

THORNAPPLE TOWNSHIP PLANNING COMMISSION

Regular Meeting, February 27, 2023.

1. Call to Order:

- a. The meeting was called to order by Vice Chairperson Linda Gasper at Thornapple Township located at 200 E. Main St. Middleville, MI 49333.
- b. Present: : Elaine Denton, Elizabeth Hansson, Linda Gasper, Sandra Rairigh, Bryan Finkbeiner and Craig Wandrie. Tom Kilgore was absent. Also Present: Eric Schaefer, Jeff Sluggett, Todd Boerman, Nathan Mehmed, Amy Brown, Marty Wenger, Tim Schutter, Brian & Jill Smith, Marty Postema, Buddy Head, James Dykema, Alyssa & Nick Tape, Jason Scheerhorn, Paul Lettinga, Brandyn Deckinga, Phil Wenger, Dennis Postema, Don DeGroot, Bob Scheerhorn, and Rob Dykstra.

2. Approval of Agenda:

MOTION by Rairigh, **SUPPORT** by Wandrie to approve the agenda as printed. **MOTION CARRIED** with six yes voice votes.

3. Approval of Minutes:

MOTION by Denton, **SUPPORT** by Finkbeiner to approve the January 23, 2023, meeting minutes as presented. **MOTION CARRIED** with six yes voice votes.

4. Citizen Comments:

- a. Nick Tape displayed an enlarged photograph of a semitruck with a lowboy making a right-hand turn at the corner of Payne Lake Rd. and Bass Rd. Tape explained that the truck could not make the turn without using both lanes to make the turn. He also had a second smaller copy of the same photograph that is attached to the minutes. He said the road was not built to handle 50 to 100 gravel trucks per day and that it wouldn't be safe.
- b. Danielle Hoskins – email – letter to Planning Commission Members outlining her concerns regarding the sand mine. She requested that outside of the operator acquiring an easement the following conditions be met should the Commission grant the special use permit. They are: limited traffic of 3-5 trucks per day, establishment of engine braking ordinance, regulated operation times, weekly maintenance checks, and air quality permit.
- c. Neil Hoskins – Letter to Planning Commission Members stating several areas that he believes would have a profoundly negative impact. In his letter he outlines the areas of pedestrian and traffic safety, impact on existing land uses -noise, bordering properties, and environmental concerns. He asks the special use permit be denied, but if approved

that certain conditions would be required to be met which include obtaining use of an easement, environmental impact study, limited traffic, 3-5 trucks per day, noise guidelines, limited operations, and an engine braking ordinance.

5. Public Hearings:

a. Proposed Zoning Ordinance Text Amendment – Outdoor Furnaces

- i. Staff Introduction – Mehmed explained that the proposed changes to Section 21.41 outdoor Furnaces was included in the board packet. It allows for EPA certified outdoor furnaces be permitted on lots of 1.5 acres or more as opposed to the 3 acres limit previously allowed. The minimum setback for EPA certified outdoor furnaces would be changed from 200 feet from the nearest existing dwelling on abutting property to not less than 100 feet from the nearest existing dwelling.
- ii. Public Hearing – No comments from public regarding the proposed amendment.
 - (a) OPEN 7:07 pm
 - (b) CLOSE 7:07 pm
- iii. Commission questions and deliberation – Finkbeiner stated that he supports the proposed amendment. Denton also stated that she supports it as well.
- iv. Action - **MOTION** by Finkbeiner, **SUPPORT** by Denton to approve the amending of ordinance 2019-01, Section 21.41 Outdoor Furnaces, sections d and e as follows:

(d)Minimum lot size: Outdoor furnaces not meeting the 2015 New Source Performance Standard (NSPS) for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces at 40 CFR Part 60 (Subpart AAA) (“EPA Certified”) shall be permitted only on lots of 3 acres or more. EPA Certified outdoor furnaces shall be permitted on lots of 1.5 acres or more.

(e)Minimum setbacks: Non-EPA Certified outdoor furnaces shall be set back not less than seventy-five (75) feet from the front, rear and side lot lines, and not less than two hundred (200) feet from the nearest existing dwelling on abutting property. EPA Certified outdoor furnaces shall be set back not less than seventy-five (75) feet from the front lot line and twenty-five (25) feet from rear and side lot lines, and not less than one hundred (100) feet from the nearest existing dwelling on abutting property.

