

Otsego County Planning Commission

Minutes 12-21-09

1. Call to Order
2. Pledge of Allegiance
3. Roll Call

Present: Chairman Stults, Vice Chairman Arndt, Secretary Ernst, Mr. Mang, Mr. Klee, Ms. Backenstose, Mr. Hilgendorf, Mrs. Jarecki, Ms. Nowak, Mr. Borton

Absent: Mr. Colosimo

Land Use Services Director Joe Ferrigan, Otsego County Attorney Haider Kazim, and County Administrator John Burt

Public present from sign in sheet: Olen Harris, David Delaney, Elliott Blumberg, Tom Matelski, Colleen Jozwiak

4. Consent Agenda – None
5. Approval of Minutes Nov. 12, 2009 Special Meeting and Nov. 23, 2009 Regular Meeting

Motion made by Mr. Klee to approve the Minutes with the finding of facts as amended from Nov. 12, 2009. Supported by Mr. Borton.

Approved unanimously. Motion carries.

Motion made by Mrs. Jarecki to approve the Minutes from Nov. 23, 2009 with corrections. Supported by Mr. Mang.

Motion approved unanimously. Motion carries.

6. Other – None
7. Public Participation for items not on the agenda – None
8. Unfinished Business – None
9. Public Hearings – None
10. Unfinished Commission Business
 - a.) Northern Processing

Mr. Ferrigan “We had this on our agenda at our last meeting and Mr. Kazim was unable to attend at that time. He is here tonight to answer any questions we had , some events that , took place at the Planning Commission where the Planning Commission requested a written opinion from Mr. Kazim, he issued that to us, we took some action on, as directed by Mr. Kazim, in his opinion to require Northern Processing to submit a reclamation plan. Since then, from a hearing back in May, Judge Allen signed an order that she determined that they were not required to submit a reclamation plan and after the Planning Commission took their action then there was some additional paperwork filed in court asking

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the Judge to reconsider her order. I don't know if that has taken place yet. One of the Attorneys may be able to answer that question tonight. That's where we're at right now."

Mr. Stults "Mr. Kazim, do you have anything you want to add or?"

Mr. Kazim "No I believe Joe has a, summarized it correctly unless the members of the Planning Commission want me to go over or answer any questions based on the opinion that was issued by us on Oct. 19th 2009 which then the Planning Commission considered in its decision at its Oct. 21st meeting, the Planning Commission decided that Northern Processing was required to submit a reclamation plan pursuant to Section 18.25 of the Zoning Ordinance and in addition ordered it to submit a draft reclamation plan by Nov. 16th of 2009. I want to add that at the time when my opinion was issued I was asked two questions. I was asked should Northern Processing be required to submit a reclamation plan and the second question was whether the five thousand irrevocable letter of credit that had been submitted by Northern Processing, whether that was sufficient. My opinion is based upon the Otsego County Zoning Ordinance in specifically Section 18.25, as well as based upon the review of the Planning Commission minutes from the Nov. 2nd 2001 hearing and on the Special Use permit and I believe the Jan. 2004 Planning Commission minutes from the issuance of the second Special Use permit as well as the Special Use permit applications that were submitted by Northern Processing, the first and second time, based upon review of all those documents my opinion is that they are required to submit a reclamation plan under the Otsego County Zoning Ordinance. Now, the difference is, at that time I was not made aware that there had been a hearing that had taken place before Judge Allen on May 5th, 2009 at which Mr. Ferrigan testified, and he testified pursuant to subpoena. I subsequently became aware that he had been subpoenaed by one of the parties in the lawsuit that is currently in progress between Ms. Jozwiak and Mr. Matelski and then a counterclaim by Northern Processing, and that Mr. Ferrigan testified. I have since that time reviewed the DVD recordings of not only the May 5th hearing but two additional hearings that took place on May 7th, 2009 and then on Nov. 5th, 2009, it appeared to me that after the hearing on May 5th, 2009 Judge Allen, ordered from the bench that based upon the testimony of Mr. Ferrigan she concluded that what had been submitted to the Planning Commission case back in 2001 when it had the hearing for the first Special Use permit that Northern Processing was not required to submit a reclamation plan. In all fairness to Mr. Ferrigan, the actual order was not signed by the Judge until November of 2009, we all know that court speaks through its written orders so even though at the conclusion of the hearing Judge Allen verbally stated that she was making a decision that a, Northern Processing would not be required to submit a reclamation plan the actual court order was not entered until November. That has created a distention of on my Oct. 19th opinion to the extent that so far as the Planning Commission ordered Mr. Matelski to submit a reclamation plan by Nov. 16th of 2009 or else he would be found in violation of the Otsego County Zoning Ordinance based upon the current order that is in effect we cannot do that. My analysis and this Planning Commissions decision that Mr. Matelski should be required to submit a reclamation plan is correct. To actually order him that he must submit a reclamation plan presently we do not have that authority based on Judge Allen's order that she signed in November saying that they don't have to. Now as Joe indicated council for Ms. Jozwiak has refilled a

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motion for reconsideration, under the court rules you don't file a response to a motion for reconsideration and there is no hearing on a motion for reconsideration, but council for Mr. Matelski did file a response and part of that response asked to not issue a decision until after today's Planning Commission hearing takes place. In my opinion the decision of the Planning Commission that it made on Oct. 21st that Mr. Matelski is required to submit a reclamation plan pursuant to Section 18.25 is correct. The Ordinance is very clear. In addition the representations made by Mr. Matelski back in 2001 and again in 2004 in the form of an impact statement also indicated that there was an intent to file a plan. That plan was never filed. To the extent that the position that has been taken is that what was indicated in the Special Use permit applications that they will comply with the requirements of the Otsego County Zoning Ordinance that that in itself constitutes a reclamation plan, in my opinion that's not correct. A reclamation plan by its very nature has to be specific as to what steps a person or an entity needs to take to rehabilitate the property, and that has to have certain specifics. Now our ordinance does provide some parameters as to what that reclamation plan or rehabilitation plan has to be, and that is contained partly in Section 18.25.7, where it talks about that all slopes and banks are remaining above water level shall be graded to angles that do not exceed one foot in elevation for each three feet of horizontal surface and these shall be treated to prevent erosion or any other potential deterioration. It also requires that rehabilitated sites shall be reasonably natural and inconspicuous and shall be reasonably lacking in hazard. Now to suggest that simply by indicating in a statement that our rehabilitation will not have any hazards and we will take all measures to prevent erosion and then say that is our reclamation plan, to me, it is not. It then asks to indicate what steps will be taken to prevent soil erosion and what steps will be taken to stabilize the soil and prevent sedimentation, it has to indicate how there will be no hazards, it has to indicate how the area will revegetated, what types of trees, or turf will be planted and what is going to be the timing, the sequence of all these steps, and that is clearly contemplated under the Zoning Ordinance because the Zoning Ordinance that also requires that at least with soil erosion and stabilization efforts that they need to comply with the recommendations and specifications of the soil conservation office. Clearly our soil conservation officer will not be able to make a determination whether, whatever, Mr. Matelski or Northern Processing intends to do in terms of preventing soil erosion and soil stabilization meets those steps specifications and recommendations, unless there is something in that plan for that soil conservation officer to review and then say yes this complies with our standards, our specifications or recommendations. So I do not agree with Mr. Matelski's representation to this Commission that what they submitted back I believe in April of 2009 to Mr. Ferrigan which they titled a reclamation plan, and basically all it contains is a sub-certain findings that the Planning Commission made the second time it issued a Special Use permit in Jan. of 2004 where it found that the Zoning Administrator or the Zoning Officer had inspected the site on several occasions to insure compliance with the Special Use permit requirements. That Zoning Administrator at that time informed the Planning Commission that Northern Processing was in compliance and that the Chairman (Tober) at that time read a statement from Ms. Jozwiak that she would like Northern Processing to get the approval and then it references statements that were made in the impact statement which basically recited the language that is in the Zoning Ordinance, which is a very broad language it is not meant to be the reclamation plan in itself, it basically sets the parameters, ok this is what at a minimum you need to do in your reclamation plan but then you need to be more

