

Corrected 6/28/01 DN

MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS SPECIAL MEETING HELD ON THURSDAY, MAY 24, 2001 AT 7:30 P.M. IN THE CLAY TOWNSHIP BOARD ROOM, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MI 48001.

Chairperson Ron Nelson called meeting to order at 7:30 p.m.

1. Roll Call

Present: Marianne Diss, Cindy Kirkpatrick, Joanne Shirkey.

Absent: Chuck Michel (excused).

2. Approval/Amendments to Agenda:

Moved by Shirkey, supported by Kirkpatrick, **MOTION CARRIED**, to add 4-A. OLD BUSINESS: Earl Steele, Edlane Consideration for an Extension. AYES: All. NAYS: None. ABSENT: Michel.

3 ZONING BOARD OF APPEALS PREFACE

Chairman: The ZBA addresses mainly hardship based on lot size, location and/or shape or contour and location of existing buildings. We are guided by Section 1304 of Ordinance #89. There are five members on the ZBA, one person is excused tonight. Three (3) members must vote the same way for a motion to be granted for a variance. Three (3) members constitute a quorum. You may speak when so directed. Everyone will have a chance to speak. If a particular point gets belabored, the chairman has the right to limit debate. If you should not like the board's decision, whether you are the appellate or the public, you have the right to take it to the Circuit Court. You have twenty-one (21) days to file with the Circuit Court. When the appeal you're involved with has finished, you are welcome to leave or stay, whatever you wish.

4. NEW BUSINESS:

2001-035 OTTO LUDECKY 9609 N. RIVER ROAD

Appellate: Bill Davis, Champion Window, representing the owners: Replace an existing patio room and extend it to the length of the house, non-conforming structure, to the north would not extend beyond where the house already, waterside require 6" more to accommodate wall thickness and elevate some footings.

Chairman Nelson: Sunroom measurement was 13' x 26' going to 13' x 52'.

Marianne Diss: Questioned doesn't have a survey for the property.

Appellate: Building Department OK'd paperwork submitting.

Open the public hearing for Appeal 2001-035, 9609 N. River Road for an addition 13' x 52' for non-conforming house continues the same encroachment into the required front yard. In favor: None. Opposed: None. Close the public portion.

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Chairman Nelson: Brick line is now the same as both neighbor's, new addition will project out further, extending length south would create a greater amount of interference; no one here to comment on it tonight nor did not receive any letters.

Mr. Ludecky: Suffered storm damage why we need to replace it, talked to surrounding neighbors and not objecting to new structure.

Marianne Diss: No problem with the addition, except this is not a legal survey.

Moved by Shirkey, supported by Kirkpatrick, **MOTION CARRIED**, to grant the variance for 9609 N. River Road for a 1'6" variance on the south side yard and a 10' variance for the required east side water yard to allow expansion of his non-conforming structure that will encroach on the average setback. AYES: Kirkpatrick, Shirkey, Nelson. NAYS: Diss. ABSENT: Michel.

4-A. **NEW BUSINESS**

~~2000~~ 2001 Appeal 2004-036 Earl Steele Edlane Property

Chairman Nelson: Received note from Mike Kras regarding a request for a 6-month extension for the appeal, expires 8-17-2001, appellate problems with liens against the property, etc., he is making progress, resolving these issues; on 4-19-2001 was before ZBA for variance on the structure, will not have everything completed prior to the permit deadline before the old trailer is moved off the property; ZBA decision to grant the extension, a public hearing is not in order.

Moved by Diss, supported by Kirkpatrick, **MOTION CARRIED**, to grant the ~~building permit~~ ZBA extension for Earl Steele for property at 7336 Edlane a 6-month extension after 8-17-2001 and would expire on February 17, 2002. AYES: All. NAYS: None. ABSENT: Michel.

5. REQUEST FROM SUPERVISOR JOSEPH MCKOAN IV: INTERPRETATION OF THE AMENDMENT OF ORDINANCE 89-33, SECTION 1117 (c) (1) REGULATIONS, PASSED AND APPROVED JANUARY 22, 1996.