Roll Call Vote: Finkbeiner- Yes, Denton- Yes, Gasper- Yes, Hansson-Yes, Kilgore-Absent, Rairigh-Yes, Wandrie-Yes. **MOTION CARRIED** with 6 yes votes and 0 no vote.

6. New Business: None.

7. Unfinished Business:

- a. Special Use # 159/Site Plan#119 – Busch Drive Concrete Mineral Extraction
- i. Gasper requested Mehmed provide a summary of the status of the process. Mehmed stated that he did a review of the standards of the special use permit and the site plan. He pointed to his memo which summarized the actions of the commission and the applicant. Additionally, he drew the attention of the Planning Commission to page 15 of his memo which states the following Final Thoughts:

Final Thoughts. The criteria listed in the above tables are important in considering the approval, denial or tabling of the request for special land use and site plan review. It is also important to note the Township Attorney's statement at the January meeting related to what Michigan Law allows as it pertains to mining operations. Mr. Sluggett indicated that there is a recognition that mining and extraction operations cannot be placed just anywhere, but rather only where minerals are found. The Zoning Enabling Act establishes that the extraction should be approved if minerals are found on a site, there is a need for them, and that no very serious consequences exist. The standards for consideration from the Zoning Enabling Act are below:

1. The relationship of extraction and associated activities with existing land uses.
 2. The impact on existing land uses in the vicinity of the property.
 3. The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.
 4. The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.
 5. The impact on other identifiable health, safety, and welfare interests in the local unit of government.
 6. The overall public interest in the extraction of specific natural resources on the property.
- ii. Gasper asked Sluggett, Thornapple Township's Attorney, if he had anything further to add regarding the Zoning Enabling Act. He did not, but restated that there is the very serious consequences test which is outlined in Mehmed's memorandum. Once the applicant has met the burden of proof and the requirements of the permit, then the burden shifts to the Township to determine, based on the standards of the Zoning Enabling Act, whether very serious adverse consequences exist. Sluggett advised the commissioners to

consider whether the impact on some of these items would have a substantial adverse impact or not.

- iii. Commission Questions and Deliberation: Finkbeiner asked the applicant, James Dykema, to give an update on the possibility of an easement across Wenger and Lettinga properties to allow for traffic directly onto Patterson Rd. Dykema stated he had conversations with both Wenger and Lettinga regarding the possibilities of an easement. He stated that he could not come to an agreement with Lettinga on the price and maintenance of a gravel road. Dykema further stated that Barry County Road Commission had approved the use of the public road for their use and that since he couldn't get the easement he planned to move forward with the use of the public road. Finkbeiner said he had reached out to both land owners and that he feels that an easement could be worked out. He stated that most of the commissioners either live on or use gravel roads and is are very familiar with how the Barry County Road Commission maintains gravel roads. Dykema understands that it could be done, but not necessarily at a reasonable cost.

Finkbeiner then asked Lettinga to give the commissioners his thoughts regarding the possibility of an easement. Lettinga stated that he felt from the conversation that he would have to bear the cost of the contract for the easement. He said that Dykema did not want to discuss the various points of a contract and the associated costs. Finkbeiner said he had been out and looked at the northwest corner of the Postema property.

Finkbeiner then asked Wenger to give his perspective on the easement. Marty Wenger stated that he had talked to Dykema a couple of times and that they came to a tentative agreement on what could happen although he would have to talk with other family members to get a final say on it. However, he also knows from using the N. Payne Lake Rd. and Bass Rd. intersection that it is not a good situation to have trucks coming through there. Finkbeiner strongly encourages Dykema to come to an agreement for an easement.

Rairigh also agreed with Finkbeiner that an easement would pretty much eliminate the concerns that the commissioners have regarding the safety of the traffic. Also, Rairigh believes that, based on living on a gravel road, ~~that~~ she doesn't feel the Barry County Road Commission would be able to maintain the condition of the road.

Denton feels that the cost to the applicant of getting an easement can't be compared with the risk to the safety of others at the N. Payne Lake Rd. and Bass Rd. intersection. Hansson said that she agrees with the other commissioners and that she feels the best solution would be for the applicant to get the easement. Sluggett clarified that the substantial adverse impact was listed in 19.3 of the Zoning Ordinance.

Gasper reiterated that the commissioners have grave concerns about the impact on pedestrian and traffic safety along the proposed route and especially at the intersection of N. Payne Lake Rd. and Bass Rd. and the entrance and exit to the property. Sluggett further advised the commissioners that they consider making a tentative decision to either approve or deny, subject to Boerman, Mehmed, and

Sluggett's proposed findings of fact based on the record. And then the commissioners could then approve the findings of fact presumably at the next meeting. Finkbeiner asked Sluggett if they needed to act solely on the proposal set before them. Sluggett agreed that yes, that is that the current proposal is what is before them.