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specific as to what steps you're going to take, and clearly that is not being submitted to the Planning Commission. One of the issues that has been brought up is that the Planning Commission requires, or that the Zoning Ordinance requires this rehabilitation to take place progressively so that in essence as the mining operation or the excavator moves through the mining area they rehabilitate the area that had already been mined, and that's fine, but to suggest that a reclamation plan cannot be submitted at the beginning of the process and rather it must be submitted at the end of the process, I don't think that's accurate, because the Zoning Ordinance itself contemplates that it has to be reclaimed progressively, and so there has to be a plan in place as to how you're going to do that. Otherwise, we don't know what steps they will take because we're not monitoring how the excavation or mining operations are taking place and what the schedule of those operations are, but as long as we have a plan in place that as they move through this mining area, these are the steps they will take to remediate or rehabilitate the already mined areas then that's sufficient for our purposes. I also don't believe that it is a legitimate argument that because we in the past, Otsego County has never required a reclamation plan to be submitted that somehow that precludes us from requiring in the future any new operator, miner, or excavator to submit such a plan. We should all understand that the Zoning Administrator or Land Use Director only has those powers that are provided under the Zoning Ordinances, that's his job, he cannot make his own rules, that are in conflict with the Zoning Ordinance. The Zoning Ordinance requires a reclamation plan to be submitted. I do not know and I don't think Mr. Ferrigan knows the mind set of why the previous Zoning Administrator didn't require one, but now we are required and there is no argument of a detrimental reliance on our past practices because if anything by not requiring others to submit such a reclamation plan they benefitted from that oversight. They did not detrimentally rely upon that practice to then say; well now we shouldn't be required to submit a reclamation plan because you haven't required anyone in the past. So, at this point my recommendation to the Planning Commission is that your decision of Oct. 21st, 2009 that Mr. Matelski and Northern Processing was required and should be required to submit a reclamation plan under Section 18.25 is correct and it should stand, however that part of your decision that required Mr. Matelski to submit such a plan by Nov. 16th 2009, I don't think we can legally enforce that deadline unless and until Judge Allen entertains a plaintiffs motion for reconsideration and reverses her decision. "

Mr. Ernst: For the time being we'll put the issue of the reclamation plan in its own little box over here, but let's talk about the rest of the permit, because it did state that it had to follow the guidelines of 18.25.7 and recommendations of the Otsego County Soil Conservation District. If, I guess those are a minimum and if we are at a point where the Special Use permit for this site is expiring ... "

Mr. Kazim "January 2010, sometime in January."

Mr. Ernst" next month, then even without that we have a situation where, the permit holder has to comply with those two recommendations and have it done by Jan. whatever in order to maintain compliance with their permit, is that correct?"

Mr. Kazim "Now you are referring to?"

Mr. Ernst "Item three from the November 2nd 2001 minutes"

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Mr. Ernst "It's in the original motion on page 3? It's about third page from the back."

Mr. Ferrigan "It is in that packet that I gave you tonight."

Mr. Kazim: ok I have it. Thank you. Pit rehabilitation or restoration shall follow guidelines found in Section 18.25.7 and the recommendations of the Otsego County Soil Conservation District paragraph 3, and then you're also referring to paragraph 2? "

Mr. Ernst "Well I guess right now I'm just talking about it in terms of the rehabilitation. You know, I think that it essentially means that they've got to follow the rest of the Ordinance."

Mr. Kazim "Right, I guess and just so I know that I'm understanding your question correctly, your question basically is, without the actual event of a reclamation plan being prepared and submitted, pursuant to the conditions that were attached to the approval of the Special Use permit whatever reclamation or rehabilitation work they do would they still be required to conduct that rehabilitation work pursuant to Section 18.25.7 and the recommendations of the Otsego County Soil Conservation District is that..."

Mr. Ernst "And to have that done by the time their permit expires."

Mr. Kazim "Well I'll answer the first question first. The answer to that is yes, whatever reclamation work that they do perform it has to comply with 18.25.7 that's clear. With or without an actual reclamation plan being submitted. As to the second question, whether or not as to the time line by when they should have completed that work our Zoning Ordinance does not place such a time line as to when that reclamation, remediation work has to be completed it basically says it has to, the areas have to be rehabilitated progressively.

Mr. Ernst "Doesn't that imply that it is part of the operation of the pit?"

Mr. Kazim "Well you can make that argument and I would certainly say this that it has to be performed within a reasonable time period after the operation has concluded so that it cannot be left to an indefinite time period. There is a separate provision in the lease that Mr. Matelski entered into with Ms. Jozwiak that provides for a one year."

Mr. Ernst "But that has nothing to do with it. "

Mr. Kazim "That has nothing to with us, but if you're looking at this from the perspective of the Zoning Ordinance, the Zoning Ordinance doesn't really have any language that says the final rehabilitation work has to be completed before the Special Use permit expires or that it has to be done within six months after the Special Use permit expires or one year or whatever."

Mr. Ernst "What if they're allowed to, if the argument is that they're allowed to do this item that's contained in the description of what their mining operation is and what other operations can they do after the permit expires? Only the ones that make money? I would argue that restoration is an integral

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part of the mining operation . It's clearly laid out and dealt with as part of the overall operation and part of the permitted activities and required activities under the permit."

