

**MINUTES
ANN ARBOR CHARTER TOWNSHIP
BOARD OF TRUSTEES SPECIAL MEETING
WEDNESDAY OCTOBER 25, 2023 AT 4:30 PM
TOWNSHIP OFFICES
3792 PONTIAC TRAIL, ANN ARBOR, MI**

I. CALL TO ORDER, ESTABLISH QUORUM

Supervisor O’Connell called the Ann Arbor Charter Township Board of Trustees special meeting to order at 4:30pm on October 25, 2023.

Present: Supervisor Diane O’Connell
Clerk Rena Basch
Treasurer Carlene Colvin-Garcia
Trustee John Allison
Trustee Michael Moran
Trustee Kristine Olsson

Absent: Trustee Rodney Smith

Also Present: Township Attorney Sarah Gabis
Environmental Consultant Professor Steven Wright

II. CITIZEN PARTICIPATION

Tanya Whelan, 4014 Earhart Road, asked about the continuing Mid Michigan Materials (MMM) truck movement on the road. What is the status of the truck situation relative to hauling the gravel and sand from the gravel pit?

Tom Bartoshesky, 3909 Earhart Road, expressed gratitude to the Board of Trustees and the legal team.

Dayton Hollis, 3909 Earhart Road, expressed appreciation to the Board of Trustees for the time and work spent on this issue thus far.

Michael Watts, 4700 Granduer Oaks Lane, thanked the Board for the action taken so far and their diligence in making sure the community was heard and that the original agreement negotiated with MMM is the one they should follow. Mr. Watts asked the following:

- What is full compliance as expected by the Township?
- What is MMM allowed to do on the site before they reach full compliance?
- Who has been and is going to be doing inspections and testing during all stages of the Order?

III. REPORTS, DISCUSSION

A. Discussion of Washtenaw Circuit Court's Stipulated Clarification to Order Granting Preliminary Injunction in Ann Arbor Charter Township vs. WSG Properties LLC, AMC-WSG LLC, AMC-Mid Michigan Materials, LLC, Case No. 23-001234-CE.

Township Attorney Gabis explained that the lawsuit against Mid Michigan Materials was filed to address the immediate concern regarding the impact dewatering was having on residential wells, and the need to protect the aquifer that was being impacted by the dewatering.

Because the impact on the aquifer and the residential wells was an emergency, the Township also included in its complaint a motion for a temporary restraining order and a preliminary injunction, to make MMM cease operations at the Vella Pit, so that the Township could determine what was needed in terms of protecting the aquifer. Specifically, the Court was asked to prohibit operations that were not in compliance with the conditional use permit (CUP), the development agreement, and township ordinances, and that all operations cease during the pendency of the lawsuit.

The Court granted the request for operations to cease until MMM could demonstrate whether or not they could comply with the CUP, the ordinances, and the development agreement. The Court put a one week timeline on the prohibition, and required both parties to return a week later to review the order to cease operations.

During that week, Mid Michigan Materials and the Township negotiated a stipulated clarification of the Court's order.

The Township's original complaint was not a request to revoke the conditional use permit. Revocation of a CUP is a different process that involves the Planning Commission. The Township wanted to address the immediate emergency, in order to protect the aquifer and protect the residential wells.

After hearing extensive arguments on both sides, the Court decided in the Township's favor, noting that the defendants had represented to the Township that they would be mining in a certain manner, but after receiving their permit, had changed their operations. The Court also noted that the water belongs to everyone, not just one particular entity.

The Order, which is posted on the Township website:

- Prohibits Mid Michigan Materials from using a dewatering operation.
- Requires operation without the use of the wash plants until it's necessary for MMM to use a wash plant to continue their mining operation.
- Also requires a phased approach that involves the use of water already on site to recommence washing operations, using the on-site water up to the point where that water is no longer available for the washing operations.
- The final stage of the phased process allows MMM to use water from the active pit to continue washing operations, but only to the extent that there's no net loss of groundwater.
- To ensure no loss of ground water occurs, the following safeguards have been ordered:
 - Daily monitoring of the pond in the aquifer recovery area.
 - Daily monitoring of approximately 10 off-site wells.

- Daily monitoring of other off-site water features.
- Monitoring will be carried out by the Township, at Mid Michigan Material's expense.
- Once MMM has demonstrated to the Township that the aquifer has recovered, MMM can present a plan to upgrade to the closed loop system they had initially proposed, which will allow mining operations to continue.
- If at any point after MMM starts to use water from Pit 1, or after the closed loop system is in place, there is any indication of the aquifer being depleted, all operations must immediately cease.

Attorney Gabis further explained that because minerals must be mined where they are found, mining in Michigan is given special protections under the Michigan Zoning Enabling act. The Township, by default, has to allow mining to occur in most circumstances. The current agreement allows for the Township to remain compliant with state law, while also protecting the water.

In response to Ms. Whelan's question during public comment, Attorney Gabis said that the gravel trucks are moving aggregate that was created prior to the Order; this activity was not in violation of the Order.

Questions from the Board of Trustees

Q: Could Mid Michigan Materials appeal the Order?

A: Mid Michigan Materials has agreed to the stipulated Order but not the contents. Theoretically MMM could still appeal, but this is not expected.

Q: What personnel will be employed to monitor and make sure MMM follows the conditions under the Order?

