

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

REGULAR MEETING - MONDAY, JULY 8, 2013

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, July 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
Don Walker, PC Rep. to ZBA	Lucy Koscierszynski, Board Member
Tony Cook, Board Member Alternate	

ZBA MEMBER ABSENT:

Mike Flood, BOT Rep. to ZBA

CONSULTANTS PRESENT:

Tom Berger, Township Building Official
Dan Kelly (Township Attorney) of Giarmarco, Mullins, & Horton, P.C.
Jim Stevens (Township Engineer) of Orchard, Hiltz, & McCliment, Inc. (OHM)

OTHERS PRESENT:

Tim Dugan	Brett Baker	Craig Redner
Eugene McNabb	Eugene McNabb, Jr.	Ryan Schultz
Steve Facione	Curtis Vance	Phoebe Schutz

1. OPEN MEETING

Chairman Yaros called the meeting to order at 7:00 p.m.

2. ROLL CALL

Tony Cook served as alternate in Mike Flood's absence.

3. MINUTES

Moved by Board Member Walker, supported by Board Member Cook to approve the May 28, 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-2013-13, Starbucks Coffee Signs, 4960 S. Baldwin Road, Northern Sign Company, Inc., Sidwell #09-32-351-005

Mr. Craig Redner, of Northern Sign Company, overviewed the variance requests as stated on their application. The Petitioner is seeking eight variances from Sign Ordinance No. 138: 1)Section 8, B, Zoning District GB-1, Ground Sign, Ground Sign Height, requesting a 17-foot height variance from the allowed eight feet in sign height to install a 25-foot tall ground sign; 2)Section 8, B, Zoning District GB-1, Ground Sign, Setback, requesting a 30-foot road right-of-way setback variance from the required 30-foot setback for a ground sign that is set back zero feet from the road right-of-way; 3)Section 8, B, Zoning District GB-1, Ground Sign, Ground Sign Area, requesting a 21.1-square foot variance from the allowed 32 square feet to install a 53.1-square foot ground sign; 4)Section 3,

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013

Directional Sign, requesting a 1.54-square foot variance above the allowed two square feet, to install a 3.54-square foot (Thank You/Exit) directional sign; 5)Section 3, Directional Sign, requesting a 1.54-square foot variance above the allowed two square feet, to install a 3.54-square foot (Drive-Thru) directional sign; 6)Section 3, Directional Sign, requesting a 3.5-square foot variance, above the allowed two square feet, to install a 5.5-square foot (Clearance Bar) directional sign; 7)Section 8, B, Zoning District GB-1, Wall Sign, Maximum Number of Signs, requesting a variance for three additional wall signs above the allowed one wall sign for a total of four wall signs; and, 8)Section 8, B, Zoning District GB-1, Wall Sign, Area, requesting a variance of 50.39 square feet, above the allowed 40 square feet, to install wall signs totaling 90.39 square feet. The Petitioner is also seeking one variance from Zoning Ordinance No. 78, Article 27, Section 27.03, G, 2, requesting a 1-foot x 10-foot variance from the required 10-foot x 10-foot corner clearance to install a ground sign (structure) within the required corner clearance.

Chairman Yaros inquired why they need the variance from the zoning ordinance a 1-foot x 10-foot variance from the required 10-foot x 10-foot corner clearance to install a ground sign (structure) within the required corner clearance.

Mr. Redner noted that he does not know why and that he would have to go back and ask Starbucks.

Chairman Yaros noted that members need to know why and that request number one, is too high. Number two, he doesn't have a problem with. Number three, he's not really in favor of that one. He then noted that personally he doesn't really have a problem with the directional signs. As far as the maximum number of signs, he's not so sure they couldn't get by with less than four signs.

Vice-Chairman Durham noted that he understands that Mr. Redner works for the sign company and is not the applicant, so if he can't answer these questions, just let them know. It appears that they are signing the entire building, but they won't be occupying the entire building.

Mr. Redner replied, that is correct.

Vice-Chairman Durham noted his concern regarding the zero setback and crowding that entry with the heavy traffic in that location and inquired if the signage is corporate mandated vs. something they'd just like to do.

Mr. Redner noted that the signage is not corporate mandated.

