



Zoning Board of Appeals Regular Meeting Minutes, Monday, April 23, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 23, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT: Loren Yaros, Chairman; Joe Geraci, Vice-Chairman; Mark Crane, TB Rep. to ZBA; Don Walker, PC Rep. to ZBA; Dan Durham

CONSULTANTS PRESENT: Tom Berger, Township Building Official; Jim Stevens, Township Engineer (Orchard, Hiltz, & McCliment, Inc.)

OTHERS PRESENT: Gary Thede, Eugene McNabb, Jr., Pete Granzow, Eugene McNabb, Sharon Kosiba, George Kosiba, Jack Warren, Lois Fons, Terry Moran, Brett Baker, Arnold Sleutelberg, Phoebe Schutz

1. **OPEN MEETING:** Chairman Yaros called the meeting to order at 7:00 p.m.
2. **ROLL CALL:** All members were present.
3. **MINUTES:** Moved by Vice-Chairman Geraci, supported by Board Member Crane to approve the March 26, 2012 regular meeting minutes as presented. **Motion carried 5-0.**
4. **AGENDA REVIEW AND APPROVAL:** No changes were made to the agenda.
5. **ZBA BUSINESS**

A. AB-99-01-2012, Bob Warren Trucking, Inc., Lot 28 of Highland Farms (Sidwell #09-32-400-024), Lot 29 of Highland Farms (Sidwell #09-32-400-022), and Lot 30 of Highland Farms (Sidwell #09-32-400-021), and a 7.5-acre parcel (Sidwell #09-32-400-058): Chairman Yaros noted that the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

Mr. Jack Warren, of Bob Warren Trucking, Inc., was present.

Mr. Jim Stevens, Township Engineer (Orchard, Hiltz, & McCliment, Inc.) overviewed their review correspondence dated April 16, 2012*.

Mr. Warren commented that they may get some jobs where they would do some mining, possibly 30,000 to 40,000 cubic yards and approximately six trucks per day. There may possibly be approximately 5,000 cubic yards of fill as well.

Board Member Walker inquired whether there would be a dust issue from the trucks.

Mr. Warren noted that they treat the site with sodium chloride once a week for dust control.

Moved by Vice-Chairman Geraci, supported by Board Member Crane regarding case AB-99-01-2012, Bob Warren Trucking, Inc., Lot 28 of Highland Farms (Sidwell #09-32-400-024), Lot 29 of Highland Farms (Sidwell #09-32-400-022), and Lot 30 of Highland Farms (Sidwell #09-32-400-021), and a 7.5-acre parcel (Sidwell #09-32-400-058), that the petitioner is requesting renewal of an Ordinance No. 99 annual permit for sand and gravel mining, earth excavation, and/or filling and earth balancing. I move that we **approve** the permit on the condition that Bob Warren Trucking, Inc. has 60 days until June 22, 2012 to comply with the recommendations requested by the Township Engineer of Orchard, Hiltz, & McCliment, Inc., as stated in their review letter to the Zoning Board of Appeals, dated April 16, 2012. The petitioner has requested approximately 30,000 to 40,000 cubic yards of sand to be removed and approximately 5,000 cubic yards of fill to be brought in to the site. Also, ten vehicles per day will visit the site throughout the permit year. This is mainly still a current trucking operation. Under Ordinance No. 99 the following conditions must be met by the June 22, 2012 date. Failure to comply with the conditions stated in this motion will cause the permit to be revoked. Per Section 5, Item E, the petitioner shall indicate the specific places of the property impacted. If no material is being removed or imported into the site, it should be noted as such on the application. He didn't list any proposed operation, but we do now have a 30,000 to 40,000 cubic yards removal from tonight. Per Section 6, the petitioner shall address the bond/guarantee and insurance information with the Township if this has not already been done. Per Section 7, Item L, the petitioner shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year. At the time of closure, coordination will need to take place with the Pontiac Sand and Gravel site to the east and the Dan's Excavating site to the north to ensure final grades at the property line are coordinated. Also, additional topsoil may be necessary to re-establish sufficient vegetation on the site. Roll call vote was as follows: Geraci, yes; Crane, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-99-03-2012, Pontiac Sand & Gravel, Inc., 397 Brown Road, Lot 22 of Highland Farms (Sidwell #09-32-400-030), Lots 23 through 27 of Highland Farms (Sidwell #09-32-400-067), and Lots 18 through 21, excluding the 275 feet of Lots 18 and 19, of Highland Farms (Sidwell #09-32-400-083): Chairman Yaros noted that the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing with the hours of operation from 7:00 a.m. to 7:00 p.m.