Finkbeiner asked how to move forward with the possibility of the easement. Sluggett suggested that the commissioners propose to the applicant that he give it one more try or alternatively as the applicant if he would like the commissioners to move forward based solely on the proposal before them. Gasper outlined the 3 options before the Planning Commission.

1. To approve or deny outright.
 2. To approve or deny tentatively subject to the subsequent review and approval of the proposed findings of fact and determinations.
 3. Recommend to the applicant that one more attempt be made to obtain an easement.
- ii. Dykema asked a few questions. First, if you made a recommendation would you put it in the tentative motion to approve the permit. Second, Dykema clarified that the applicant would bear a lot of the burden of the cost of maintaining the gravel road and not the residents. Third, Dykema asked the commissioners to ask Mr. Sluggett whether the applicant had met the burden of proof in that the Barry County Road Commission had provided information that a gravel truck had clearance to make a legal turn at the N. Payne Lake Rd. and Bass Rd. intersection. Finkbeiner said that it doesn't alleviate the concern that every driver will make the turn in their own lane and that it would only take one time for something very serious to happen. Rairigh feels that the consensus is that if the applicant can get the easement, then the special use permit would be approved. Mr. Sluggett responded to Dykema's question by restating for clarification, "would they tentatively approve it contingent on whatever conditions have been set forth in the memos plus contingent on whatever could be worked out for the easement." Dykema agreed that was his question. Brian Smith asked if the phase one and phase two would be switched if the easement is used. Boerman confirmed it would make sense for the applicant to revise the plan and reverse phases one and two. Gasper asked Boerman and Mehmed to address the concern regarding the impact on property values. Mehmed explained that the county doesn't assist with this type of data, but he had reached out to the township assessor who explained there wasn't enough data to address their question. Boerman explained that with an easement the impact on property values would be less than if the truck were going down N. Payne Lake Rd.

MOTION by Finkbeiner, **SUPPORT** by Rairigh to tentatively approve Special Use #159/Site Plan #119 subject to a review and approval (at the next meeting) of an easement from the property to Patterson Rd. with a revised plan and revised conditions for use of an easement that would

be reasonably acceptable to the township and the applicant. **MOTION CARRIED** with 6 yes votes and 0 no votes.

Roll Call Vote: Finkbeiner-Yes, Denton- Yes, Gasper-Yes, Hansson-Yes, Kilgore-Absent, Rairigh-Yes, Wandrie-Yes.

8. Committee Reports: None.

9. Administrator's Report:

- a. Zoning Activity Report – Included in the packet, no questions from commissioners.
- b. Code Enforcement Report – Included in the packet.

10. Commissioner Comments:

11. Adjournment: **MOTION** by Rairigh, **SUPPORT** by Finkbeiner to adjourn the meeting at 7:56 pm. **MOTION CARRIED** with 6 yes voice votes.

