

NEW BUFFALO TOWNSHIP BOARD
PUBLIC HEARING/REGULAR MEETING
NOVEMBER 15, 2010
17425 RED ARROW HIGHWAY
NEW BUFFALO, MICHIGAN

Supervisor Dudiak called the meeting to order at 7:00 p.m.

Call to Order

Board Members Present: Dudiak, Heit, Oselka, Rahm, and Rogers

Dudiak led the Pledge of Allegiance

PUBLIC COMMENTS ON AGENDA ITEMS

REPORTS

Monthly departmental reports were received.

Reports

AGENDA ITEMS

Heit moved, Rahm seconded to approve items on the consent agenda:
Minutes of the October 18 and November 4, 2010 Board meetings.

Consent
Agenda

Treasurer's Report

Bills

- 1. General \$106,447.96
- 2. Building \$14,042.55
- 3. Sewer \$21,301.99
- 4. Water \$54,715.68
- 5. Liquor \$395.62
- 6. Ambulance \$8,869.67
- 7. Park Millage \$2,144.54

Dudiak	Yes
Heit	Yes
Oselka	Yes
Rahm	Yes
Rogers	Yes

Motion Carried

NEW BUSINESS:

Rogers moved, Dudiak seconded to accept the Maudlin/Hoder sewer project as complete.

Maudlin/
Hoder Sewer
Acceptance

Motion Carried

Heit moved, Dudiak seconded to approve payment to Berrien County for \$59,198.33 for October, 2010 police protection, funds to come from the LRSD discretionary account.

Berrien Co.
Police
Payment

Motion Carried

Rogers moved, Rahm seconded to approve payment to ACI Finance, Inc. for \$6,500 for the USDA Water Project (Behner Road) and \$9,500 for the USDA Sewer Project (Harbor Country Drive), payment is pending loan/bond proceeds received after closing.

ACI
Finance
Payment

Motion Carried

Rahm moved, Heit seconded to approve payment to Howard's Excavating for \$200 for hauling and disposal of concrete relating to the Memorial Park project.

Howard's
Excavating
Payment

Motion Carried

Rogers moved, Dudiak seconded to approve the CSX agreement for the upgrading of watermain through the railroad's right of way (USDA project) and payment of the \$3,900 in fees.

CSX
Agreement
& Payment

Motion Carried

Rahm moved, Rogers seconded to approve payment to Mitchell Root for \$175.00 for recycling station clean up.

Payment to
Mitchell Root

Motion Carried

Dudiak moved, Heit seconded to approve payment to Lynn Harvey for \$251.50 (50% of the costs) for services regarding possible fire department consolidation.

Payment
to Lynn
Harvey

Motion Carried

Dudiak moved, Heit seconded to approve, upon recommendation of the New Buffalo Township and Berrien County Planning Commission, the following Zoning Ordinance Text Amendments:

Zoning
Ordinance
Amendments

Amendment to Section 14.1 C. 1.

Item 5 becomes Item 6 and is reworded to say:

“(6) Other materials as may be required by this section, by the Zoning Administrator, or by the Planning Commission.”

New Item (5)

“(5) If the Zoning Administrator determines, based on a review of (i) the Soil Survey of Berrien County, Michigan prepared by the United States Department of Agriculture, Soil Conservation Service or (ii) wetland inventory maps prepared the State of Michigan Department of Natural Resources and Environment (“DNRE”) pursuant to Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, that there is reason to believe that there are wetlands on the property on which the proposed development is to be located, then the Zoning Administrator shall advise the applicant that the application may not be submitted for review and noticed for a public hearing without a “wetlands delineation” or “wetlands assessment” as defined in DNRE Rule 281.924 (6) (c) (iii) authorized by MCL 324.30319 (commonly referred to as a Level 3 Delineation).

Dudiak	Yes
Heit	Yes
Oselka	Yes
Rahm	Yes
Rogers	Yes

Motion Carried

Heit moved, Dudiak seconded to approve, upon recommendation of the New Buffalo Township Planning Commission, a Special Land use for Shubert Collision located at 19015 U.S. 12, New Buffalo, Michigan as follows:	SLU for Shubert Collision
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Findings or Conclusions based on Section 15.4.

