

**PLANNING COMMISSION MEETING
MINUTES
Wednesday January 7, 2009**

I. Call to Order - Pledge of Allegiance - Roll Call

The meeting was called to order at 7:00 p.m. and opened with the Pledge of Allegiance.

Roll Call **Francis McNamara – absent with notice**
Donald Hartwick – present
Craig Landes – present
John Maahs – present
Ronald Overton – present
Richard Turcotte – present
Ulrika Zay – present
Charles Openlander – present
Beth Ball – present

Also present – Andrea Polverento, Planning Director

II. Communications Received –

Polverento outlined the communications given to the Planning Commissioners.

III. Agenda Approval

MOTION by **MAAHS** and seconded by **BALL** to approve the agenda as amended.

Passed unanimously

IV. Public Comment – Non-Agenda Items - None

V. Approval of Minutes from November 5, 2008

MOTION by **OVERTON** and seconded by **HARTWICK** to remove the minutes of 11/5/2008 from the table.

Passed unanimously

MOTION by **LANDES** and seconded by **MAAHS** to approve the 11/5/2008 minutes as presented.

Passed unanimously

Approval of Minutes from November 19, 2008

MOTION by **OVERTON** and seconded by **MAAHS** to remove the minutes of 11/19/2008 from the table.

Passed unanimously

MOTION by **HARTWICK** and seconded by **MAAHS** to approve the 11/19/2008 minutes as presented.

Passed unanimously

Approval of Minutes from December 3, 2008

MOTION by **TURCOTTE** and seconded by **MAAHS** to approve the 12/3/2008 minutes as presented.
Passed unanimously

VI. Public Hearings

A. Case # 08-05 SLU - Felzke Farms

Overton outlined the public hearing procedure.
Public Hearing opened at 7:15 p.m.

MOTION by **HARTWICK** and seconded by **LANDES** that **Hartwick** be allowed to abstain from considering this subject due him being a neighbor to this facility and being directly affected by this facility and feels that causes a conflict of interest.

Discussion took place among the Planning Commissioners about allowing the abstention.

Yes – 3 No- 5 1-Absent
Motion failed

Polverento explained that the applicant is applying for a renewal of their existing Special Land Use Permit (03-20), for mining sand and gravel, which is set to expire on January 19, 2009. The operation is located on the South side of Herbison Road between Francis and Lowell Roads. Agency reviews that were received prior to the meeting were included in the packets. **Polverento** reviewed the agency review and their concerns. **Polverento** pointed out that the applicant has applied for their soil erosion permit through the Drain Commissioner but has not yet obtained the permit. The applicant will also have to work with the DEQ to obtain a permit but that process is lengthy and her recommendation was that they be allowed to proceed with the understanding that this permit must be obtained.

Discussion took place among the Planning Commissioner's regarding the application. Questions were asked of the applicant.

Public Hearing Closed at 7:35 p.m.

VII. Unfinished Business

A. Discuss Master Plan Update - Review Goals and Objectives

Polverento outlined what has been taking place with the Master Plan update. She reminded everyone of the meeting in February with the consultants.

Overton asked **Polverento** if she got his changes. She stated that she did receive the changes. She has some questions about his changes and suggested that she would send him the most recent version she has with the changes for his review and comments. **Overton** asked **Polverento** to send the most recent version to all the members for their review. **Polverento** stated she would send those out by e-mail tomorrow.

VIII. New Business

A. Case # 08-05 SLU - Felzke Farms

Discussion took place about mitigating noise. **Overton** outlined the conditions that he felt should be placed on the approval. **Polverento** also recommended that no approvals be sent forward until such time that the Soil Erosion permit is obtained.

Sec. 28-605 (General Review Standards)

Each application shall be reviewed for the purpose of determining that the proposed special land use meets all of the general standards. Each special land use will:

(1) Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance, with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.

Staff comments: The excavation areas are surrounded by trees and berms, and are set back at least 1,000 feet from the road. Truck traffic servicing the area uses only the approved haul route.