Board Member Cook noted his concern is that since there is space for three more tenants in the building in the future, and that the variances stay with that property, and does not want it becoming a neon corner. He also inquired about the height of the pylon sign.

Mr. Redner replied that it is for the visibility from I-75.

Board Member Cook inquired what the order of priority would be for these variance requests.

Mr. Redner replied that they're looking for visibility from the freeway, so the pylon sign would be a priority. The amount of square footage needed to get the extra signage for better visibility.

**CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013**

Board Member Koscierzynski noted that she feels that the sign overlooking I-75 is a little extreme.

Board Member Walker noted that the whole variance request is extreme. A lot of the smaller ones would not be an issue with him. However, there are so many huge variance requests. He inquired whether Mr. Redner is in a position to negotiate with the board today.

Mr. Redner noted that he could try, but he would rather go back and discuss this with their client to see what they're willing to give and take.

Chairman Yaros noted that he would put together a list of what members have heard. Number one, what is going to be the future, will they need additional future signing. What is the reason that the sign base is in the clear distance area, which we rarely, if ever, have allowed. There really is no reason for that. Also, your requests regarding the height and size of the big sign and the channel set signs all around the building. Also, to define the outside space for what exactly it is going to be.

Board Member Walker inquired whether this Starbucks was owned by the same owners as the Starbucks on Lapeer Road.

Mr. Redner commented that he does not know.

Board Member Walker suggested that they follow the example of the signs at the Starbucks on Lapeer Road.

Mr. Redner noted that their company did the signs for that Starbucks as well. He then noted that he will take these issues back to review it.

Mr. Tom Berger, Township Building Official, noted that as far as he knows, the petitioner that brought this site plan to us is not the same owner as the one that's on Lapeer Road.

Mr. Redner, representing the petitioner, requested to postpone this case until he can review this with the petitioner.

Chairman Yaros inquired if they could get something drawn up and submitted by the July 22nd regular meeting.

Mr. Redner noted that he will meet with them tomorrow and then put together another package.

Moved by Vice-Chairman Durham, supported by Chairman Yaros regarding case AB-2013-13, Starbucks Coffee Signs, 4960 S. Baldwin Road, Northern Sign Company, Inc., Sidwell #09-32-351-005, **to postpone** due to some complications and the fact that the sign provider has to speak with the applicant, that this matter be postponed to the August 12, 2013 regular meeting. Roll call vote was as follows: Koscierzynski, yes; Cook, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-99-02-2013B, 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 annual permit for sand and gravel mining, earth

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013

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. He explained that this case was denied at the May 13, 2013 regular meeting. The petitioner has brought back additional information to this board and asked per the ordinance that if the board so desires, we could re-hear this case by a vote of the board.

Moved by Board Member Walker, supported by Chairman Yaros regarding case AB-99-02-2013B, 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 re-hear the original request before we move on to addressing the substance of the petitioner's application.** The petitioner and the Township Engineer have provided this board with additional information as per the ordinance. Roll call vote was as follows: Cook, yes; Durham, yes; Walker, yes; Kocierzynski, yes; Yaros, yes. **Motion carried 5-0.**

Mr. Timothy Dugan, of the Law Offices of Deneweth, Dugan, and Parfitt, 1175 W. Long Lake Road, Suite 202, Troy, Michigan 48098, commented that he is representing Dan's Excavating, Inc. He then noted that Mr. Brett Baker is also here as a representative of Dan's Excavating, Inc. They are requesting the 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. as provided for in the application. He then gave an overview of the history of this case. The ZBA had requested that the petitioner install a 12-inch culvert to relieve the drainage into the neighbor's property and also to have soil testing done by the Township Engineer (OHM) to determine whether there is contamination. They did not have these things completed by the May 13th regular meeting and the ZBA denied the case at that time and the petitioner was not present at that meeting either. Since that time, they have completed those items. So at this time, we are requesting a re-hearing based upon the denial that happened at the May 13th meeting.

Chairman Yaros commented that we have our legal counsel and that we are following the ordinance by having a motion to re-hear based on the new evidence, which we have here in front of us, so based on that, we're going to continue this hearing.

Attorney Daniel Kelly (Township Attorney) stated, that's correct. There's a specific ordinance on point and the board has already moved.

Chairman Yaros noted that the petitioner has followed through within the time limit to be here.

