposed) M-F, 7am to 7 pm, Sat 8am to 5 pm, no work on Sunday
12. Water and brine solution will be used to wet the haul road on an as-needed basis to control dust.
13. No gates/fences
14. The project will start with the first 150' (running east to west) on the north end of the property and then the west side (150' north and south). The goal is to work the areas closest to residences first, stabilize those areas then work toward the rear and east side.
15. The haul road will be located as shown on the site plan, it is located approximately:
 - 210' from residence to North
 - 140' from residence to south
 - 130' (entry point) to nearest point of Amber Township Hall
16. The recommended haul route (see Mason county Road Commission correspondence) is on north on Amber Rd. to US-10. There are 5 dwellings on the east side of the street and 2 dwellings on the west side, and Township Hall. Mason County Reformed Church is located at the corner of US-10 and Amber Road.
17. There are 14 dwellings adjacent to the proposed topsoil mining operation.

PHYSICAL SITE CHARACTERISTICS: The site contains elevations ranging from 666' to 674' above mean sea level (AMSL). The wooded portion of the property contains a County Drain—the Miller Drain. This area of the property will not be disturbed. The Drain Commission is aware of this application.

Mary Reilly read correspondence she received from Marge and Lance Christensen, Mary Johnson and Robert Thurow opposing top soil mining. Ms. Reilly read letters from Don Bradley and Mike Klemm. Dan Rhode also provided a letter in support of the top soil mining project (in file).

Cary Shineldecker motioned to accept the staff report into the file. Second by Tom Hooper. Motion carried 6 yes, 0 no.

Doug Robidoux asked Jay Shillinger if there was anything he wanted to add. Mr. Shillinger stated Mary did "a good job" and there was nothing he felt the need to add.

1 Doug Robidoux opened the public hearing.

2
3 Richard Quinn stated he already has to vacuum the dirt on his door from the church
4 project across the road. Mr. Quinn stated he is concerned with possible health risks of
5 breathing in the dirt and dust. Mr. Quinn said he can see why Jay Shillinger would want
6 to conduct top soil mining, but thinks it's a poorly chosen location.

7
8 Lynn Forbes stated he is concerned about his kids playing near the heavy equipment
9 and inhaling the dust. Mr. Forbes said he is concerned with Jay Shillinger keeping
10 promises after he just heard Consumers hasn't been keeping their promises.

11
12 Lori Powers stated Jay Shillinger is a liar. Ms. Powers said she has seen him drive his
13 personal vehicle onto the property and has been tilling and planting the field already
14 without permits. Ms. Powers stated there will end up being a pond in the field because
15 Mr. Shillinger will take out all of the dirt and leave a big hole. Ms. Powers wants her
16 house to remain in a residential area.

17
18 Allison Prince played audio from her cell phone of birds chirping in her backyard. Ms.
19 Prince stated she bought the property in 2014 for the quiet. Ms. Prince is also
20 concerned with the dust as she and her son have allergies.

21
22 John Hackett asked about the length of the permit. Mr. Hackett stated the project
23 sounds messy and risky.

24
25 Jon Powers claimed the project is located in a residential area and the well water will be
26 affected.

27
28 Will Parsons stated he would be concerned with the roads.

29
30 Evelyn Bergaila asked what the plans for work would be, including hours of operation
31 and how much of the property would be impacted at a time. Ms. Bergaila also asked if
32 Jay Shillinger would be required to purchase a bond and for what amount to ensure the
33 project is completed as planned.

34
35 Sherry Jensen stated she is concerned with the noise, dust, asthma and kids.

36
37 Sandra Lehgola said she will be closed in with the railroad on the south side and this on
38 the north and behind her house. She is concerned about the value of her house when
39 she tries to sell it.

40
41 Tom Edwards said he has COPD and opposes the project.

42
43 Richard Quinn stated the property stakes from Jay Shillinger's survey are in line with the
44 wall of his house. He questioned the accuracy of the surveyor that did the work.

45
46 Jim Osborne said "no" to the project.

1 Lynn Forbes asked if carcinogens from the top soil mining have been looked into.

2
3 Jay Shillinger asked to address the concerns of the public. Mr. Shillinger stated he has
4 planted oats and rye on the property because he is allowed to farm currently as the
5 property owner. Mr. Shillinger said he is going to keep dust down by reseeding piles and
6 stockpiling only what is needed for that year.

7
8 Jay Shillinger stated he will be working 1-2 days a year 7 am to 7 pm. Mr. Shillinger said
9 he will not be working those hours every day. He will be processing dirt and stockpiling
10 a total of about 5 to 7 days a year.

11
12 Jay Shillinger said he may drive his personal pickup truck on the small access to the
13 property on occasion. The larger trucks and equipment will strictly use the larger access
14 to the south.