(2) Be served adequately by essential public facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities.

Staff comments: While a portion of the road to access the area is gravel, it is well maintained and all other hauling is done on paved roads. The area does not require refuse disposal, water, or sewer facilities outside what currently exists. The area requires no more police or fire protection than nearby areas, and likely requires less. Drainage structures may be required, at the applicant's expense, in coordination with the Drain Commission.

(3) Not create excessive additional requirements at public cost for public facilities and services.

Staff comments: No additional requirements at public cost are needed.

(4) Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive effects of traffic, noise, smoke, fumes, glare, or odors affecting adjacent properties, streets or uses.

Staff comments: While the excavation may produce some dust and noise, all effort is made to mitigate these impacts, including required hours and dust abatement. Truck traffic again abides by haul routes intended to lessen any impact it may have, and applicant contributes the cost of one application of chloride on Herbison Road.

Section 28-606 (Special land use specific requirements)

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(32) Removal and processing of topsoil, stone, rock, sand, gravel, lime or other oil or mineral resources. The township board shall not approve such use until the following information is provided and the commission finds that the proposed use will not adversely impact surrounding properties and the township in general, in accordance with the following:

(a) The size of the property from which such topsoil, sand, gravel or other such materials are to be removed.

Staff comments: The parcels in question are 75.00 acres in size

(b) The amount of topsoil, sand, gravel or other such materials which is to be removed.

Staff comments: Mr. John Felzke estimates that to date, approximately 250,000 cubic yards of sand and gravel have been removed, and that excavation has been declining.

(c) The purpose of such removal.

Staff comments: The purpose is the commercial sale of the extracted sand and gravel.

(d) The effect of such removal on adjoining property; all removal activities shall be set back a minimum of 200 feet from any adjoining residential district or use.

Staff comments: Aerial photos seem to indicate that some excavation has taken place within 200 feet of the property lines, however, the nearest residence is more than 1200 feet away.

(e) The effect of such removal in causing a safety hazard, creating erosion problems or altering the groundwater table.

Staff comments: **Polverento** has advised the applicant that they need to obtain a soil erosion permit from the Clinton County Drain Commission, however, when **Polverento** checked with Dave Patterson on Monday, January 5, they had not been contacted about it. **Polverento** then put in another call to Mr. Felzke on explaining they would need to apply for and receive this permit prior to any approvals.

(f) The potential for such removal to cause the creation of sand blows, stagnant water pools, or swampy areas.

Staff comments: Ponds are frozen now, but during the warm months are free of swamp.

(g) The effect of such removal on the environment and the natural topography, and the potential destruction of any natural resources.

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Staff comments: A large stand of trees south of the excavation areas help to protect the Looking Glass River from any infiltration. The natural topography is certain to be changed throughout the excavation process.

(h) Potential traffic congestion and problems because of trucks or other vehicles or means utilized to haul and transport the materials removed.

Staff comments: Applicant is currently abiding by required haul routes as outlined in the existing permit.

(i) Any change of the natural contour of the land, both during mining operations and at the time of abandonment, shall be maintained in a safe condition.

Staff comments: The application states that reclamation goes on to maintain the appearance and character of the area.

(j) No business or industrial buildings or structures of a permanent nature shall be erected, except where such building is a permitted use within the district in which the extraction activity is located.

Staff comments: There are no permanent structures, however at times trucks, loaders, and excavators are used on site, and may be stored on site temporarily.

(k) No storage or truck parking shall be located within 200 feet of any adjacent residence or within 50 feet of any other adjacent property.

Staff comments: Trucks and other equipment are on site temporarily, and are not stored within the required setbacks.

(l) All of the operation shall be screened with an evergreen screen planting approved by the township board on any side adjacent to a residential district or use or occupied property.

Staff comments: A large stand of trees borders the property to the south along the Looking Glass River. There is approximately 200 feet of trees from the excavation areas to the river. Smaller stands of trees surround the parcels on all other sides as well.