Mr. Kazim "It is an integral part of mining operation, which is that as you mine an area you rehabilitate it. But once again I think that what we are talking about is the time line within which that rehabilitation work has to be performed and the Zoning ordinance only says it has to be rehabilitated progressively as those extraction areas have worked out. If you look at the permit conditions the Special Use permit both the first and second one also did not set any specific time period saying well you have to have the remediation work completed before your planning your Special Use permit expires or your lease expires or before your operations cease so to speak or before your out of this mining area. That's, There's no time limit anywhere contained in either the, in either of the Special Use permits that were issued or the Zoning Ordinance it's self. "

Mr. Ernst "What about 18.25.12, based on permit expiration? I understand what you're saying, yet but that you're saying that restoration is not part of the activities that they were permitted to do."

Mr. Kazim "Restoration is basically, first of all 18.25.12 only applies if they did not begin the mining operations within a year. So it basically, if approval for a Special Use permit it granted by the Otsego County is shall be for a specific period of time not to exceed five years, well that's fine. Those permits granted for a period shall be inspected at a minimal of once a year by the Zoning Administrator to ensure compliance. I do not believe that 18.25.12 addresses a time line within which the rehabilitation work has to be completed.

Mr. Ernst "Right."

Mr. Kazim its approval was conditioned upon them complying with the rehabilitation provisions contained in the Zoning Ordinance. It did not set any independent conditions as to when that rehabilitation work must be completed by. So the only guide for us is to then go back to our ordinance and refer to 18.25.4 and 18.25.7 specifically and say ok."

Mr. Ernst "Alright, 18.25.5.4 says a plan for extraction and reclamation of total project."

Mr. Kazim "Right."

Mr. Ernst "So, again to me that's very clear and maybe we just need to make it more clear in our ordinance if that isn't, then a reclamation is part of the total project. But I guess, all that I'm hearing is that might be our intent but that's not how it would be interpreted legally."

Mr. Kazim "If it had an interpretation your correct, and , but it is, if that is what is intended by the County that rehabilitation work must be completed by the time the Special Use permit expires, then it needs to be more clearly stated her because under the present language it doesn't say that. And in the absent of that courts are likely to, then to go to the default position as well as long as it's completed within a reasonable amount of time and then the courts won't decide based on the extent of the reclamation how long it's going to take how extensive the operation was what is a reasonable amount of

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time. And that's why I can't say without actually seeing a plan and what they intend to do and what is the extent of the reclamation whether I can, I'm not in a position right now to argue whether a certain amount of time that they may argue they need is reasonable or not without knowing the specifics of what they intend to do, because that's what the courts would look at in deciding whether what is a reasonable amount of time or not. "

Mr. Ernst "Thank you."

Mr. Stults "Any other questions?"

Mr. Ernst "I got a couple of things I've got to clarify in my mind here."

Mr. Stults "The order by Judge Allen that Northern Processing is not required to provide a reclamation plan that was in a suit that Otsego County was a part of or not a part of?"

Mr. Kazim "We are not a part of that lawsuit."

Mr. Stults "So we are being then compelled to comply with an order in a court case that we didn't have an opportunity to express how we felt it would be? How can we be expected to comply with an order when the court hasn't taken the direction to tell us that it's even out there?"

Mr. Kazim "Well arguably I think the, I'm playing the devil's advocate here, that order was based upon, and the order actually says it was based upon Mr. Ferrigans' testimony. So Mr. Ferrigan appeared at this particular hearing in his capacity as Otsego County Land Use Director. He presumably and I can only presume, the court took in to account Mr. Ferrigans' expertise in this area because he is the person that's charged with the enforcement and knowledge of the Zoning Ordinance and then relied upon his testimony to conclude a that Northern Processing was not required to submit a reclamation plan, so arguably the court did in its opinion get a view of how we felt about the situation or how we were, what our position was in this situation through the testimony of Mr. Ferrigan."

Mr. Stults "But wasn't Mr. Ferrigans' testimony in the middle of the case and he probably not even there when Judge Allen made a ruling so when the ruling was made?"

Mr. Kazim "I believe so, I don't know he testified I don't know if he left the courtroom or not. I think Joe would, but I couldn't tell on my, on the DVD whether he was still present in the courtroom or not. But so I could not answer that."

Mr. Stults "If the court intended us to live by that order shouldn't they have an obligation to give it to the County then and say live by it?"

Mr. Kazim "If you are not a party to a lawsuit you don't automatically get those orders, and that's just the way the court rules are set up. I understand what your point is, that if the court is saying by its order effectively binding the County from not making Mr. Matelski submit a plan it should at least have forwarded a copy to us, to Joe, or to the Planning Commission saying well this is my order in this manner. Court rules do not require a court to submit an order to a nonparty. Certainly and like I said the

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order was not signed until Nov. so it wouldn't have had any bearing on your decision which took place on Oct. 21st, because there was no order. Now whether either of the parties when they appeared before the Planning Commission could have informed the Planning Commission that hey we had a hearing and at that hearing the Judge made this decision but we don't have a written order yet but this is what she said. At the hearing I believe that may have been helpful to the Planning Commission to know, well Mr. Ferrigan testified and the Judge after the testimony from the bench said that she was not requiring Mr. Matelski to submit a plan. I can't speak to that but something that would have been helpful to you when you were considering this decision, because at that time you could have just said, well listen it doesn't really matter at this point whether we order him to submit a reclamation plan or not because under the court order he's not required to."

Mr. Arndt: So as we go forward tonight we're having this conversation to inform ourselves but I guess we've got to decide whether we're going to wait until the Judge rules one more time or we're going to take the middle ground of reasonableness or something?

Mr. Kazim: my impression of today's proceeding is limited to the fact of your order that required Mr. Matelski to submit a reclamation plan by Nov. 16th that Joe sent in a letter to Mr. Matekski dated Nov 2nd 2009 where he said that you are required to submit a reclamation plan no later than Nov. 16th 2009 if you fail to submit the draft reclamation plan you be considered in violation and will be issued a citation. And so in my opinion the extent of today's hearing is, we have no power at this point to enforce that part of your decision from Oct.21st which required him to submit a reclamation plan by Nov. 16th or be cited.

Mr. Stults: Is the reclamation plan is considered a part the general site plan?

Mr. Kazim: By looking at the ordinance provisions in your site plan review standards I don't see how that would be considered as part and parcel of a site plan review application. Clearly the Planning Commission knew at that time that he had to submit a reclamation plan an especially the second time around when they made the decision. Mr. Matelski' council had submitted an impact statement in which he made a statement that a plan that showed a site plan that showed a soil erosion measures and other remediation measures would be submitted to the Zoning Administrator so I would assume that the Planning Commission looked at that draft impact statement and said ok well we expect you to submit one. Now someone should have followed up on it and made sure that one was submitted, but that didn't happen.