Mr. George Kosiba and Mrs. Sharon Kosiba, of Pontiac Sand & Gravel, Inc., were present.

Mr. Jim Stevens, Township Engineer (Orchard, Hiltz, & McCliment, Inc.) overviewed their review correspondence dated April 16, 2012*.

Chairman Yaros offered time for public comments. None were given.

Mr. Kosiba commented that regarding the item that requires him to repair and maintain the existing construction fencing around the perimeter of the gravel pit, (the fence common with Pontiac Crushed Cement on the west property line where you enter into the pit and also further down from there) Pontiac Crushed Cement widened the road coming out of Warren Trucking, they baled it over his fence and it's covered up there and last year the ZBA told him to forget it. Part of the fence is covered up and it is not all fixed. Other than that, the fencing is in pretty good shape.

Engineer Stevens noted that there is an earthen berm along in front of the fence that is down.

Mr. Tom Berger, Building Official, noted that he doesn't see a problem with that.

Vice-Chairman Geraci noted regarding Section 8, Item C, of Ord. No. 99, that the applicant shall repair and maintain the existing construction fencing around the perimeter of the gravel pit. If it meets what Mr. Berger believes to be fine with the earthen berm there, then that is something that you can tell Mr. Kosiba and then we can move on, but I'm still going to put it in the motion just to remember that it has to be done.

Moved by Vice-Chairman Geraci, supported by Board Member Crane regarding case AB-99-03-2012, Pontiac Sand & Gravel, Inc., 397 Brown Road, Lot 22 of Highland Farms (Sidwell #09-32-400-030), Lots 23 through 27 of Highland Farms (Sidwell #09-32-400-067), and Lots 18 through 21, excluding the 275 feet of Lots 18 and 19, of Highland Farms (Sidwell #09-32-400-083), that the petitioner is requesting renewal of an Ordinance No. 99 annual permit for sand and gravel mining, earth excavation, and/or filling and earth balancing. I move that this annual permit be **approved** with the condition that the petitioner has 60 days until June 22, 2012 to comply with the recommendations of our Township Engineer, of Orchard, Hiltz, & McCliment, Inc., review letter dated April 16, 2012. The petitioner has requested approximately 5,000 cubic yards of sand to be removed and 300,000 cubic yards of fill to be brought in by 25 trucks per day visiting the site throughout the permit year. Under Ordinance No. 99, the following conditions must be met by June 22, 2012 and failure to comply with all conditions stated in this motion will cause the permit to be revoked: 1)Per Section 6, the petitioner shall address the bond/guarantee and insurance information with the Township if this has not already been done; 2)Per Section 7, the petitioner shall note that the tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year; 3)It has also been recommended that the appropriate soil erosion control measures be installed and maintained throughout the permit year. These include, but are not limited to, check dams in the ditch, a silt bag on the end of the hose, or a silt sack in the catch basin; 4)Per Section 8, Item B, since grading operations resulted in a body of water forming, the permit holder shall erect "KEEP OUT - DANGER" signs on the required fence around the excavation at a distance of not more than two hundred feet apart; and, 5)Per Section 8, Item C, the petitioner shall repair and maintain the existing construction fencing around the perimeter of the gravel pit. The Building Department is to go out and look at that west line between Pontiac Crushed Cement and this property to see if the earth berm will work as a fence. All equipment must be stored behind the new berm. At the time of closure coordination with Bob Warren Trucking will need to take place on the west property line to ensure final grade. Also, additional topsoil may be required to re-establish significant vegetation to the site. The requested variances are granted as follows: 1)the hours of operation from the allowable 7:00 a.m. to 5:00 p.m. to be extended to 7:00 a.m. to 7:00 p.m. for the period considered Daylight Savings Time on Monday through Friday, and on Saturday from 7:00 a.m. to 5:00 p.m.; 2)the 100-foot setback to excavate to the west property line; and, 3)the sloping of banks where removal of material is taking place. This relates to the fencing around the working area where slopes exceed 1:3. Roll call vote was as follows: Crane, yes; Durham, yes; Walker, yes; Geraci, yes; Yaros, yes. **Motion carried 5-0.**

C. AB-99-04-2012, Pontiac Crushed Cement, Inc., Lot 30, excluding the south 400 feet, of Highland Farms (Sidwell #09-32-400-021), Lot 29, excluding the south 400 feet, of Highland Farms (Sidwell #09-32-400-032), and a 7.5-acre parcel (Sidwell #09-32-400-058): Chairman Yaros noted that the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

Mr. Pete Granzow, of Pontiac Crushed Cement, Inc., was present.