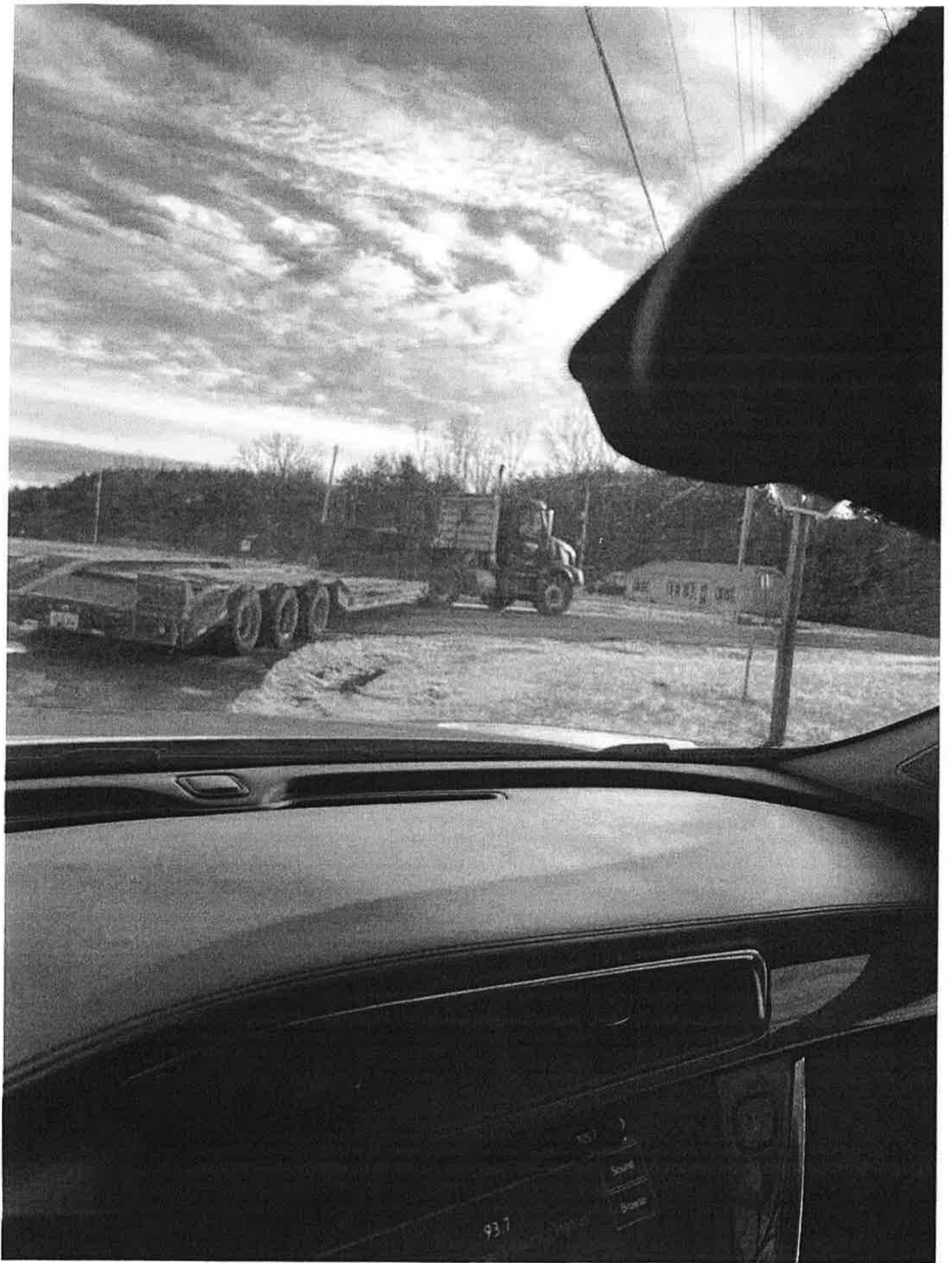


Sandra Rairigh, Secretary



Amy Brown, Recording Secretary

Approved 3/27/2023



Mehmed, Nathaniel

From: Danielle Hoskins <danii7373@hotmail.com>
Sent: Monday, February 27, 2023 5:25 PM
To: Mehmed, Nathaniel; srairigh@thornapple-twp.org; Eric Schaefer
Cc: jeff@bloomsfluggett.com
Subject: URGENT Please share with Committee Members
Attachments: 1329-S.SL.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Nathan, Sandy and Eric,

I will not be able to attend the meeting tonight, but I would like to have the following letter shared with the committee members tonight please.

According to Open Public Meetings Act, and the recently enacted ESHB 1329, there is a provision that a "requirement to the OPMA that an agency take comment at or before every regular meeting at which the board will take final action". As the board indicated that final action would be taken at tonight's meeting, I would like the following statement to be considered as my comment. Please let me know that you were able to share it appropriately. I am attaching the legislation to this email as well. Feel free to contact me with any questions.

Thank you so much for passing this along!!

Take care,

Danielle Hoskins

Dear Planning Committee Members,

My name is Danielle Hoskins and I live on the corner of North Payne Lake Road and Davis on an organic farm directly across from the property proposing a gravel operation. I spoke at the November meeting and provided you with clearly outlined concerns and numerous statements with pieces of evidence falling under "Very Serious Consequences" as defined by Michigan Law. Today, I bring you new information, as well as a repeated plea to this Planning Commission to be intentional in preserving the character of the area, and adhering to the mission of the Township by denying the Special Land Use request.

