

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

******* MINUTES *******

REGULAR MEETING - MONDAY, APRIL 8, 2013

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 8, 2013 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Loren Yaros, Chairman	Dan Durham, Vice-Chairman
Mike Flood, BOT Rep. to ZBA	Don Walker, PC Rep. to ZBA
Lucy Koscierzynski, Board Member	

CONSULTANTS PRESENT:

Jessica Katers, of Orchard, Hiltz, & McCliment, Inc., Township Engineer
Tammy Girling, PC/ZBA Coordinator

OTHERS PRESENT:

Gene McNabb, Jr.	George Kosiba	Sharon Kosiba
Jack Warren	Pete Granzow	Brett Baker
Eugene McNabb	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 Board Member Walker, supported by Board Member Flood to approve the February 25, 2013 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-99-01-2013, Bob Warren Trucking, Inc., Lot 2 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 applicant is requesting renewal of an Ordinance No. 99 annual permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

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

Ms. Jessica Katers, of Orchard, Hiltz, & McCliment, Inc. (OHM), overviewed their review letter, dated April 1, 2013*.

Members had no comments.

Chairman Yaros offered time for public comments. No comments were given.

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Moved by Board Member Flood, supported by Chairman Yaros regarding case AB-99-01-2013, Bob Warren Trucking, Inc., Lot 2 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), to **approve the renewal of the Ordinance No. 99 annual permit** for sand and gravel mining, earth excavation, and/or filling and earth balancing. Also, to include the conclusions that Orchard, Hiltz, & McCliment, Inc. (OHM) had in the Township Engineer's letter dated April 1, 2013: 1) Per Ordinance No. 99, Section 6, the applicant shall address the bond/guarantee and insurance information with the Township if this has not already been done and it's due in a couple of months; and, 2) Per Ordinance No. 99, Section 7, Item L, the applicant shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year. Roll call vote was as follows: Koscierzynski, yes; Flood, yes; Durham, yes; Walker, yes; Yaros, yes.
Motion carried 5-0.

B. AB-99-04-2013, Pontiac Crushed Cement, 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 #09-32-400-022), 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 327 Brown Road, commented that he is with Pontiac Crushed Cement and that they estimate 50 loads per day going in and out.

Ms. Jessica Katers, of Orchard, Hiltz, & McCliment, Inc., overviewed their review letter, dated April 1, 2013*. She also commented that there are no ordinance violations that she is aware of.

Members had no comments.

Chairman Yaros offered time for public comments. No comments were given.

Moved by Vice-Chairman Durham, supported by Chairman Yaros regarding case AB-99-04-2013, Pontiac Crushed Cement, 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 #09-32-400-022), and a 7.5-acre parcel (Sidwell #09-32-400-058) that the request for **the renewal of the Ordinance No. 99 annual permit be granted** for sand and gravel mining, earth excavation, and/or filling and earth balancing. Also, include the conclusions that OHM had in the Township Engineer's letter dated April 1, 2013: 1) Per Ordinance No. 99, Section 6, the applicant shall address the bond/guarantee and insurance information with the Township as it comes due; and, 2) Per Ordinance No. 99, Section 7, Item L, the applicant shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year. Roll call vote was as follows: Flood, yes; Durham, yes; Walker, yes; Koscierzynski, yes; Yaros, yes. **Motion carried 5-0.**

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C. AB-99-03-2013, Pontiac Sand and 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 south 275 feet of Lots 18 and 19 of Highland Farms (Sidwell #09-32-400-083)

Chairman Yaros noted that the applicant 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 6:00 a.m. to 8:00 p.m.

Mr. George Kosiba, of Pontiac Sand & Gravel, Inc., with their office being located at 445 Brown Road and the subject site being located at 397 Brown Road, was present.

Ms. Jessica Katers, of Orchard, Hiltz, & McCliment, Inc. (OHM), overviewed their review letter, dated April 1, 2013*. She also commented that there are no ordinance violations on this site that she is aware of.

Mr. Kosiba noted that there should be a correction to Engineer Katers' review letter, that he may use 30,000 cubic yards of clean material to fill the site this year and not 3,000 cubic yards as it states in Engineer Katers' letter.

Ms. Katers agreed to that amount and that she had intended to put 30,000.

Mr. Kosiba then noted that he does not agree with the billing from OHM.

Ms. Katers replied that she would be happy to go over that with him.

Chairman Yaros offered time for public comments. No comments were given.

Vice-Chairman Durham inquired of Mr. Kosiba whether he uses the above-ground fuel tank to fuel their vehicles throughout the course of the year and how long it has been in place.

Mr. Kosiba noted that they do use it and that it has been there about five years.

Vice-Chairman Durham noted that is not very long.

Mr. Kosiba noted that it is containerized so that if it did leak, it would leak into the container and not onto the ground.

Members had no further comments.