Mr. Ernst: Mr. Chairman?

Mr. Stults: Chairman Stults recognized Mr. Ernst

Mr. Ernst: Mr. Kazim would it be appropriate, for us to consider a motion that the Planning Commission based on a finding of fact that no acceptable reclamation plan has been submitted, does find that Northern Processing is in violation of the ordinance at this time.

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Mr. Kazim: I think it's appropriate for that because number one no acceptable reclamation plan has been submitted, and number two the Zoning Ordinance 18.25 does require such a plan to be submitted. The only thing I want to make clear to the Planning Commission does not have any authority to then enforce.

Mr. Ernst: Understood. But this might be an official way for the Planning Commission to communicate its concerns back to the court.

Mr. Kazim: Absolutely. I think the court needs to be aware of our position in this matter when it considers the motion for reconsideration.

Mr. Stults: Is there any other action that we should consider?

Mr. Kazim: Not at the present time. Now we may, if the court reverses its decision and says you have to submit a reclamation plan then obviously we would, I would say that in that instance Mr. Ferrigan should be authorized to then contact Mr. Matelski and require him to submit a reclamation plan based upon the same amount of time that was earlier provided, so if you had provided him from Oct. 21st till Nov. 16th, should the court reverse its decision and grant plaintiffs motion for reconsideration in this case and require Mr. Matelski to submit a reclamation plan then Mr. Ferrigan should be authorized to contact Mr. Matelski and require him to submit a reclamation plan in 30 days.

Mr. Ernst: You haven't asked him tonight.

Mr. Kazim: No I think with respect to your Oct. 21st meeting you already made a motion to inform Northern Processing that they have not complied with Section 18.25.4 and 25.7 and that is required to submit a reclamation plan no later than the 16th so I think you have already made a motion informing him that he has not complied with Section 18.25.4.

Mr. Stults: Well I think the timing of the court order being after that then we should reiterate that we still feel there is an issue.

Mr. Kazim: Ok. That's fine. And I don't see any problem with you reiterating that.

Mr. Delaney: I have weigh in on what you're doing because at the Oct. meeting did the Board send notice to the applicant who has the standing here on this issue that it was going to be addressing some issues and it appears to me that your amending, revising, revisiting, reinterpreting a special use permit issued 5 years ago. He has to have due process notice."

Mr. Ernst: Excuse me, but what we did is give instruction to this man we gave no instruction to your client. We gave instruction to this man on how he should proceed in enforcing the ordinance. So we decided he was in violation then... and we just told him to go do his job.

Mr. Kazim: And I should also point out, correct me if I'm mistaken, but the Oct 21st meeting at which Northern Processing matter was considered, that was not a Public Hearing was it?

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Mr. Ferrigan: No

Mr. Kazim: It was just like today's meeting. You're not required to provide a notice of, I don't believe it is your practice to provide an agenda in advance to any one in particular who might appear on your agenda is it?

Mr. Ferrigan: No.

Mr. Kazim: So the meeting times were noticed at the beginning of the year I'm assuming and unless it's a Public Hearing there is no statutory requirement or legal requirement to provide a specific notice to any one that's on the agenda.

Mr. Delaney: To reach a finding that someone is in violation of permit.

Mr. Kazim: It doesn't matter it was an issue that was on the agenda if you were expecting one I would think that the two councils would be communicating with each other.

Mr. Delaney: The reason I weighed in was because Hider had said earlier, it would have been good to know from the applicant or a party in that position that there was a court decision which there was back in May. Well if I'd have known about the hearing I would have come over here. But I didn't know.

Mr. Blumberg: Excuse me, can I just address a couple of things? First of all in fairness to Mr. Ferrigan, on the day of the hearing before Judge Allen he apparently was subpoenaed by Mr. Delaney's client Mr. Matelski. I think in all things we had some ability to look backwards and Mr. Ferrigan certainly should have consulted with either Mr. Burt or Council before he went into court to testify in the matter clearly I think he answered in good faith but clearly his testimony was the basis for a decision that Judge Allen made. We supplied the court with all the documents that your council spoke about. All the documents that require Northern Processing to file a reclamation plan. But one for the fact that Mr. Ferrigan's testimony was something to the effect Mr. Matelski is generally complied with the Zoning Ordinance and I have every reason to believe he'll follow the ordinance. And what's really the basis of Judge Allen's decision and I think for future reference I'm certain Mr. Ferrigan will consult with legal council before he comes into court certainly if he's subpoenaed I think it would be a prudent thing for him to do.

Mr. Delaney: Now I just saw the video the court had your file, all your Planning Commission minutes, had the impact statement, had your resolutions and that's my issue, is that I'm aware of what happened in 2000 before I was here. I know what your Special Use permit says regarding reclamation plan, the impact statement indicates that we could or may file a plan but that's an application. It's your resolution that your Special Use permit that controls you. Well looking back 5 years later on a plan saying that looking at the ordinance is something that we should do or something that we should have done. If the Planning Commission wants to have ordinance amended to reflect that it's fine. But making a decision 5 years later in retrospect and the suggesting that he's in violation of the ordinance really is a pretty significant due process concern for me. That's really why if we were here in Oct. we wouldn't be in this situation that we're in I don't think.

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Mr. Ernst: Are you saying that because it was from 2000 because it was in the ordinance in 2001 and he didn't do it then he doesn't need to do it now?

Mr. Delaney: Well

Mr. Ernst: Is that your argument?

Mr. Delaney: No, the argument is this, your now saying in 2009 we think this is a good idea we think that the ordinance required that, where is it saying in your minutes in your Special Use permit that he needs to file a plan. It says follow the ordinance, follow this Section.

Mr. Ernst: Yes sir.

Mr. Delaney: Where does it say it? You know John you've been here a long time.

Mr. Ernst: Yes sir.

Mr. Delaney: You're a solid engineer and we're trying to go back in time 5 years, and say it at that time, say but you will file a reclamation plan and this is the criteria for a reclamation plan which.

There were several people talking at the same time.

Mr. Delaney: I don't get a chance to finish what I am saying.

Mr. Stults: Mr. Blumberg please let him finish.

Mr. Delaney: The reason I'm addressing it with John because he and I were there then, and I know what the criteria's been over the last 15 years, you've never required it.

Mr. Ernst: And it states this is the 2001 version

Mr. Delaney: Right

Mr. Ernst: Alright a plan for extraction reclamation of the total project which shall include surface overburden, topsoil stripping, and stockpiling on the plans and provisions for grading re-vegetation and stabilization that will minimize soil erosion sedimentation and public safety problems. That is to be included in the materials to be filed.