15
16 Jay Shillinger stated the loudest component of all of his machinery will be the backup
17 alarm on the tractor that will be used for about 2 days a year.

18
19 Jay Shillinger said he was going to start next to the homes on the north side in order to
20 work away from them. Mr. Shillinger stated he "did not want [his] neighbors to dread the
21 work coming toward them." Mr. Shillinger said he "wants to be a good neighbor."

22
23 Jay Shillinger stated his trucks will not be operating on the road until the frost laws are
24 dropped.

25
26 Jay Shillinger said he hired surveyors and was not present at the time they surveyed.

27
28 Allison Prince stated she was concerned with "supply and demand" increasing the
29 amount of operation and hours of operation. Ms. Prince said she wants to make sure
30 soil amounts taken and left will be measured.

31
32 Jay Shillinger stated Richard Plowe, the Soil Erosion Administrator for Mason County,
33 would be on site to regulate rehabilitation.

34
35 John Hackett claimed if the soil mining permit is issued, "who's to say it can't turn into a
36 clay mine or sand mine?"

37
38 Doug Robidoux closed the public hearing.

39
40 Doug Robidoux stated by Michigan law, the Planning Commission cannot deny the top
41 soil mining permit, but they can regulate the project.

42
43 Cary Shineldecker asked Jay Shillinger why he was currently tilling. Mr. Shillinger stated
44 the field was covered in weeds. Mr. Shillinger said he would like a cover crop and not a
45 weed crop. Mr. Shillinger planted rye and oats.

46
47 Cary Shineldecker asked what the plans were to construct the haul road/driveway for

1 the main access.

2
3 Jay Shillinger said they are stripping the top soil on the driveway surface, building to
4 road height of Amber road and rounding the driveway to the north. Mr. Shillinger said
5 this was at the recommendation and request of the Road Commission so the large
6 trucks are not doing a 90-degree turn on the roadway.

7
8 Cary Shineldecker asked what will be used for dust control on the access road. Jay
9 Shillinger said a mixture of water and brine will be applied; he has a small unit he uses
10 to apply the brine and water.

11
12 Cary Shineldecker stated he thinks 7 am to 7 pm for hours of operation plus Saturdays
13 so close to houses is excessive. Mr. Shineldecker suggested hours of operation be
14 reduced to 8 am to 5 pm on weekdays only. Mr. Shineldecker stated the hours of
15 operation don't need to be left open when Mr. Shillinger is only planning to work 12
16 hours 1-2 days per year.

17
18 Mike Shaw asked Jay Shillinger if he would be working at the site Monday through
19 Saturday and for how long. Mr. Shillinger stated he would only need to be there for 1-2
20 days for that length of time.

21
22 Mike Shaw asked how many piles of dirt would Jay Shillinger have at a time. Mr.
23 Shillinger stated he would only have 1 pile of dirt to work off from at a time.

24
25 Mike Shaw asked how long would the stockpiling process take. Jay Shillinger stated
26 that would take the 1-2 days. Coming in and loading dirt to take it to various sites will
27 be as needed.

28
29 Mike Shaw asked if the pile itself would be seeded. Jay Shillinger said it would be
30 seeded to control the dust from the pile.

31
32 Mike Shaw agreed with Cary Shineldecker to reduce the hours of operation and prohibit
33 weekend hours of operation.

34
35 Frank Redmond asked if there would be any odor involved with the operation. Jay
36 Shillinger stated the only odor would be from his diesel machines.

37
38 Tom Hooper agreed the hours of operation need to be more limited to line up with a
39 normal work day due to the residences nearby. He asked how often the shredder would
40 run and how noisy is it. Jay Shillinger replied the shredder would need to run 1-2 days in
41 the spring and 1-2 days in the fall and would be on the property no more than 1 week
42 per year.

43
44 Janet Andersen agreed with the other commissioners about the hours needing to be
45 reduced. Ms. Andersen stated the operation should be done in a timely manner and the
46 truck traffic will need to be mindful of speeds in the area.

1 Doug Robidoux agreed with the statements of the other commissioners.

2
3 Cary Shineldecker stated he chose the hours of 8 am-5 pm because people are home
4 enjoying their backyards after 5 pm. Mr. Shineldecker also suggested no weekends
5 because people look forward to enjoying their yards on the weekends. Commissioners
6 Shaw, Redmond, and Hooper voiced their agreement.

7
8 Doug Robidoux stated he agrees with the limitation of Monday through Friday 8 am-5
9 pm, but thinks there should be some Saturday window.

10
11 Jay Shillinger stated he would just like to be able to get his loader out on Saturdays to
12 take back to his property on Hansen Rd.

13
14 Tom Hooper said he thought 8 am would be a good time on Saturday to get the loader
15 off the property.

16
17 Janet Andersen stated she would like to stay away from weekend operation.