Chairman Nelson: Agenda item is an open meeting, not a public hearing, ZBA members can ask questions of the audience. Letter read from Supervisor Joseph McKoan IV with his request for an interpretation, was it the intent of the amendment to prohibit new pits being dug within a two-mile radius or prohibiting pits established previous to said amendment from operating within a two-mile radius of another pit?

Chairman Nelson permitted John and Donna Horvath's lawyer Frank Hearsch to speak. Lawyer Frank Hearsch: Interpretation before you because of their particular land use.

Chairman Nelson: Amendment interpretation could affect other similar items, not directly related to your client, based on what ZBA concerns are.

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Frank Hearsch, Lawyer: Lengthy remark why an interpretation of the amendment is impossible based on subsequent history this amendment since adopted was not enforced on new, old or existing pits, has not been applied consistently.

Chairperson Nelson: Repeated the question before the ZBA per Mr. McKoan's letter, choice of two as far as what has been asked of the ZBA.

Frank Hearsch: Problem is they have not applied it against either a new pit or an existing pit; amendment was not applied, otherwise Mr. Horvath would not have gotten his permit four months later, if it were to apply to old pits then why did they continue to get their annual permits. Logical conclusion was they did not intend to apply this amendment against anybody.

Chairperson Nelson: Quoted a part of Section 1117 regarding the Planning Commission's approval of a soil removal pit not within a two mile radius of an existing operation soil removal operation, then in C. Regulations it refers to a two (2) mile radius from the closest point of the property line of the proposed soil removal operation to the closest point of a property line of an existing operational soil removal operation. Personal opinion is the depriving of pits established previous to this set amendment for operating within a two-mile radius of the pit, not stated in this wording.

Joanne Shirkey: Might be referring to any pit after 1996.

Chairman Nelson: Pits on the Island have gone dormant, example Vandenkieboom, sure there is no existing permit for that one, start to dig that one would it be considered a new pit or an existing pit.

Cindy Kirkpatrick: Did not have permit for the last two years, dormant that long it would be hard to issue a permit again; referred to Horvath's pit, it has been in existence and issued a permit for the last couple years, don't understand why this question has to be answered for this particular case, he has an existing pit.

Chair Ron Nelson: Addressing the Ordinance in question, not the particular site. Need to look at the word "proposed soil removal operation."

Joanne Shirkey: Sounds like intent of the Ordinance prior to this is okay because there are existing pits close together now and they got approved year after year, can't apply this same ruling, referring to the Island.

Marianne Diss: Opinion can only address existing pits that have a current permit with no lapse or a new pit, anything other than that would be dormant and should not be addressed.

Chairman Nelson: Pit that has gone dormant would be considered a new pit.

Marianne Diss: If they were issued a permit, if don't have a current permit with no lapse, has to be running for years, in existence and current constantly.

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Cindy Kirkpatrick: Unless they are applying for a re-permit, stuck in a gray area.

Marianne Diss: If "grandfather" in before the ordinance, as long as a permit was issued yearly from that point on they established themselves, if permit is ever lapsed, then they would have to re-apply and be under the new ordinance; did not receive info in packet, do not want to make a hasty decision without having all the facts and researching it.

Joanne Shirkey: Agree, having trouble making a decision.

Chairman Nelson: Keep in mind the Ordinance does not state new pits vs. old pits, only talking new pits only because it is saying "proposed."

Marianne Diss: Which would be a new pit, would have to come before the Planning Commission and the Township Board; a pit that has been there before the ordinance was created if they have had a permit yearly from that point on w/o any interruption then they would be grandfather in, if there has been an interruption, they would have to apply under the Ordinance.

Chairman Nelson: Agree with what Marianne is saying.

Lawyer Hearsch: Understand the analysis you are making, problem is Mr. Horvath got his permit after the ordinance was adopted, a new permit, not grandfather, Board adopted the amendment, four months later he gets a new permit, can't say this grandfather concept works because he was brand new, when his permit was approved, the Board in affect said we are not going to pay attention to this ordinance; Mr. Horvath has had a permit every year since.