Mr. Delaney: Right. And if you look at the impact statement we address those issues in the impact statement but the proofs in the pudding how many reclamation plans has the County taken since 1973 for mining operations? None. It's ok to say that what we should do now is this way. I'm ok with that, but to overtone it is a violation and you'll be fined is a little over the top considering you've never had a plan, I mean do you know of one? Tell me the site."

There were several people talking at the same time.

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Mr. Blumberg: I just want to say one more thing. Mr. Delaney's application to this Commission for the Special Use permit in his impact statement he says a copy of the erosion control and site restoration plan shall be filed the applicants restoration procedures will be provided to the Planning Commission. That's exactly what he put in his application and then the Special Use permit specifically says it's considering all of the documentation that's submitted in support of the permit, so I suspect that this was very much an integral part of the acceptance of the Special Use permit is that he says right in it what he is going to do. He's obligated to do.

Mr. Ernst: Mr. Delaney, in response to your question of when it has, the one that I can specifically recall was I believe Henry Mason did the mining on, it's on the east side of Old 27 between Gaylord and Vanderbilt and I don't know the specific location on it, it's long since been reclaimed. But there was a plan submitted of what the reclaimed site was going to look like.

Mr. Delaney: I'll take a look at that. He closed a site on 27 also and Pyke School and he didn't file a reclamation plan.

Mr. Stults: Mr. Kazim.

Mr. Kazim: Thank you Mr. Chairman, I just want to basically reiterate what the portion that Mr. Blumberg quoted. I think this, this argument of taking the argument direction that we have not required anyone else to submit a reclamation plan so we should not require this particular applicant to submit one or that we did require him back then to submit one or that somehow the Planning Commission minutes or approval of the Special Use permit should have specifically said this is what you have to submit. Well why would the Planning Commission minutes specifically enumerate what he has to submit when the Planning Commission incorporated by reference all the documents that had been submitted in support of Special Use permit application including the impact statement that Mr. Delaney drafted which says a copy of the erosion control and site restoration plan shall be filed and conditionally that his client is supposed to, will be providing to the Planning Commission the restoration procedures. If is making that representation he is already made that representation to the Planning Commission that if you give us the approval we will give you these documents, so to now come back 5 years later and say you didn't say ABC and D specifically that back then and that it's a due process violation to me is contradictive by it' own impact statement what he submitted back in 2003.

Mr. Delaney: My only concern is when you start talking about violations as if it is black and white and it's not. If you say would you submit a plan and it's something that Mason did I'll take a look at it but that's what concerns me.

Mr. Arndt: Mr. Delaney, what's a reasonable position for your client to take in this deal? Are you just going to walk away? Or would you say gees I'll carve of the sharp points and put some black dirt on it and?

Mr. Delaney: I mean the sites going to be reclaimed. I think that his reclamation history is very good with the County that was testified to by Mr. Ferrigan. So that's not the issue this sites going to be reclaimed

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so I don't think the Commission should have any concerns. We're talking about paperwork here. That's all we're talking about is a plan and I don't think it requires an extensive engineered document to get that done and the County's had numerous sites reclaimed without that so that shouldn't be the Commission's concern that he's going to leave this site unclaimed he's never done that.

Mr. Stults: Mr. Blumberg.

Mr. Blumberg: Then the question is when? And I think it's a really important question because the lease is expired he is in default under the lease the Special Use permit expired in Jan of 2010 so if not now, never. That was the reason I came before you in Oct. is because, initially before Judge Allen is because the production phase of the lease had expired even by its own admission so that in my mind started or at least required him to start the reclamation process and because we never saw a reclamation plan we brought it before the court. And now ultimately you've already determined that the Special Use permit expires next month. So I don't know when this reclamation is going to take place.

Mr. Delaney: Like the council for the County already indicated that there is not a time restriction contained in the ordinance. And I don't know what he means that we're in default he wants to drag you into our litigation and I don't think he should do that. I think that he's baiting you by making that remark but I'm not going to respond to it.

There was more than one person talking, unable to hear

Mr. Delaney: what is already our litigation downtown on...

There was more than one person talking.

Mr. Blumberg: That was not my intent. My intent was to let you know that now is the time and it's probably too late already but something needs to be done and frankly come Jan. 2010 I don't know where we're going to be because his legal right to maintain in the pit at least it's our position is expired at that point."

Mr. Delaney: There are 2 positions in this case... *Cell phone was ringing in the background.*

Mr. Arndt: Well Mr. Blumberg, if you could wave your wand and say fix it today, what would you tell them to do?

Mr. Blumberg: I would tell them to submit a plan 'because based on the plan we can determine whether his intentions are acceptable or appropriate under the circumstances. Right now we're shooting in the dark. And again based on his past history well I don't really know what that history is. That's the purpose of having a reclamation plan so we all can look at it and see if acceptable."

Mr. Arndt: So we say well really can't get much going until March or April or May maybe that's alright as long as there's a plan? And he agrees to it.

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Mr. Blumberg: You know I don't know, because frankly again I think come spring there'll be some determination of these if he's even legally able to be in the pit.

Mr. Delaney: See possession of the pits not before this Commission.

Mr. Blumberg: Oh, I understand.

Mr. Delaney: If we're mining sure then we can't be out there making gravel, even if it were in July right now, that's never been an issue, but possessions ? It's a whole different question than what's before the Commission. And see what happened here was Mrs. Jozwiak brought this motion before the court, I did not, back in May, the court made a ruling and that was it. I never looked back until I got a letter from my client saying what about a reclamation plan. I thought we decided this case. Went back an order wasn't filed I was the prevailing party so I submitted the order. That's why there was a delay. I thought it was a resolved issue. And having never filed a reclamation plan in front of this Commission we had other fish to fry in this case so I just have concern that some of this litigation is being dragged in before the Commission.

Mr. Kazim: Mr. Chairman, if I may?

Mr. Stults: Please.

Mr. Kazim: I believe, and I'm sure either council will correct me, but at that May 5th 2009 hearing the conclusion of that hearing, Judge Allen did lift the freeze on the reclamation activities."

Mr. Delaney: It was a short restraining order of about 14 days.

Mr. Kazim: "Now, I want to make this, I'm sure the Planning Commission probably already recognizes this distinction but I'll read it, the order or the judge's decision only goes to the extent that Mr. Matelski doesn't have to submit a reclamation plan. It doesn't say that he doesn't have to do any reclamation work in the absence of such a plan. And if I remember correctly mining operations stopped in January of this year. And so we are in December, 11 months after the mining operation ceased in January of 2009. The Zoning Ordinance says areas, extraction areas have to be rehabilitated progressively. My argument would be in this situation is that if the mining operation ceased on Jan. of 2009 and he had already made his representations back in 01 and 03 that he is going to comply with the provisions of Sections 18.25 and Section 18.25 says all rehabilitation work to be done progressively on these extraction areas certainly 11 months should be enough time period to do that reclamation plan at least in conformance with the requirements with the Zoning Ordinance whether or not he had a reclamation plan or not so if he got in Dec. and the argument is well we haven't completed the reclamation work because of whatever reasons, I think even with the existence with the order in place the County can still require Mr. Matelski to finish his reclamation work 11 months after he ceased operations, mining operations in Jan. of 2009.