Attorney Kelly stated, yes.

Mr. Jim Stevens (Township Engineer) of Orchard, Hiltz, & McCliment, Inc. (OHM), overviewed their review correspondence, dated July 1, 2013*. The main point of the correspondence was regarding the soil test pits. They oversaw six test pits that were approximately four feet in width and 15 feet in length and 13 feet in depth. They collected any miscellaneous debris, concrete, etc. from the test pits and performed volume

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013

calculations. The results of those volume calculations are found on the last two pages attached to their correspondence*. The ordinance calls for no greater than 5% of concrete, debris, etc. For the most part in this analysis, most of the debris was concrete, some organic debris, some minor pieces of asphalt. The percentage of that debris is relative to the 5% requirement for concrete in the ordinance and was well below. The greatest percent of the pit in terms of the volume of debris was in Pit #4 and it was .16% relative to the volume of the excavated material. We believe that those random tests provided a fairly decent representation of that stratum of material and we didn't find any substantial amount of material that would be inconsistent with fill material in accordance with the ordinance.

Chairman Yaros inquired, so in your opinion, it has met the ordinance.

Engineer Stevens replied, correct. (There was also approximately 120 feet of 12-inch culvert installed from the property line of 2981 Judah Road [owned by McNabbs] across the property of 2985 Judah Road [owned by Dan's Excavating, Inc.]. At the culvert outlet, 350 feet of ditching was constructed to provide a positive outlet from the property to the East toward the pond. The culvert and ditch both appear to be installed with more than adequate slopes to convey the run-off from 2981 Judah Road.)

Chairman Yaros thanked the petitioner for providing a copy of the haul route from the Road Commission for Oakland County (RCOC).

Attorney Dugan commented that the petitioner also had the site cleaned up as recommended by OHM, removing two unused tanks and construction debris.

Chairman Yaros offered time for public comments.

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented that he had provided copies of the minutes from the April 8, 2013 regular meeting and the May 13, 2013 regular meeting to be included in members' meeting packets for their review*. He commented that he has brought in numerous pictures for members' review at previous meetings. He inquired why the petitioner took until almost the end of June to get the culvert installed. The culvert was on-site at the May meeting, but not installed. He then noted regarding who was going to pay for it. He then commented regarding the importance of complying with the Township's ordinances. He then gave a couple of pictures to members for their review (the pictures were not submitted to the Township to become a part of the case file). He also noted his concern of contamination of soil.

Mr. Eugene McNabb, of 2981 Judah Road, gave a brief overview of the history of the subject site. He then gave a couple of pictures to members for their review (the pictures were not submitted to the Township to become a part of the case file). He also noted his concern regarding the dust problem on the site's entrance road as well as on Judah Road.

Mr. Curtis Vance, of 3040 Judah Road, commented that he lives across the road from the gravel pit. He is here to complain about flooding since the water now goes into his front yard as well as their neighbor's front yard.

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013

He has dealt with this for years and it has ruined their basement. He asked that something be done to stop the water problems.

Attorney Dugan replied to Mr. Vance that Judah Road is a County road and that the water is not coming from the subject site or going in the direction of his property. This problem has existed for 35 years before they ever owned the site. They are not the cause of the flooding problem. The only time that there was an issue of standing water was with Mr. McNabb's property and they worked with the Township to put the culvert in to try to alleviate that issue. He understands that Judah Road is in poor condition with the washouts, but they cannot just go out and make repairs to a road that they do not own.

Chairman Yaros stated, that's correct.

Mr. Baker noted that they have repaired the washout on their site and up to the road when they installed the culvert.

Engineer Stevens noted that he would be willing to work with the Township to investigate that area and to see if there is something that can be done, even with the RCOC.

Chairman Yaros stated, as Chairman of this Board, I'll make a request to the RCOC to look into this.

Mr. Eugene McNabb, Jr. commented that the water run-off on the road is a very important issue and a lot of it does run down the driveway. He then asked about what they're going to do about monitoring the soil coming into the site and monitoring what goes on out there. He also noted his concern about the asphalt on the site.

Mr. Eugene McNabb, of 2981 Judah Road, commented that there is another ordinance that states that you can't block the natural flow of the water and that's why that culvert was put in there.