A: Township staff has been on site to confirm the outfall has been closed and pumping activity has ceased. The only current activity is the removal of previously mined aggregate that is already on the site. After the existing sand and gravel is depleted, activity can proceed in phases as defined in the Order.

Township staff and consultant engineers will do the monitoring. The monitoring system is not yet in place and the details are still being worked out. The off-site wells and non-well locations have been submitted to MMM. Both parties understand the sense of urgency, and if a response does not come from MMM within a few days the Township will aggressively follow up.

Q: Even if all measures have been met under the Order, is it true the case is not closed?

A: Correct, the case is not resolved and will go on even after compliance with the Stipulated Clarification to Order Granting Preliminary Injunction. This Order is a temporary initial action to terminate immediately the danger of what has been occurring.

Q: Does MMM still need to answer the Township's complaint?

A: Yes. MMM was granted a one week extension; MMM's answer is due early next week. MMM must respond to each point paragraph by paragraph.

Q: Do we know how long it will take before the closed loop system will be ready?

A: (from Prof. Wright): We know that a little less than 2 million gallons were leaving the outfall per day. Without having done a full analysis, giving a very rough estimate, the pond, which is estimated to be 10 acres, would require approximately 100 million gallons to return to normal groundwater level. Based on several factors, that could take around 6 months. There will be much better information once monitoring data starts to come in.

Attorney Gabins cautioned that there is much more data that is needed before Dr. Wright can provide an expert analysis.

Q: Do we know the actual day MMM started pumping water? Has that come up in discovery?

A: No. The Township has not yet engaged in any formal discovery, and there is a lot of information still to be gathered. The Order was expedited due to the urgency of the situation.

Q: Will MMM continue to reimburse costs to residents relating to impacts on residential wells?

A: If there are costs based on impact to the wells, those costs should be submitted to Mid Michigan Materials. If there are residents who have been impacted and have not yet contacted the Township they should call, and the Township can help facilitate cost recovery. Examples of such costs would be having a pump lowered, having a well drilled and other affiliated costs with that work. If a well has been dewatered, the Township should know that as well.

Q: (from the audience) Will MMM reimburse residents for ongoing testing of static levels in their wells, such as testing every 2 months? Will MMM reimburse residents for basic testing to make sure there is no problem?

A: The Board and Township attorneys will discuss this question.

IV. NON-AGENDA ITEMS - None.

V. PUBLIC COMMENT

Rick Bunch, 4989 Earhart Drive, asked the following questions:

- It was stated that if there is a problem with the water level, all operations would cease. Does this mean washing only? Or does this mean all operations, including loading trucks?
- Is there a nexus between satisfactory resolution of the EGLE (Michigan Department of Energy, Great Lakes and Energy) enforcement actions and continued operation? The conditional use permit requires MMM to be in compliance with all relevant laws. Does the Township have the ability to restrict operations as long as complaints by other agencies are outstanding?
- What is MMM's responsibility relative to trucking noise and behaviors (queuing on Earhart, trucks taking the non-preferred route, trucks operating early, trucks without covered loads).

Michael Watts, 4700 Grandeur Oaks, asked if compliance with the conditional use permit, the developer agreement and the township ordinances was defined as following the steps in the Order, or did it mean full compliance going forward?

Amy Olszewski, 2816 Warren, said that while she was very grateful that the Township hired a competent legal team as well as Dr. Wright, she thought the Board should address the community relative to the three years of complaints, and lack of oversight during that time. She wanted to have confidence that when the Board said Township staff would be monitoring, that the monitoring would be effective. Better communication is critical, especially since it sounded like processes were not yet in place but being “talked about.”

Sarah Spratt, 4949 Ridge Creek Lane, asked what and where the non-well water features were that will be part of the monitoring process.

Teresa Romens-Woerpel, 2751 Warren, asked what residents can expect in terms of being kept up to date on where the process is at. It is her understanding that the original permit had a 5 year limitation. What happens if litigation is still in progress when that deadline arises? She was also concerned as to how continuing information will be communicated to the community.

Betty-Ann Gilliland, 4410 Earhart Rd., reported that for the last 2 weeks when MMM was shut down, loud noises have been coming from the mine.

Thomas Moir asked if there would be monitoring of truck traffic to make sure MMM was in compliance with the number of trucks using the road. Also, did the Township have any plans relative to remediation of impacts including erosion on Massey Lake and Fleming Creek?

Comments by the Board of Trustees:

In response to public comments, Board members offered the following:

- This case has just started, and it is unusual that action has taken place as quickly as it has. There are some things the Board will not be able to share as certain items will be held in attorney client privilege, but the Board has been and will continue to communicate as much as it can. Attorney Gabis wrote down all questions asked tonight, and to the extent that the Township can answer those questions without impacting litigation, she will do so.
- The Board continues to seek ways to improve communication. There will be continuing information on the Township website; there is a place to opt in on the website to receive public notices, and people can always contact the Township. There is also a form that can be filled out that goes to the code enforcement officer for time-sensitive issues, such as truck noise.
- The Board is dedicated to resolving the issues with Mid Michigan Materials. Information from residents that is specific to time, place, and nature of complaint/concern would be helpful.
- Regarding the question about the 5-year term of the conditional use permit, the CUP has to be re-applied for after 5 years. This would not be a renewal, but a new application, when detailed information will be required.

VI. Adjourn

MOTION by Colvin-Garcia, support by Olsson, to adjourn the meeting.

Motion passed by voice vote. The meeting adjourned at 5:23pm.