Moved by Board Member Walker, supported by Chairman Yaros regarding case AB-99-03-2013, 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 south 275 feet of Lots 18 and 19 of Highland Farms (Sidwell #09-32-400-083), that the applicant 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 6:00 a.m. to 8:00 p.m., **to grant the renewal of the annual permit on the following conditions** as recommended

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by the Township Engineer: 1)Per Ordinance No. 99, Section 8, since grading operations resulted in a body of water forming, the permit holder shall repaint the "KEEP OUT-DANGER" signs on the required fence around the excavation at a distance of not more than two hundred feet apart; 2)Per Ordinance No. 99, Section 6, the applicant shall address the bond/guarantee and insurance information with the Township if this has not already been done; and, 3)Ordinance No. 99, Section 7, Item L, the applicant shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year. Also, **to grant the applicant's variance request in the hours of operation** from the allowable 7:00 a.m. to 5:00 p.m. to be extended to 6:00 a.m. to 8:00 p.m. for the period considered Daylight Savings Time. Also, that the applicant may use 30,000 cubic yards of clean material to fill the site this year and not 3,000 cubic yards as it states in Engineer Katers' letter. Roll call vote was as follows: Durham, yes; Walker, yes; Koscierzynski, yes; Flood, yes; Yaros, yes. **Motion carried 5-0.**

D. AB-99-02-2013, 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 applicant 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 working areas.

Mr. Brett Baker, of Dan's Excavating, Inc., 12955 23-Mile Road, Shelby Township, Michigan 48315, was present. He noted that they will only be filling and will not be doing any mining.

Mr. Gene McNabb, Jr., of 680 E. Silverbell Road, commented that he would like to hear the Township Engineer's report before he comments.

Ms. Jessica Katers, of Orchard, Hiltz, & McCliment, Inc. (OHM), overviewed their review letter, dated April 1, 2013*. She also commented that there are no ordinance violations on this site that she is aware of.

Mr. McNabb, Jr. commented that he is speaking on behalf of his father. He suggested that in the future the neighbors should be invited to the site walk. He then gave a Power Point presentation regarding this site, which is adjacent to his parents' home. He is concerned about the berm and the future draining and run-off and that it needs to be addressed now and not at final grade. He then showed slides of standing water on the site and noted that the back of his parents' property will not drain properly if it is not addressed. He also noted that the grade is almost five feet higher than what it shows on the topographical map. The finished grade of the pit is supposed to be 10:60. They shouldn't be allowed to raise the elevation any higher than 10:60, because it creates the run-off problems that they have now with the standing water. The accumulation of the water is partly a result from his parents' property and partly as a result of coming from the front half of the pit that Dan's Excavating owns. It runs down and

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hits the berm, which is a natural dyke now. That water used to have a channel to get back onto the pit property, but now it doesn't since it is five feet too high and can't get through there. They stopped up the drain by raising that up five feet. He then spoke about the fence requirements from Zoning Ordinance No. 78.

Ms. Tammy Girling, Planning/Zoning Coordinator, noted that Ordinance No. 99 also has fence criteria.

Mr. McNabb, Jr. commented that there is asphalt and asphalt millings on the site and believes that it is contamination. He then read from Ordinance No. 99 regarding keeping a documented record of what dirt goes out, what dirt comes in, and where the dirt is placed. He believes that needs to be enforced. He then showed pictures from 2006, 2008, 2010 of many tires, wood, construction debris, re-rod, used oil filter, etc. in the bottom of the pit and that it is not suitable fill material. All that material is now 50 feet underground. He then read from Ordinance No. 99 about fences and private roads and noted that this site does not comply.

Mr. Eugene McNabb, of 2981 Judah Road, commented that the applicant is sorting materials on private property, which he believes is not permitted and is to be done on industrial-type property if there is a variance granted for it. He also noted that there was no variance given to allow that on the property.

Chairman Yaros read aloud correspondence from Edward J. Soma in which he stated that he wrote the letter on behalf of the Hart Estate at 3071 Judah Road, dated March 26, 2013*. The Hart family is opposed to the renewal of this permit.

Mr. Baker noted that they will not be excavating anything out of there and haven't for a number of years. They are just filling. He also noted that there are many millings on the site that they use to help keep the dust down. If there is a drainage problem, they will install a 12-inch culvert to drain into the pit.

Board Member Koscierzynski inquired when they will do that.

Mr. Baker replied, as soon as they can get out there with the weather, etc.

Board Member Koscierzynski noted her concerns about the removal of all the debris.

Mr. Baker noted that he will keep all materials out that the ordinance does not allow. Also, that the fencing they have there is just for safety and the ZBA is who required it for the excavation area and is not meant to be a perimeter fence and it is not a permanent fence.

Board Member Flood agreed that that is what is required in Ordinance No. 99 and hopefully has helped keep the recreation vehicles out of there.

Mr. Baker noted that is has.

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Board Member Flood asked for clarification on the top grade on the topographical map.

Engineer Katers noted that OHM performed that survey of the topographical map in February 2011 at the request of the Township. Right now they do have a 10:71 grade at their property line and there is an area on the McNabb property that is at 10:67, so there is a four-foot difference right now between the low area on the back side of the McNabb property and Dan's Excavating property.