Chairman Yaros asked about the fence repair that Mr. Kosiba had just mentioned.

Mr. Granzow replied that he thought he had taken care of it last year. He noted that someone can walk the site with him to determine what exactly they want repaired and he will get that done. He noted that it is Mr. Kosiba's fence, but if there is still some that his company damaged, he will repair it.

Mr. Jim Stevens, Township Engineer (Orchard, Hiltz, & McCliment, Inc.) overviewed their review correspondence dated April 16, 2012*.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-99-04-2012, Pontiac Crushed Cement, Inc., Lot 30, excluding the south 400 feet, of Highland Farms (Sidwell #09-32-400-021), Lot 29, excluding the south 400 feet, of Highland Farms (Sidwell #09-32-400-032), and a 7.5-acre parcel (Sidwell #09-32-400-058), that the petitioner is requesting renewal of an Ordinance No. 99 annual permit for sand and gravel mining, earth excavation, and/or filling and earth balancing. I move that we **approve** the annual permit with the condition that the petitioner has 60 days until June 22, 2012 to comply with the recommendations of the Township Engineer, of Orchard, Hiltz, & McCliment, Inc., in their review letter dated April 16, 2012. The petitioner has requested that approximately 100,000 cubic yards of broken concrete to be hauled in, then crushed, and then hauled out, with an estimated 50 vehicles per day. Under Ordinance No. 99, the following conditions must be met by the June 22, 2012 date: 1)Per Section 6, the petitioner shall address the bond/guarantee and insurance information with the Township if not already done so; 2)Per Section 7, Item L, the petitioner shall note the tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year; and, 3)Per Section 8, Item A, the area on the north side of the crushing operation encroaches on the neighboring property. Written permission from Dan's Excavating, Inc. will be required for operations to continue on the off-site property. The Building Department will check in to see if there is a standing letter on file and if so, that this issue will be put to bed: 4)Per Section 8, Item C, the petitioner shall repair and maintain the fencing, especially on the east property line where the earthen berm has been established next to the Pontiac Sand & Gravel, Inc. site. Failure to comply with these conditions of this motion shall cause the permit to be revoked. Roll call vote was as follows: Durham, yes; Walker, yes; Geraci, yes; Crane, yes; Yaros, yes. **Motion carried 5-0.**

D. AB-99-02-2012, Dan's Excavating, Inc., 2985 Judah Road, the north 535 feet of Lot 11 of Mt. Judah Farms (Sidwell #09-32-400-056), Lot 11, except the north 535 feet, of Mt. Judah Farms, (Sidwell #09-32-400-057), Lot 12, and the southerly 588 feet of Lots 13 & 14, of Mt. Judah Farms (Sidwell #09-32-400-055), and 3011 Judah Road, Lots 13 & 14, excluding the southerly 588 feet, of Mt. Judah Farms (Sidwell #09-32-400-063): Chairman Yaros noted that the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing with the hours of operation from 7:00 a.m. to 7:00 p.m. and fencing of working areas.

Mr. Brett Baker, of Dan's Excavating, Inc., was present.

Mr. Jim Stevens, Township Engineer (Orchard, Hiltz, & McCliment, Inc.) overviewed their review correspondence dated April 16, 2012*.

Mr. Baker noted that they have a contract now with Road Maintenance Corp. and they have already begun doing the sodium chloride treatments to their driveway and at their entrance as members had requested on the site walk.

Vice-Chairman Geraci noted that he would like to have Mr. Baker call Mr. Berger whenever he knows that the trucks will be coming through his entrance and driveway, so the Township can check the dust and call the maintenance company to get the chloride out there if needed.

Mr. Tom Berger, Building Official, noted that he wants Mr. Baker to maintain and keep up with the condition of the dust and to get his company out there to keep it under control. Per this Board, if he feels that there is a violation, he will have to instruct the Ordinance Officer to ticket the parties involved.

Board Member Durham noted that the dust problem on Judah Road is truly severe.

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, gave members some pictures to look at. He then asked Engineer Stevens to again read the portion of their review letter regarding the fill that has been brought in to the site.

Engineer Stevens read that portion of his letter.

Mr. McNabb, Jr. noted that there was asphalt being used as fill on the site, which is not natural fill. He is also concerned that the removal of the asphalt could become a huge cost to Township residents as well as a health hazard. He then inquired who is going to maintain the area between his father's property and the fence.