Of the six outlined standards falling under the definition of "Very Serious Consequences", I would like to draw your attention specifically to the factor labeled (d) concerning the impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route. As the Oetman mine off Bender Road on the Janose farm is being compared as a similar operation to the one being proposed, I spoke with the operators and learned that there are only between 3 to 5 trucks per day utilizing this operation even during peak season. This has allowed better sustainability with wear and tear on the roadways and has minimal impact to traffic and safety. A stark contrast to the 50 trucks a day that is being proposed here with North Payne Lake Road. Additionally, there is only one residence that gravel trucks pass on Bender Road, as opposed to the 9 residences that would be passed on Payne Lake Road.

At the November meeting, you requested further evidence that this operation would not create very serious consequences. According to the law, the burden of this proof falls on the applicants to show for each of the outlined categories. If you find today that the applicants have provided satisfactory proof within each of the

Thornapple Township Planning Commission,

I have a few statements mainly surrounding how approving this special use permit would have a profound negative impact pedestrian safety, existing land uses, environmental concern, and how the neighboring industrial properties are not on Payne Lake Road.

- Pedestrian and traffic safety
 - For the entirety of the 24+ years I have been alive my family and I rode our bikes, run, and go for walks with our dogs on Payne Lake Road regularly like so many of our neighbors do. Granting a special use permit for the lot directly across the street to be a gravel mine and allowing traffic of up to 50 large semi-trucks a day down Payne Lake would make it unsafe to enjoy the past times we have loved for the past 24+ years.
- Impact on existing land uses (Noise)
 - I believe approving this would have a profound negative impact on the surrounding land uses. Allowing a mining operation to take place directly across the street from 10+ residences would, in my opinion, be a grave mistake. We would be hearing the excavation take place throughout the day and it would interfere and negatively impact our day-to-day life. There has been some mention to the fact that the operators will be instructed to “minimize noise” but I find it hard to believe they will be able to minimize a mining/excavation operation to the point it does not disrupt our day-to-day life & we wouldn’t hear it as we walk inside our homes and sit on our front porches.
- Bordering properties not on Payne Lake Road
 - There has been some mention to the fact that this property borders other gravel pits, so it would be appropriate to designate this one as a mine as well. While it’s true this new gravel pit is near an existing one, it very important to point out that every single other pit goes onto Patterson Road and is bordered by other properties zoned industrial or agricultural. Patterson road can handle large, big rig trucks. There are currently 0 operations of any kind on Payne Lake which require regular commercial traffic. Allowing up to 50 trucks a day would drastically change our quite neighborhood into an active industrial area.
- Environmental Concerns
 - This board asked the proposers of the special permit if their operations would create silica dust or other harmful byproducts. They responded no. These individuals have a material benefit in this

matter, and I believe that there should be independent studies or "testimony" given from someone who does not benefit from this special use permit being passed. I find it inappropriate that the only testimony taken on the environmental and health concerns of this matter was taken from someone who benefits from this permit passing.

- Conversations with Marty Wenger and Paul Lettinga
 - Furthermore, it has been brought to my attention this board has requested the proposed site to attempt to get an easement from the Wenger and Lettinga families to pass through their property to Patterson. I have spoken with both over the weekend, and they are more than willing to attempt to hash out a deal to ensure the safety of the public, traffic, and pedestrians.
 - Spoke with Marty Wenger – He is aware the property is seeking an easement and is more than happy to attempt to work out a deal.
 - Paul Lettinga – Spoke with him and he said he has been reached out to about creating a driveway and is willing to attempt to make a deal. Not advantageous for him, but he feels it would be in the public's best interest to avoid trucks going from Payne Lake to Briggs for safety.
- I ask that this board:
 - First, I request that they outright deny the special use permit change due to the fact it would have a profound negative impact on the existing land use of the surrounding residences.
 - If the board insists on approving the special use permit change, despite the clear negative impact on the residences it would surround I ask that the board:
 - Requires the new operation to obtain an easement from the Lettinga's and Wenger's to maintain pedestrian and traffic safety down Payne Lake.
 - Requires the individuals requesting the special use permit to conduct an independent study on the environmental impacts of operating a gravel pit near residences.
 - Limits traffic to no more than 3-5 trucks a day.
 - Establishes noise guidelines that are specific and enforceable to maintain the peaceful use of the neighboring residential land.
 - Limit operations to 9-5 Monday to Friday and exclude weekends.
 - Establishes an engine braking ordinance down Payne Lake, Davis, and Bass Road.

- Regular maintenance checks of Payne Lake Road by the road commission.
- Your decision today will affect the day to day lives of so many families but will also be a precedent in future decisions moving forward. If you approve this operation, what's to stop other companies from coming in and turning our beautiful township into a hole in the ground?

Respectfully,

Neil Hoskins