Pursuant to Section 15.4 of the Zoning Ordinance, the Planning Commission has found, and recommends that the Board of Trustees likewise find the following Conclusions and attach same to the Minutes of the Township Board Meeting where the Special Land Use is Granted

- 1. The development given by the SLU is harmonious and appropriate with the area character and is compatible with the adjacent properties because as a Vehicle Repair Facility it continues what was done previously at the property for many years by Vanair Co: namely modifying, painting, refinishing and reconditioning vehicles.*
- 2. The Vehicle Repair Facility is adequately served by a 4 lane road, wide driveway access, is adjacent to the fire department, appears to have appropriate drainage because it never caused any issues when operated as Vanair. It has municipal water and sewer.*
- 3. The chemical and odors have been affirmed in writing (see attached statement) by the applicant to meet all EPA and DNRE requirements and the applicant will submit the most recent report on the venting system to the Zoning Administrator within 30 days of the SLU being recorded. Therefore there are no concerns about odors, chemicals, equipment, etc.*

4. *The building has been vacant for at least two years since the Vanair Company left. Having a new, viable business in the property is definitely an improvement.*
5. *The Definition of Vehicle Repair Facility is not contained in section 15.7 so this is not relevant.*
6. *The Master Plan and Zoning Ordinance both anticipate commercial activities along Rte 12 in this area. The activity of a Vehicle Repair Facility is specifically noted as eligible for a Special Land Use. Therefore the use is compatible with the Master Plan.*

Findings or Conclusions based on Section 15.3 and appropriate Parts of Section 14

The Planning Commission has found and recommends that the Board of Trustees also find that:

1. *All notices as required by Section 15.3 of the Zoning Ordinance have been properly and timely posted.*
2. *An Appropriate Site Plan and other documentation has been submitted as required in the applicable sections of Section 14 of the Zoning Ordinance.*

Conditions placed on the Special Land Use Grant as permitted in Section 15.5

The Planning Commission has created Conditions for the SLU and recommends that the New Buffalo Township also create the same following conditions for the granting of the Special Land Use:

1. *Since the Special Land Use is granted to the lessee interest only and not to the fee simple interest of the property, the SLU is only for the leased portion of the property and shall exist only so long as the attached lease exists.*
2. *As such, since the Lease specifies only one renewal of 5 years, this Special Land Use shall automatically terminate not later than August 31, 2020. The Lessees or their successors or assigns may apply for a continuation of the SLU under a new lease and such extension shall be granted unless the conditions of the business operation have changed in a way to make the operation no longer compatible with the original Special Land Use issued.*
3. *Since the SLU is being granted to a tenant interest, the SLU shall not be recorded and thereby made effective until the Lessee delivers a copy of the lease fully executed by both Lessor and Lessee to the Zoning Administrator.*
4. *Since the Lease provides for 13 shared spaces, and Ordinance requires 8 dedicated spaces, the Lessees warrant as part of their acceptance of the Special Land Use that there shall always be a net of 8 spaces available for their use during their business operating hours. The shared use concept is in the Ordinance and so there is no issue so long as there are always 8 net spaces during hours of business operations.*
5. *The SLU shall be finally recorded only when the Lessee/Applicant has delivered the latest Inspection Report for the filter system at the premises to the Zoning Administrator.*
6. *The SLU shall be finally recorded only when the Lessee/Applicant provides the Zoning Administrator with an affidavit indicating that they will always abide by all applicable EPA and DNRE laws, rules, and regulations related to the operation of their Vehicle Repair Facility. The Lease shall, once the financial terms and any other personal terms have been edited out, be recorded attached to the SLU Permit.*

Dudiak	Yes
Heit	Yes
Oselka	Yes
Rahm	Yes
Rogers	Yes

Motion Carried

Rahm moved, Dudiak seconded to amend the Sewer Use Ordinance as follows:

The following paragraph shall be added to Article V Paragraph 5 of the Sewer Use Ordinance:

Any person that owns or occupies property served by a building sewer that connects the property, including a structure, fixture or improvement on the property, shall be fully responsible for and pay all costs incurred if the sewer lateral that connects the property to the Township sewage system becomes plugged, blocked, or backed up. The owner and/or occupant shall be responsible for paying all costs to correct any overflow, backup or damage to the sewer pipe from the main sewer line to the structure, fixture or improvement on the property. The owner and/or occupant shall hold New Buffalo Township harmless from any costs that result from the sewer main to the structure, fixture or improvement.

Dudiak	Yes
Heit	Yes
Oselka	Yes
Rahm	Yes
Rogers	Yes

Motion Carried

The Weed and Grass Ordinance was TABLED.

Weed/Grass Ordinance TABLED

Heit moved, Dudiak seconded to approve the revised Park Pavilion Rental Agreement.

Park Pavilion Rental Agreement

Motion Carried

Public Comments were heard.

Rahm moved, Dudiak seconded to adjourn at 7:35 p.m.

Adjournment

Motion Carried

Submitted,

Paul Oselka
Clerk