Mr. Eugene McNabb, of 2981 Judah Road, mentioned that there was a planning map for this site. He is concerned about the watershed and also that the planning map and Ordinance No. 99 have been violated. He is also very concerned about the severe dust problem on Judah Road as well as the site's entrance. There has also been material pushed onto his property and his property is supposed to be restored. There is supposed to be nine inches of topsoil there. He would like to know whether there is a bond on this site for restoration.

Ms. Lois Fons, of 2858 Judah Road, commented that she has lived there for 29 years and they have had to endure this severe dust problem on Judah Road that is caused by the haul trucks going 100 trips per day, which is very unreasonable for a residential street. She does not understand why the Board seems to think that the residents don't matter. She can't even go out to get her mail without being covered in dirt from the trucks continuously kicking up the dust. She noted that if they would keep the road watered on a regular basis, that would alleviate the problem. She is also very concerned about what materials are being used to fill in the pits, since the residents in that whole area there are on water wells. Due to the long hours of operation, they can't even use their yards, because there are continuous trucks very loudly passing by and throwing dust.

Mr. Terry Moran, of 2740 Judah Road, noted that he did not receive a notice about this public hearing, but does live on Judah Road.

Chairman Yaros explained that the state law requires notification of residents within 300 feet of the subject site.

Mr. Moran noted that he agrees with everything that Ms. Fons has spoken about tonight. He also noted that the windows in their house rattle all day from the loud noise of all those trucks going by

continuously. He noted that he, as well as all the residents in that area, suffer on a daily basis from all the severe noise levels and dust. Where is the protection for the residents?

Board Member Crane inquired whether there are any other options for an entrance to this site other than off of Judah Road.

Engineer Stevens commented that he thought that at one point there was a small access road on the far west side of the property line that went from Judah Road to Brown Road.

Mr. Warren commented that it was just a trail that his father used to use to go back and forth from the house to the garage, but the gas pipe line is there, so the trucks probably couldn't use it and it is closed there now.

Mr. Berger noted that he wants verification of a current bond with the county and a dust control contract as a condition of the permit renewal.

Mr. Baker noted that he does have a bond with the county and he will provide Mr. Berger with a copy of that document.

Board Member Crane noted his concern for the residents and that this dust, noise, and health problems from the dust, need to have a better solution.

Chairman Yaros noted that the petitioner needs to get contracts for sodium chloride treatments in place to cover the dust control for Judah Road and for their site entrance.

Mr. Baker replied that he will check into that and also look into bringing in a road to the site from the south.

Mr. Moran again commented that he was not notified of this public hearing.

Board Member Crane explained the state law (Zoning Enabling Act) regarding notification requirements.

Ms. Phoebe Schutz, PC/ZBA Recording Secretary, noted that she will include Mr. Moran in any mailings for this case.

Engineer Stevens explained the importance of being consistent with the notification process with all cases.

Moved by Vice-Chairman Geraci, supported by Board Member Crane regarding case AB-99-02-2012, Dan's Excavating, Inc., 2985 Judah Road, the north 535 feet of Lot 11 of Mt. Judah Farms (Sidwell #09-32-400-056), Lot 11, except the north 535 feet, of Mt. Judah Farms, (Sidwell #09-32-400-057), Lot 12, and the southerly 588 feet of Lots 13 & 14, of Mt. Judah Farms (Sidwell #09-32-400-055), and 3011 Judah Road, Lots 13 & 14, excluding the southerly 588 feet, of Mt. Judah Farms (Sidwell #09-32-400-063), that the petitioner is requesting renewal of an Ordinance No. 99 annual permit for sand and gravel mining, earth excavation, and/or filling and earth balancing with the hours of operation from 7:00 a.m. to 7:00 p.m. and fencing of the working areas. I move that this case be **postponed** and to extend the petitioner's current permit until the June 25, 2012 regular meeting in order for the petitioner to provide

the Township with a copy of the haul route bond that he holds with Oakland County for Judah Road and also to give the petitioner time to deal with Oakland County about Judah Road as far as applying sodium chloride treatments to Judah Road on a regular basis when their trucks are hauling. Also, to possibly work out a route that would enter and exit southerly to Brown Road. Roll call vote was as follows: Walker, yes; Geraci, yes; Crane, yes; Durham, yes; Yaros, yes. **Motion carried 5-0.**

E. AB-2012-04, Arnold Sleutelberg, Outlot C of Indianwood Hills No. 2, Sidwell #09-03-201-002: Chairman Yaros noted that the petitioner is seeking a variance from Zoning Ordinance No. 78, Article XXVII, Section 27.02,A,1, in order to build a detached accessory structure on a vacant lot, which does not contain a principal structure.