Board Member Flood asked what is allowable.

Engineer Katers commented that she would have to get the original topographic map from 2008 that is on file with the Township.

Board Member Flood noted that if it's too high, it will have to be balanced out.

Chairman Yaros noted that it would have to be balanced to the 2008 topographic map.

Engineer Katers commented that she will check on that.

Board Member Flood inquired whether Mr. Baker is going to install the 12-inch culvert in at the drain spot.

Mr. Baker stated, yes and that should alleviate any issues of the water draining.

Board Member Flood inquired whether last year's request for this site to dig there to determine what types of fill are there on the site was completed.

Engineer Katers noted that OHM provided a scope of work to go in for a day and work with the DPW to do excavations and come up with estimated volumes and then sort out and determine what is in there. However, that scope of work was never authorized to go ahead. But in their meeting today, Dan's Excavating said that they would provide excavation for us and then they could go out and perform the analysis this year.

Mr. Baker noted that they could do that at the same time that the culvert is being installed since the equipment will be out there at that time.

Chairman Yaros noted that so far we've heard that we're going to look at the possible contamination and see what's there. The dust must be kept down on the entrance if you have a lot of trucking this year. We'll want you to use the chloride, which will be monitored. The drainage will be taken care of with the 12-inch culvert. You'll continue having the haul route with the Road Commission for Oakland County (RCOC) for any trucking down Judah Road.

Mr. Baker noted that with the haul route, trucks will enter onto Judah Road from Baldwin Road and they will exit off of Judah Road onto Joslyn Road.

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Mr. McNabb, Jr. commented that he would like to be a part of the excavations with OHM and the Department of Public Works (DPW). He is concerned about what is in the ground in the pit since everyone over there has water wells. He is also concerned that the dirt that is brought into and out of the site should be monitored as per Ordinance No. 99. He noted that he did grow up there and has a 54-year history there and is very familiar with the site. Dan's Excavating is only on-site four months out of the year. He is concerned about dust control if they're busy this year. It wasn't a problem last year since they weren't busy.

Mr. Eugene McNabb, of 2981 Judah Road, commented that he can tell them the right places for the drills to go to get the bore samples and that it would clear the whole thing up.

Chairman Yaros noted that we have an opportunity for the Township Engineers to do the sampling. We have a way to get rid of the water that's standing on the other properties by using a culvert. We can handle the dust by having the haul route and by the owner putting down chloride on the entrance road. The fence will stay and it is required by Ordinance No. 99 and is where it should be. However, if there is contamination on the site and we find it, then it's going to have to be removed.

Board Member Flood inquired how they would do the soil testing.

Engineer Katers noted that they had proposed that in five or six spots on the parcel. They will excavate with a backhoe. They will estimate the cubic yardage of what they bring up and then have any debris sorted out. Then take that as a percentage of the cubic yards.

Board Member Flood inquired if that would be as good a test as doing soil borings.

Engineer Katers noted that soil borings wouldn't give you an accurate view of the volume that's there. The soil boring machine core is very small. It's about six inches depending on how big the auger is.

Chairman Yaros noted that with a soil boring, if there's a chunk there, it's just going to push the chunk around. Whereas, with excavating, you can dig down twenty feet and come up with a percentage of contamination of the fill or whatever is there. It's a much better sample.

Engineer Katers noted that with a soil boring, if you hit something, it's not going to bring it up, you just relocate where your boring would be, typically.

Board Member Flood inquired who would be paying for this.

Engineer Katers replied that she doesn't know and that last year they were not authorized to do it.

Mr. Baker stated, the excavator will provide it, we will.

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Chairman Yaros commented that we would have to check with the Township Supervisor to determine who would be paying OHM for that.

Moved by Board Member Flood, supported by Chairman Yaros regarding case AB-99-02-2013, 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), **to postpone action on this case until the May 13, 2013 regular meeting with conditions:** 1)we get the report back from Orchard, Hiltz, & McCliment, Inc. (OHM) for the Fill Analysis; and, 2)that the 12-inch culvert has been installed by the applicant at the same time as the soil testing. Roll call vote was as follows: Walker, yes; Koscierzynski, yes; Flood, yes; Durham, yes; Yaros, yes. **Motion carried 5-0.**

7. PUBLIC COMMENTS

No comments were given.

8. COMMUNICATIONS

Chairman Yaros thanked this recording secretary for the copies of the Board of Trustees' meeting minutes and the Planning Commission's meeting minutes for members' information.

9. COMMITTEE REPORTS

None at this time.

10. MEMBERS' COMMENTS

Board Member Flood commented that at the last Board of Trustees regular meeting he requested of the Board that they authorize at least one full-time Ordinance Enforcement Officer again and that the Building Inspectors have been filling in, but they're getting much too busy now with all the new construction.

11. ADJOURNMENT

Moved by Vice-Chairman Durham, supported by Board Member Flood to adjourn at 8:20 p.m. **Motion carried unanimously.**

* Attachment