(m) As removal activities are completed that portion of the property shall be restored by the placement of topsoil where feasible.

Staff comments: The application states that reclamation goes on to maintain the appearance and character of the area.

(n) All excavations shall be sloped to a gradient with not more than a 30 degree slope and the contour is caused to blend as nearly as possible with the natural surroundings.

Staff comments: The applicant is currently operating within this requirement.

(o) All truck operations shall be directed away from residential streets and utilize paved county primary roads wherever possible.

Staff comments: Applicant is currently abiding by required haul routes as outlined in the existing permit.

(p) The township board may require such performance guarantee as deemed necessary to ensure that requirements are fulfilled, in accordance with the provisions of section 28-49(b) and may revoke permission to operate at any time specified conditions are not maintained.

Staff comments: A performance bond was required as part of the previous/existing permit. A letter of credit in the amount of \$85,500 was established in coordination with the Road Commission, however the applicant states that Mark Bates allowed the applicant to close the letter of credit in 2006. As far as **Polverento** can tell, no bond was established with the Township.

(q) The applicant shall secure all necessary permits from county and state authorities.

Staff comments: As indicated above, they do not have the required soil erosion permit from the Drain Commission at this time.

(r) The proposed operation shall adhere to the following operational schedule.

Staff comments: The operation is open only during hours listed in the original permit.

MOTION by **OVERTON** and seconded by **TURCOTTE** (per Chairman Overton) that the Watertown Charter Township Planning Commission recommend approval to the Board of Trustee for the request to extend the Special Land Use Permit approval as described in **Case #08-05 SLU** for **Felzke Farms** for an additional 5 years, to expire on January 19, 2014, provided that conformance to the originally approved conditions are achieved to the satisfaction of the Township's Zoning Administrator as being in accordance with the requirements of the Watertown Charter Township Zoning Ordinance.

Reasons and findings of fact:

1. The applicant requested an extension prior to the date of the expiration of the Special Land Use and Site Plan Review approvals.
2. The applicant is currently operating within the regulations of the existing permit to the satisfaction of the Zoning Administrator and the Soil Erosion and Sedimentation Control Department of the County Drain Commission.

Conditions of Approval:

1. The applicant receives approval from all of the reviewing agencies prior to the approval of the Board of Trustees.

2. The applicant complies with the original mining agreement to the satisfaction of the Zoning Administrator.

Passed unanimously

B. Non-Conforming Billboards

Polverento explained that Turcotte was reviewing the court cases in the Planning and Zoning News, and asked that the cases regarding non-conforming billboards be placed on the agenda for review.

In the case of Lamar v. City of Norton Shores, the courts determined that despite a new regulation that no billboards were allowed in a particular zoning district, an existing non conforming billboard could be replaced with a smaller and shorter billboard.

Section 28-635 (Non-conforming signs) apply to this case. The Township allows non-conforming signs to be maintained, but not enlarged or expanded, and we allow the diminishing of size or dimension to a non-conforming sign. **Polverento** feels that the Township Ordinance is in line with the ruling in that court case. If the Planning Commission would like **Polverento** to, she would be glad to seek the opinion of the Township Attorney on this matter.

Overton agrees that the ordinance is in line with the court case.

Turcotte asked if the sign is taken down and replace with a new structure the same size or smaller would that be permitted. **Polverento** feels it would depend on the degree of destruction. Unless it's abandoned, if it's replaced to the same size or smaller that would be permitted.

Zay discussed the new legislation that was passed regarding no new billboard signs and the vegetation maintenance that are allowed to the billboard companies for the existing billboards. Five hundred feet on both sides of the billboard can be cleared of trees and shrubs and any vegetation that could be conceived as blocking the billboard. **Polverento** explained that the Township Ordinance does not allow for any new billboards.

It was the consensus of the Planning Commission that no action be taken on this item.

C. Non-Conforming Abandonments

Polverento explained that In the case of Bialik v Stambaugh Township, the courts cited a few cases which indicated the following:

A non-conforming use cannot be expanded. The vested right to continue a non-conforming use may be lost due to abandonment. The intention to abandon must be substantiated.