Chairman Nelson: We have to keep in mind members, addressing the question at hand, not addressing anyone in particular.

Joanne Shirkey and Cindy Kirkpatrick agree Township Attorney should give opinion first.

Chairman Nelson: ZBA needs to act on the following reasoning: approving new pits part of it or as opposed to the pits established previously or to state don't have enough information to act on.

Cindy Kirkpatrick: Explained how this particular case was referred to the ZBA for an interpretation, Mr. Horvath's case has to be looked at when we make this decision.

Chairman Nelson: Not disagreeing but Mr. McKoan's letter is referring specifically to Section 1117, C. Regulations.

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Cindy Kirkpatrick: Don't believe Mr. McKoan was aware Mr. Horvath was given permit four months after the amendment was adopted and this is why we are having the problem we are with the interpretation; as a ZBA member could not write the letter, motion was for Supervisor McKoan to write a letter; Mr. McKoan asked us to make a decision on should this affect existing operations which is what the ZBA Board is looking at and do agree, if they are up and running it shouldn't affect a grandfather in place, and I believe Mr. Horvath's pit is, however, if he had his permit issued after 1996, than we couldn't say previous to 1996 because his is after, he is in a gray area now to get his permit approved and could be out in left field depending on what we decide this evening.

Chairman Nelson: It doesn't say prohibiting pits established previous to said amendment; agree not enough information provided.

Motion would be in order to go either way of his statement or to ask Mr. McKoan by the minutes to provide more information.

MOTION BY DISS, SUPPROTED BY SHIRKEY, TO POSTPONE UNTIL THE ZBA BOARD RECEIVES MORE INPUT FROM SUPERVISOR JOSEPH MCKOAN IV WHAT EXACTLY HE IS REQUESTING THE ZBA TO MAKE AN INTERPRETATION ON REGARDING THE AMENDMENT OF ORDINANCE 89-33, SECTION 1117, C. REGULATIONS, 1.

Motion discussed: Two choices: A or B, and so far neither one seems to address the regulations, the regulations just say "proposed soil operations", those proposed would be that are new, doesn't say anything about existing ones.

If nothing else, he may have to give us a case sample. For right now, there is not enough information to make a decision on the regulation.

Continued discussion on the Regulation wording: "..... of the proposed soil removal operation"

Cindy Kirkpatrick: Interpret it that if they have already have had a permit and current, it should affect them whatsoever.

Nelson: what is "proposed" ? Proposed as being a brand new pit as not having scratched the grass yet, also look at as one that has been dormant for a period of time.

Cindy Kirkpatrick: Horvath would not even require a decision by the ZBA because his has not been dormant.

Nelson: Dormant to me is has there been active permits on the property?

Kirkpatrick: Yes there has been, a Catch 22, personal opinion.

Nelson: Have to go on generalities as to how it will affect other pits, not anyone specifically according to Mr. McKoan's letter, he refers to previous and proposed; my opinion if not a permit on a piece of property, for even one year, it would go back to square one and be a proposed one again. Cindy Kirkpatrick: Agree with that.

Diss: Maybe Mr. McKoan could give us a definition of "proposed" and "or established".

Shirkey: Yes, what is a new pit unscratched ground, not given that information.

Nelson: A pit not in operation for a year or two, when they come back again, to me would be a brand new permit, not an existing permit against it.

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MOTION BEFORE TO POSTPONE UNTIL WE GET MORE INFORMATION FROM MR.

MCKOAN AS TO WHAT HE WANTS.

CALL THE QUESTION: ALL THOSE IN FAVOR:

AYES: DISS, SHIRKEY, NELSON.

NAYS: KIRKPATRICK.

ABSENT: MICHEL.

Chairman Nelson: The minutes will be the conveyance to Supervisor Joseph H. McKoan IV as opposed to a letter being written.

6. Member Comments: None.

7. Public Comments: None.

8. Adjournment:

Moved by Kirkpatrick, supported by Shirkey, **MOTION CARRIED**, to adjourn the special meeting at 8:10 p.m. AYES: All. NAYS: None. ABSENT: Michel.

Valerie J.
Kulba
Recording
Secretary