18
19 Mike Shaw asked Jay Shillinger how he was going to get machinery out. Mr. Shillinger
20 stated he would be driving an empty tractor down the road.

21
22 Cary Shineldecker suggested looking through Section 16.05 of the Zoning Ordinance.

23
24 Tom Hooper made a motion to approve Section 16.05 as presented in the staff report.
25 Second by Mike Shaw. Motion carried, 6 yes 0 no.

26
27 Cary Shineldecker made a motion to approve the site plan according to Section 17.59
28 and 18.05 as noted with change to hours of operation, M-F 8 AM to 5 PM. Second by
29 Mike Shaw. Motion carried, 6 yes 0 no.

30
31 Tom Hooper made a motion to conditionally approve Section 17.59 as presented in the
32 staff report with conditions noted on the site plan. Second by Janet Andersen. Motion
33 carried, 6 yes 0 no. [Note: standards for site plans are specified in Section 17.59, 1.a
34 and Standards for Approval are in 1.c]

35
36 Cary Shineldecker made a motion to conditionally approve application PZ17070, a top
37 soil mining operation located at 180 S. Amber Road in a C-3 district. Conditions of
38 approval: hours of operation from 8 AM to 5 PM, M-F. No weekend hours for
39 processing, stockpiling, loading, or other operations related to the top soil mining
40 operation. Mr. Shillinger can pick up equipment on Saturdays after 8 AM if needed.
41 Second by Tom Hooper. Motion carried, 6 yes, 0 no.

42
43 New Business: Mary Reilly presented Consumers Energy's request to display a retired
44 turbine generator (from Pumped Storage) as an outdoor educational exhibit in Summit
45 Township, Lakeshore Drive, across from the entry to Pumped Storage plant. Ms. Reilly
46 stated she was bringing the idea to the board for input. Ms. Reilly provided a rough site
47 plan provided by Consumers.

1 Frank Redmond noted the need to add a handicap spot to the proposed site plan, and
2 the change of the parking spaces from 9' x 20' to 10' x 20'.

3
4 Brian Zatloukal, Consumers Energy, stated they would provide a more detailed plan at a
5 later date if the board is generally in support. Mr. Zatloukal stated Consumers would
6 rather use the retired turbine for education than scrap it. Mr. Zatloukal stated they chose
7 the location to educate the public, including class field trips.

8
9 Tom Hooper said he thinks the display is going to be more popular than Consumers
10 expects.

11
12 Janet Andersen, Cary Shineldecker, Mike Shaw and Doug Robidoux expressed support
13 for the project.

14
15 Brian Zatloukal stated the runner they want to use will be the last runner coming out
16 from Pumped Storage in 2019. There is plenty of time to work out the details and
17 Consumers will present a more finalized plan to the board at a later date.

18
19 Mary Reilly read a request from Dale and Pat Ruba to remove the required evergreen
20 screening from the approved site plan from the Jawor Bros. Blueberry Farm (Farm
21 Labor Dwellings, Meisenheimer Road).

22
23 Mike Shaw made a motion to amend the site plan to not include the planting of trees on
24 the north and west sides.

25
26 Tom Hooper stated he thought it needed to be further discussed.

27
28 Mike Shaw amended his motion to remove the evergreen planting on the west side
29 only. Second by Cary Shineldecker.

30
31 Cary Shineldecker stated the trees were added as screening for the neighbors, so if
32 they don't want it he didn't see a problem with removing the screening. Mr. Shineldecker
33 stated the trees to the north were meant to be a road buffer so those should stay on the
34 site plan.

35
36 Motion carried, 6 yes 0 no.

37
38 Ms. Reilly discussed the ongoing gloss testing and mitigation at the Ray property (WTG
39 28). The left and right sides of the nacelle (WTG 28) had readings higher than the
40 approximate 30 gloss units. Ms. Reilly summarized Consumer's mitigation plan to put a
41 matte coating on the left and right sides of the nacelle to reduce the gloss.

42
43 Chris McNally, Consumers Energy, stated the coating will be a ceramic base that will
44 not change the color characteristics of the nacelle. Mr. McNally said the coating will be
45 done by September 1, 2017.

46
47 Mary Reilly asked what kind of gloss finish would Consumers end up with (referring to

1 the specs they provided).

2
3 Chris McNally said close to steel.

4
5 Doug Robidoux asked Mary Reilly if she would be involved in checking over the test
6 panel, or how would it be monitored.

7
8 Mary Reilly asked Consumers if they would be using a sample piece.

9
10 Chris McNally stated they would try to find a sample piece that matches the nacelle, but
11 if they couldn't they would use the nacelle itself.

12
13 Mary Reilly stated another gloss test will have to be performed to verify the gloss rating.

14
15 The Board of Commissioners agreed to another gloss test being conducted.

16
17 Janet Andersen stated Consumers Energy would need to "hold to the deadline" for
18 getting the matte finish put on.