This case referred to a non-conforming building that was seemingly abandoned, however, the owner attempted to rehab it, which caused a

roof to collapse damaging the rest of the building. They applied to rebuild it on its current footprint.

Polverento explained that Section 28-550 (d) (1) (Non-conforming uses) applies to this case. The Township does not permit a non-conforming use to be expanded. The Township also states that if a non-conforming use is abandoned for one year, any subsequent use must conform to the standard zoning requirements. The Township does not require the abandonment to be substantiated, and **Polverento** feels that the Planning Commission may wish to consider how to best substantiate these claims.

Discussion took place regarding abandonments and how to substantiate those claims.

Turcotte discussed the variance that the ZBA did for the property behind Thompson's Body Shop allowing them to not pave the driveway even though paving in any industrial/business area is required. He asked if non use or abandonment of that property could constitute somehow that the ZBA's ruling could be overturned. If another business were to utilize that property would they be subject to the new rules and the new ordinances?

Overton feels that according to the ordinance if a property meets certain criteria it can be considered abandoned. New occupants would be held to the new rules and ordinances.

Polverento pointed out that a variance goes with the land. **Openlander** pointed out that is true only if the property is being used in the same use.

Discussion took place among the Planning Commissioners. It was the consensus of the Planning Commission that no action be taken on this item.

D. Review of Capital Improvements Plan

Polverento explained that she has reviewed and improved the Capital Improvements Plan. She presented the plan to all the Department Heads for comments. She did not receive any comments from the Department Heads leading her to believe that everyone is happy with the plan. She outlined the additions she made to the plan.

Discussion took place regarding the report.

Overton suggested that the projects that have been completed should be moved to the top and separate them.

MOTION by **OVERTON** and seconded by **LANDES** to accept the Capital Improvements plan as presented and to forward it to the Board of Trustees.

Passed unanimously

E. Review Planning Commission Annual Report for 2008

Polverento outlined the report and the new information that she added to the 2008 report. **Hartwick** pointed out that there was an error in the date he was appointed to the Planning Commission.

Discussion took place about the data in the annual report.

MOTION by **OVERTON** and seconded by **TURCOTTE** to accept and forward the 2008 Annual Report as amended to the Board of Trustees.
Passed unanimously

F. Annual Review of the Planning Director

Overton outlined the Executive Committee's Review of the Planning Director.

MOTION by **OVERTON** and seconded by **HARTWICK** to accept the annual review of the Planning Director as written by the Executive Committee and forward the review onto the Board of Trustees and the Township Manager.
Passed unanimously

MOTION by **OVERTON** and seconded by **HARTWICK** to recommend to the Board of Trustees a step increase for the Planning Director in accordance with her job description.
Passed unanimously

IX. Committee and Staff Reports

- A. Executive Committee Report – Met to conduct the annual review of the Planning Director.
- B. Ordinance Review Committee Report – **Polverento** will send out some suggested meeting dates.
- C. Site Plan Review Committee Report – None
- D. Board of Trustees Report - DRAFT Minutes 12/10/08, 12/15/08, 12/30/08 – **Maahs** presented the Board of Trustees Report.
- E. Zoning Board of Appeals - None
- F. Non-Motorized Circulation Plan Committee Report – The committee is meeting in January. **Zay** spoke about the Safe Routes to School Program at Wacousta Elementary.
- G. Environmental Affairs Committee Report - None
- H. Capital Improvements Committee Report – None
- I. Comprehensive Development Plan Update Committee – None
- J. Staff Reports -
 - A. Directors Report, December 2008
 - B. Assistants Report, December 2008

X. Comments and Questions from Audience, Staff and Commissioners-

XI. Adjournment

MOTION by **OVERTON** and seconded **BALL** by to adjourn the meeting.

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Passed unanimously

Meeting was adjourned at 9:25 p.m.

Date approved:

Ron Overton, Chair

Beth Ball, Secretary