Mr. Stults: But what time frame can we do that?

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Mr. Kazim: I think that would be something that the Planning Commission or Mr. Ferrigan initially will have to decide in concert with the soil erosion officer is to what he is doing and how much time he should have really needed for that. That is a decision for you guys, this Commission or Mr. Ferrigan to or the soil erosion officer to say well you know this is what you're doing and this is how much time you're going to get, because in the absence of a specific time limit the Planning Commission decides. Or the Land Use Director decides, whoever the Land Use director feels he's not, he would like the Planning Commission make the determination, that's fine, but the Zoning administrator, or Land Use director should be talking to the soil erosion officer, visiting the site, determining what has been, what needs to be done additionally and then come up with a recommendation for a time period within that work has to be done. Because it doesn't matter whether the 4 to 7 years to submit a reclamation plan or not the Zoning or the court never reached a decision or never addressed the issue of whether he is to do reclamation work or not. And he clearly has to under the Zoning Ordinance.

Mr. Stults: So we should the direct Mr. Ferrigan to deal with the soil control officer. To do that and come up with a time frame that should have a site of that size and with the specifics of that site are to have the reclamation completed.

Mr. Kazim: Right and in the absence of a reclamation plan I think that's the only way we go about doing it, and I know Joe has visited the site several times, but and I think one occasion at least he was there with Ms. Osburn but I don't believe there was ever any written report generated as a result of that site visit with recommendations to the Planning Commission as to what needs to be done and this how much time should it should be done within. So maybe that is what needs to be done at this point to get, make sure that the process is taking place, with or without a reclamation plan.

Mr. Stults: Would you recommend we have a motion then giving that guidance?

Mr. Kazim: Yes I think that would be the appropriate way for the Planning Commission to make its decision what it wants to do in respect to how this remediation work needs to be done and under what time line.

Mr. Hilgendorf: Is it safe to say that nothings been done so far?

Mr. Delaney: No, there's been progressive reclamation in that pit since he began operating it in 1989, 91? (Directed to Mr. Matelski)No, so you've had progressive, as he abandons the site of removal he reclaims it.

Mr. Hilgendorf: I understand that now we're getting into an interesting conversation about words. So shall, may are two different kinds of words contractually that you might just eliminate or put in. Regular, normal, usual are very debatable concepts.

Mr. Delaney: Oh I'm not using those.

Mr. Hilgendorf: I know but you're, we're tangling up, we're reusing words, extended or it puts a better time frame here when I haven't been on the Commission as long as others so I kind of came in the

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middle of what was going on here. He was done mining 11 months ago, that's a fact, there seems to be a big question about has anything been done to reclaim it? Now I see Mr. Ferrigan has been out there, would you say there's been some progressive reclamation that appears (*Could not hear the rest of the question due to a loud squeaking sound from a chair*) we should direct to you?"

Mr. Ferrigan: Of course I didn't see the site 16 years ago.

Mr. Hilgendorf: No

Mr. Ferrigan: It appears that there has been progressive reclamation of some sort since the beginning of this thing. Now there has been some reclamation started since Jan of 09. I'm not the one to decide if that's been enough reclamation, there has been some. He has begun to do something.

Mr. Ernst: Could you estimate the number of acres?

Mr. Ferrigan: He's probably in the neighborhood of what, 8 and a half, acres, he's moved a lot of dirt around but it's a big site there's a big hole in the ground. I guess I have a question about the soil conservation, and their involvement in this reclamation process. Now I don't think that it's their job to design a reclamation plan I think in this case it is Northern Processing's job to submit a reclamation plan to the Soil Conservation District and they will review that reclamation plan and say yes it complies with what we normally grows here in Northern Michigan or those kinds of things, but when we took Patricia to the site and walked around a little bit on the site we didn't receive anything from her regarding that inspection. I don't think that she's in the business of writing reclamation plans, she'll certainly review something if it's submitted to her."

Mr. Ernst: Could we request that she provide, perhaps that there are appropriate best management practices or other accepted means or she is aware of accepted means that would be appropriate in this instance?

Mr. Kazim: Mr. Chairman, I didn't mean to suggest that the County should be preparing the reclamation plan that's not what I'm suggesting, What I'm recommending is as the soil erosion officer clearly the soil erosion officer is in a position to know what are the acceptable soil erosion minimization and stabilization technique or practices that are approved by the State. If there are standards that the, for example the DEQ or the DNR has with respect to minimizing soil erosion and ensuring soil stabilization and my recommendation is that our soil erosion officer in the absence of a reclamation plan at a minimum ensure that those minimum standards State standards are being met with respect to soil erosion, and I think at least to that effect that narrow portion, she's qualified to do that.

Mr. Ferrigan: She is certainly qualified.

Mr. Arndt: So are we going to do anything about getting something in our hands to look at all parties concede. What we really need to be doing then is directing Mr. Ferrigan to I suppose to take steps to obtain a plan.

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Mr. Kazim: I think what we need to do, is what Mr. Ernst and Chairman Stults indicated that they would like to reiterate the earlier decision in light of the new court order. That the Planning Commission does find that Mr. Matelski is required to submit a reclamation plan pursuant to Section 18.25 of the Zoning Ordinance and that he hasn't done so. And then the second part would be then direct Mr. Ferrigan to consult with soil erosion officer to visit the site and determine the extent of the reclamation work that has been done so far. Make some recommendations as to what needs to be further done. In so far only as this Zoning Ordinance provides, I'm not asking that they go beyond and actually act as reclamation engineers. Just following the standards of the Zoning Ordinance to determine what needs, additional steps need to be done and based upon that recommendation also then provide a time line a recommended time line for when that work should be completed by. And in the meantime, if the plaintiff prevails in court on its motion for reconsideration and the court orders that they have to provide a reclamation plan, well that's even better then, then we have something in writing to start the review.

Mr. Stults: I'd like this to be done in two separate motions."

Mr. Kazim: That's fine.

Mr. Stults: Are you working on the first part John?

Mr. Ernst: I got one done and working on the second one.

Mr. Stults: Ok, can you go ahead with the first one?

Mr. Ernst: Ok. Motion by Ernst that based on the fact that no acceptable restoration plan has been submitted the Otsego County Planning Commission finds that Northern Processing is in violation of the conditions of the Special Use permit and the Otsego County Zoning Ordinance.

Mr. Stults: Support?

Mr. Mang: I will support the motion.