19
20 Bill Schoenlein, Consumers Energy, stated that Consumers would share their test
21 results with the board and they would likely use the same company that the County has
22 contracted with to test the gloss. Consumers plans on doing a "before and after" to
23 verify that the matte finish is effective.

24
25 Mary Reilly presented Consumers Energy, update on LWEF spring sound testing. Ms.
26 Reilly stated that while the sound testing was being conducted, the sound consultant
27 discovered 13 of the turbines were running at a specific power level, 1543 kilowatts.
28 The turbines had been de-rated and were not operating at full power so the first round
29 of data collected this spring may not be conclusive. Consumers has provided a written
30 letter explaining why this occurred.

31
32 Tom Hooper stated he was disappointed that the turbines were not running at 100%
33 when sound testing was being conducted.

34
35 Janet Andersen asked how Consumers couldn't know 25% of the turbines were
36 "governed down" by 15% during testing.

37
38 Doug Robidoux asked for an explanation from Consumers Energy.

39
40 Adam Smith, Consumers Energy's Attorney, stated Consumers had just gone through
41 an upgrade on their monitoring software. Mr. Smith claimed the software took away
42 what used to be an alert that would "pop up" on the monitoring screens. The alert
43 moved to a secondary location where it wouldn't "pop up" and had to be looked for. Mr.
44 Smith stated Consumers Energy had no idea the change in operation had occurred.

45
46 Adam Smith stated production changes as the wind changes, so it would have been
47 hard to know without that alert that the turbines were operating at a lower power level

1 for any other reason than a wind speed change. The issue with the software has been
2 resolved.

3
4 Alex Rice, Consumers Energy, stated wind gusts fluctuate. Mr. Rice claimed it is rare
5 that the turbines function at their 1,800 kilowatt maximum. Mr. Rice said without the
6 alarm notifying Consumers there was a problem with the turbines, it was impossible for
7 them to know something was wrong until they actively sought the alarm out.

8
9 Janet Andersen asked how it was possible to miss the turbines running at a specific de-
10 rated speed when Consumers has a 24/7 monitoring system.

11
12 Alex Rice stated each tower is different. Mr. Rice also stated the towers de-rate as a
13 safety mechanism. Mr. Rice used the example of if a cable is loose in the hub the tower
14 will de-rate.

15
16 Chris McNally stated significant winds cause towers to de-rate for protection. Mr.
17 McNally said what happened was the de-rate alarm was changed from an alarm to a
18 warning and was missed because Consumers didn't know that happened until it was
19 brought to their attention.

20
21 Tom Hooper stated it was "unsettling" that Consumers knew when the sound testing
22 was going to occur and the towers were de-rated.

23
24 Janet Andersen asked how long the towers were "governed down" for.

25
26 Alex Rice stated the towers could have been de-rated for days.

27
28 Janet Andersen asked when the software update occurred.

29
30 Alex Rice stated the software update occurred in late December or early January.

31
32 Mike Shaw asked if problems can be recorded.

33
34 Alex Rice stated Consumers hired a contractor and more man power to fix the issues
35 and it shouldn't happen again.

36
37 Frank Redmond asked if there is a person designated to watch for alarms.

38
39 Alex Rice stated a monitoring system notifies technicians.

40
41 Bill Schoenlein stated they couldn't dispute the fact the towers were de-rated.

42
43 Tom Hooper asked when testing will be done again.

44
45 Mary Reilly explained testing can't be done again until next spring, but they should have
46 some data to review from the second round of testing that Mike Hankard performed.

1 Unfinished Business: None

2
3 Zoning Director's Report: The next meeting will be June 20th for Mike Benedict's site
4 plan approval.

5
6 Zoning Board of Appeals: There will be a meeting on June 7th for an interpretation and
7 an appeal (Camel operation in Custer and Lakeshore Drive Adult Foster Care).

8
9 Doug Robidoux opened public comment.

10
11 Shannon Ray verified the final gloss test will be conducted when Consumers puts the
12 new coating on the nacelle. Ms. Ray also asked if Consumers was only monitoring
13 alarms and not warnings prior to this point.

14
15 Alex Rice replied to Shannon Ray's question stating the 6 people who monitor do the
16 best they can.

17
18 Will Parsons related the situation to Volkswagen and thinks Consumers Energy should
19 pay a fine.

20
21 Evelyn Bergaila stated she was concerned with 4 months of no monitoring on the
22 turbines if Consumers couldn't see alarms. Ms. Bergaila stated Consumers should be
23 paying attention to the turbines, especially during sound testing.

24
25 Bill Schoenlein stated the turbines operate as designed for safety even with the
26 changing of software.

27
28 Doug Robidoux adjourned the meeting at 10:00 pm.

29
30
31

Frank Redmond, Jr. Secretary
Mason County Planning Commission