Mr. Arnold Sleutelberg, of 888 Tonkawa Trail, noted that he bought the second parcel after he bought his home. He commented that the Building Official had told him that it would be permitted for him to build an accessory building on a vacant lot since it bordered his home's parcel, so he then went ahead and bought that second parcel. When he installed the footings for the storage building, he was informed that the regulations do not permit an accessory building on a vacant lot even if it adjoins your homestead. He feels that he did do his due diligence, but now is in a pickle. He knows that a potential remedy is to combine the two parcels into one parcel and that would have the advantage of allowing an accessory building there, but that would cause more expense and time, and that in the future he would not be able to split it again into two parcels. He would like to be able to sell it as a buildable lot in the future. He believes that he did his best to do the right thing and never meant to circumvent anything. He noted that he would not have bought the second parcel if he had not received the advice that he got.

Chairman Yaros overviewed correspondence received from Mr. Conrad Dumbrique, of 1003 Inca Trail, dated April 16, 2012, in support of the requested variance*.

Chairman Yaros overviewed correspondence received from Mr. Dein F. Nolf, of 831 Tonkawa Trail, dated April 17, 2012, in support of the requested variance*.

There was also correspondence received from David and Linda Shea, of 1013 Inca Trail (that was included in members' meeting packets), dated April 5, 2012, in support of the requested variance*.

Mr. Sleutelberg noted that due to the setback requirements, he cannot build the building on his homestead parcel without a variance.

Vice-Chairman Geraci commented that if the parcels were combined, he could build a garage there as opposed to a 198-square foot shed. Having an accessory building on a lot without a primary structure really opens up a lot of bad possibilities happening. It's something that has never been done in the Township as far as he knows. Building an accessory building on your homestead parcel with a variance would be a lot better than building an accessory structure on a vacant lot without a primary structure.

Mr. Berger noted that there are some garages that have been built in the past on vacant lots that are across the street from the primary home that faces the lake. He then noted that he may have unintentionally mislead the petitioner regarding this site.

Board Member Crane noted that the fact that he could do a lot combination makes it a type of no harm no foul type of thing.

Vice-Chairman Geraci inquired, storing boats, vehicles, trailers, etc., is that something that you have in mind for this property?

Mr. Sleutelberg replied, no, not outside of the building.

Moved by Board Member Crane, supported by Chairman Yaros regarding case AB-2012-04, Arnold Sleutelberg, Outlot C of Indianwood Hills No. 2, Sidwell #09-03-201-002, that the petitioner is seeking a variance from Zoning Ordinance No. 78, Article XXVII, Section 27.02,A,1, in order to build a detached accessory structure on a vacant lot, which does not contain a principal structure. I move that we **grant** the petition as presented based upon the fact that through a combination of the two lots, the petitioner would be able to eliminate the need for a variance all together that if he were to attempt to locate the structure on his primary lot, he would in fact need a setback variance of some kind there in order to accomplish that. Granting this variance would do substantial justice to the petitioner as well as to other property owners in the area and that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose. The petitioner has indicated that he did buy this parcel specifically for this use and with a specific understanding that this would be a permitted structure on that property and that although the problem does appear in some sense to be self-created, because it could be remedied with a simple lot combination, it doesn't impact on the concerns that are embodied within the zoning ordinance. For that reason I move that we approve the requested variance. Also, that the petitioner has agreed to the condition of this motion that he will not engage in any outdoor storage of boats, vehicles, trailers, or anything. Roll call vote was as follows: Geraci, no; Crane, yes; Durham, no; Walker, yes; Yaros, yes. **Motion carried 3-2.**

6. PUBLIC COMMENTS:

Mr. George Kosiba, of Pontiac Sand & Gravel, Inc., requested that a cash bond from 1981 be researched.

Mr. Eugene McNabb, of 2981 Judah Road, and Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented regarding the severe dust problem that is due to the haul trucks and possible contamination at a gravel and mining site in the Township.

7. COMMUNICATIONS: None.

8. COMMITTEE REPORTS: None.

9. MEMBERS' COMMENTS: Members briefly discussed that possibly there could be random inspections, of the fill that is brought in to the pit, in accordance with the regulations of Ordinance No. 99. Engineer Stevens agreed that he would look into that and report back to members.

10. ADJOURNMENT: Moved by Board Member Crane, supported by Board Member Walker to adjourn at 9:12 p.m. **Motion carried unanimously.**

* on file