Mr. Stults: Is there any discussion? Any public comment? Will you please reread the motion John before we vote?

Mr. Ernst: Ok. Motion by Ernst that based on the fact that no acceptable restoration plan has been submitted the Otsego County Planning Commission finds that Northern Processing is in violation of the conditions of the Special Use permit and the Otsego County Zoning Ordinance.

Mr. Stults: All in favor say Aye.

Mr. Stults: All opposed same sign.

Mr. Ferrigan: Motion passes.

Mr. Stults: Should we provide the court with that motion?

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Mr. Kazim: You know I'm sure... *Mr. Stults and Mr. Kazim were talking at the same time and could not be heard.*

Mr. Stults: Maybe we should extend our hands?

Mr. Kazim: My anticipation is that one of the parties would provide copies of the minutes of this meeting to the court in support of the motion for reconsideration so I don't know if the court would solicit a non-party minutes in this matter I think the proper avenue would be in this case for plaintiff to just obtain a copy of the minutes and a submit it in support of its motion for reconsideration.

Mr. Stults: Ok.

Mr. Arndt: So the second piece of this has to with directing Mr. Ferrigan to take a certain action.

Mr. Kazim: Yes.

Mr. Arndt: I've sort of got something for discussion. Arndt moves that Mr. Ferrigan be directed to consult with appropriate officials inspect the subject site and develop a recommendation as to appropriate course of action to the Planning Commission in this matter.

Mr. Ernst: I think the discussion, the original motion, Special Use permit referred to recommendations from the Otsego County Soil Conservation District. Was it appropriate to put that in there?

Mr. Arndt: I'd put appropriate officials just in case he wants to get somebody else as well. I'll be happy to add it if you like.

Mr. Mang: will you read it again.

Mr. Arndt: Arndt moves that Mr. Ferrigan be directed to consult with the appropriate officials, inspect the subject's site develop a recommendation as to the appropriate course of action for the Planning Commission.

Mr. Mang: Appropriate course of action I actually think is a little wrong.

Mr. Stults: I think it has to be more specific in giving guidance to Mr. Ferrigan on what we're expecting from him.

Mr. Mang: Well then what I was going to say there was with respect to what reclamation has already taken place and what still needs to transpire per Otsego Conservation.

Mr. Arndt: What reclamation has occurred?

Mr. Mang: What reclamation has occurred and?

Mr. Stults: What remains to be completed?

Mr. Mang: We can say it that way.

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Mr. Stults: And then do we want to set a time frame for plan and restoration to be completed?

Mr. Mang: Well I'm wondering if that's step two after we see what he's found out, I mean if there's not much left, it would be shorter, if there's a whole lot then we would give more time.

Mr. Stults: But the experts we're talking to on what is left to complete would say how long it should take to do is what I'm thinking.

Mr. Hilgendorf: Can we establish an appropriate time frame?

Mr. Arndt: Well the pieces that we've got here everybody nods at, look like this, specifically what reclamation has occurred, and what may remain to be completed. Because he's not going to know for sure until somebody, an expert tells us.

Mr. Ernst: I would like to have also the, some sort of stick there. And I don't know if you need to put this in your motion or how to put it in there, but basically some sort of acceptable standards and recommendations or best management practices for reclamation.

Mr. Mang: And that's what I was getting at. I couldn't quite get it, but that's correct. That way it becomes less subjective.

Mr. Ernst: These standards are out there, and as our lead council pointed out there, these people have more than enough qualifications to select the appropriate ones.

Mr. Arndt: So that will add to the end of that. And what may remain to be completed based on best reclamation management practices?

Mr. Ernst: Based on their recommendations. I would consider it best management practices.

Mr. Mang: Would you accept it as? *Cannot hear, Voices too low.*

Mr. Ernst: The key Ken that I was trying to get in there was it's a recommendation from the Soil Conservation District not the recommendation of some other party or book because the Ordinance specifically gives the, them the authority to make that recommendation and make those recommendations final.

Mr. Stults: Have we covered the parameters?

Mr. Kazim: Yes and I just wanted to ask if you also want to ask them make any recommendations as to how what they perceive the amount of time will be needed to complete the work. Whatever work they are recommending should be.

Mr. Stults: That a recommendation of a reasonable time line for the work to completed.

Mr. Kazim: Right, because you should also have an idea of what the feel of how long it will take to complete what they are recommending.

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Mr. Stults: Ok, do you want to take a couple minutes to fine tune for that Ken?"

Multiple people talking at once.

Mr. Mang: Just a general question. How does the council want us to implement this? Yes, I know that our Ordinance specifically mentions as we've talked about before the input from the Soil Conservation District, but I'm just wondering, them being a very different entity than what we are, are we able to draw them in, and in fact is our ordinance even able to require them to do certain things?

Mr. Kazim: Your Ordinance does require or say the Soil or Conservation

Mr. Mang: I know it does

Mr. Kazim: absolutely I think that this body and the soil conservation district from time to time you would naturally rely on their expertise in certain areas and that's way they're there to advise this board as well as any other board on those issues.

Mr. Stults: And it is the Zoning Enabling Act in a broad sense that's reference to other agencies

Mr. Kazim: Right.

Mr. Stults: And give us that broad authority to drag them in.

Mr. Kazim: Oh, sure. Absolutely because you from time to time depending on what you're dealing with will require other expertise that may be beyond the scope of this body."

Mr. Stults: Mr. Burt.

Mr. Burt: Just to point out we also have a written agreement with the Conservation district to provide services to Otsego County.

Mr. Stults: There we go. Alright.

Mr. Mang: Thanks.

Mr. Stults: Well... John..."*Spoken too low to hear.*

Mr. Stults: Any other questions or comments while Ken's finishing rewriting?

Mr. Klee: I have a question. I wonder does Mr. Matelski have any idea how it'll take to finish this?

Mr. Delaney: He does not.

Mr. Klee: No?

Mr. Delaney: I think his concern is he puts a number out there and there it is. So he has to go back and look at, it's winter. He'll have some general idea once he gets back out there because he's reclaimed sites, smaller or larger, so it's very dangerous to predict that.

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Mr. Mang: I do have another question. You did mention a case number on this, could it be useful or whatever case number this does exist to make on this motion also so that everyone.

Mr. Kazim: You I'm trying very hard to avoid getting ourselves involved in any aspect of this lawsuit

Mr. Mang: Oh I don't mean the court case I mean the case as it came before the Planning Commission

Mr. Kazim: Oh I didn't realize you assigned a number to it.

Mr. Stults: We have not, I don't think in the Zoning Department has assigned a number.

Mr. Mang: Otherwise it seems to me it's just out there without a link.

Mr. Stults: The 01 case we have a number for that.

Mr. Kazim: If you are going to use case numbers then I would suggest you use old 01 and 03 because they are in, because 03 basically relies in term it corporate by reference to 01 Special Use permit.

Mr. Stults: We want to add case numbers to that motion. Joe do you have those numbers there?

Mr. Ferrigan: I have the number from the 2001 case it is SUP-2001-9-4-CH.

Mr. Stults: CH?

Mr. Ferrigan: And the number from the 03 case is PC-2003-09-CH-SUP.

Mr. Arndt: Alright.

Mr. Stults "Go ahead.

Mr. Arndt: Arndt moves that Mr. Ferrigan consult with officials including but not limited to the Otsego County Soil Conservation District, inspect the site in question and develop a recommendation as to the perfect course of action for the Planning Commission specifically as to what reclamation work remains to be completed based on best management practices including a reasonable time frame for completion of reclamation work. References made to previous cases SUP-2001-9-4-CH and case PC-2003-09-CH-SUP.

Mr. Stults: Does that sound complete?

Mr. Kazim: Yes it does. Thank you.

Mr. Stults: And do we have a second on that?

Mr. Hilgendorf: Support.

Mr. Stults: Any discussion? any Public comment? Can you reread the motion before we vote on it please?"

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Mr. Arndt: Arndt moves that Mr. Ferrigan consult with officials including but not limited to the Otsego County Soil Conservation District, inspect the site in question and develop a recommendation as to the perfect course of action for the Planning Commission specifically as to what reclamation work remains to be completed based on best management practices including a reasonable time frame for completion of reclamation work. References made to previous cases SUP-2001-9-4-CH and case PC-2003-09-CH-SUP.

Mr. Stults: All in favor of the motion signal by saying Aye

Mr. Stults: All opposed same sign

Mr. Stults: Motion passes.

Mr. Kazim: Mr. Chairman, before you move on to the next agenda item if you don't have any other questions of me I am going to leave.

Mr. Stults: Does anyone have any additional questions?

Mr. Arndt: I do. I have a question?

Mr. Stults: Ok.

Mr. Arndt: Completely different from this issue here. From time to time we lose buildings to fire and so on and other hazards in the community, and under certain of the Zoning regulations our officials have interpreted the loss of buildings in Zoning districts where the uses are to the loss is legally nonconforming as a loss that's basically unrecoverable to the insured or the homeowner or whomever. Now we're grasping, this has happened several times and of course the recourse is to send it to the Zoning Board of Appeals that basically has not heard the cases or said forget it you lose. A couple of year ago this happened down in Bagley Township and we sought an opinion from someone over in your office there and they said look, there's a thing called the Act of God Loss and as long as it wasn't done intentionally by the property owner then you probably couldn't enforce the interpretation of your Zoning relation and they would allowed to rebuild. Without blind siding you here in 5 minutes, am I nuts when I re-quote that or because it does work on hardship on some of our people especially the lower end of the spectrum that get left out.

Mr. Kazim: Right, you know my first inclination would be to look at what your Zoning Ordinance says with respect to that. However, you are correct that you can have an exception to act of God losses and in those events like tornado or something like that, some Zoning Ordinances do give an exception that if the destruction of a nonconforming building or a nonconforming use is due to such an act of God that

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you the owner can rebuild that same use. So short the answer is yes you are correct in sighting that exception. But then if it's not provided in your Zoning Ordinance you can't evoke it.

Mr. Arndt: Ok.

Mr. Stults: And I don't believe we have it in our Zoning Ordinance.

Mr. Kazim: Right, but you can certainly consider it as an amendment because that is provided for. There is a legal basis for that exception.

Mr. Arndt: Good.

Mr. Stults: Any other questions for Haider?

Mr. Kazim: Thank you.

b) WTG ordinance revision recommendations from committee.

Mr. Mang gave an overview of where the committee stands.

There were multiple discussions among Commission members as to the change recommendations to the WTG Section 18.47 of the Zoning Ordinance.

Mr. Stults asked Mr. Ferrigan to refer the proposed changes to the townships for their input and asked to have comments back from them for the Feb. meeting.

Mr. Stults asked the Members if it was ok to continue with the meeting agenda due to 8:00 stopping time in the bylaws.

There were no objections.

c) Assisted living facilities recommendations from committee.

There were multiple discussions among Commission Members.

Mr. Stults suggested discussing item number **C.** under New Business and recommended to adjust the meeting schedules for the Feb. and Nov. 2010 meetings. The Members gave input on scheduling.

Mr. Ferrigan discussed the County Administrators budget concerns on having meeting only when there are cases to be heard.

Mr. Stults called for a motion to accept the meeting date schedule of the third Monday of every month except Feb. and Nov. which were moved to the fourth Monday.

Motion made to accept the 2010 meeting schedule made by Mr. Ernst. Supported by Mr. Klee.

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Mr. Stults: Any Discussion? All in favor of the meeting date schedule say Aye.

Mr. Stults: All opposed same sign.

There were no opposed votes. Motion passes.

d) Changing message sign recommendations from committee.

There were multiple discussions among Commission Members.

Mr. Mang: A motion that we accept the changes as on this as presented.

Mr. Hilgendorf: Support

Mr. Mang: I will make a motion to recommend to the Board of Commissioners that we accept these changes to the sign portion of the ordinance as presented by the sign committee today 12-21.

Mr. Arndt: Support

Mr. Stults: Any further discussion?

There was more discussion among Members.

Mr. Stults: The motion is to recommend to the Board of Commissioners the adoption the changing the Ordinance as presented by the sign committee.

All in favor say Aye

All opposed same sign

Mr. Stults: Motion passes.

11 New business:

- a) Otsego County proposed Capital Improvement Plan for 2010-2015.

There is new information from the Parks and Recreation Department concerning new bathrooms at the County Park and they would like to add it to the Capital Improvement plan.

There were multiple discussions among Members.

Mr. Ernst: A motion that we amend the Capital Improvement Plan and refer it on to the Board of Commissioners for their approval.

Mr. Klee: Support

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Mr. Stults: Any further discussion?

All in favor say Aye

All opposed same sign

Motion passes.

b) Planning Commission objectives for 2010.

Mr. Stults suggested working on Section 18.25 and 18.26.1 of the ordinance.

There were multiple discussions among Members.

d) Set committees for reviewing the storing of trailers in the rear yard and review of Article 15

Mr. Ferrigan will call first meeting for Article 18.3

Mr. Borton, Mr. Klee, and Mr. Stults will set on this committee.

Mr. Ferrigan will chair committee to look at Article 15.

Mr. Ernst, Mrs. Jarecki, Mr. Hilgendorf and Mr. Stults will set on committee. They will also ask Patricia Osburn from the Soil Conservation District to help out.

Meeting adjourned 9:09pm.