Board Member Cook inquired of Engineer Stevens why the volume varies so differently between each testing pit and then also when it comes to sampling the site, your methodology doesn't seem to be very random.

Engineer Stevens commented that on locations one and two, based upon indications from people in the area, including Mr. McNabb, with regard to where we might find debris, so that's why locations one and two were where they were located. Locations three, four, five, and six were just relative samples to the fill in the area. South of that would be the low spot of the pit. The random sampling sites were chosen by OHM.

Vice-Chairman Durham inquired if it is a rule that you are not allowed to cause water to go from your property to another property.

Mr. Tom Berger, Township Building Official, noted that you are not allowed to intensify water to an adjacent property other than a natural rate that it was going before.

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013

Vice-Chairman Durham inquired if monitoring the pit is feasible at this time.

Mr. Berger noted that it takes extra manpower that we don't have at this time. We can't be there day in and day out when trucks are delivering product. I've never been able to produce that kind of manpower for a fill site. Due to the Township's concerns for the neighbors was to dig the test pits to see what kind of contamination of the soil there may or may not be. He has witnessed asphalt on the site before. Millings were actually brought in to improve the driveway into the property. Millings are also used on the shoulders of roads and on many Township properties as well. We do monitor a lot of sites within the Township, but they're typically under construction and not under a fill permit.

Vice-Chairman Durham commented that on-site monitoring did not and still does not strike him as being practical, but there is that stipulation in the ordinance.

Chairman Yaros suggested that if that is not realistic, then perhaps the Planning Commission would look into doing a text amendment to address that issue.

Board Member Walker noted that it goes against his grain to take that out of the ordinance.

Attorney Kelly commented that the random testing is a form of monitoring and is a way to not be there on a daily basis, but to go back after the fact, and he thinks that's what the ZBA was attempting to accomplish back in April. He would keep it in the ordinance and let the ZBA decide to what level of monitoring. To do it on a 24-hour a day basis is not an option due to the costs. The random testing is at least a way to verify what has been dumped in there over a period of time.

Board Member Walker inquired how many truck loads they will be having this year.

Mr. Baker replied that it could be none. For the last two or three years it has been very minimal. Realistically it's used by Dan's when there are large road projects in Oakland County, because of the haul distance for the soils to come to the site. Right now there are no ongoing major road construction projects here in Oakland County right now through MDOT. Right now there are really no plans to use the site this year, probably.

Board Member Walker inquired whether the petitioner would notify the Township when they know when they're bringing stuff in.

Mr. Baker replied that he has done that in the past and can continue to do that.

Mr. Berger commented that there should be some way to manage some type of monitoring. However, this is not the only property in the Township that we may want to fill. Most of the soils in the Township have already been exported out. Almost anything that's going to happen in the Township is

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013

going to be imported fill to bring our properties back to the grades and elevations that are necessary from what they may have started from on original grids. Due to the fact that this is going to be an ongoing thing in the future, it should be monitored somehow. He's not sure what the answer is at this point, but it does need to be looked at.

Chairman Yaros suggested that monitoring will be done by the Building Department and that no less than random soil testing at the end when the pit is completed.

Mr. Berger inquired whether OHM could be incorporated to do that service for us to establish a better means, so that the board is satisfied that the product that goes in there then is not going to contain elements of material that should not be in the site.

Engineer Stevens noted that they would be happy to do whatever the Township wants them to do.

Board Member Koscierzynski noted her concern regarding the cost of monitoring the site.

Chairman Yaros replied that the costs would be a part of the discussion for the monitoring.

Vice-Chairman Durham suggested doing a text amendment to Ordinance No. 99 to include any finalization or permit renewal would require test pits done by OHM on the model just provided by Dan's Excavating, Inc. as part of the costs of the permit renewal.

Chairman Yaros recommended to Board Member Walker (Planning Commission Representative to the ZBA) to take the idea to the Planning Commission to do a text amendment to Ordinance No. 99 as a request from the ZBA.

Board Member Walker noted that he would be happy to do that, but inquired whether we have the authority to incur those costs.

Attorney Kelly replied, you probably do within the ordinance. The only thing that I'm concerned about is whether the same standard is being applied to everybody else that has asked for this permit and I don't know that we've done that previously. I would say, you don't have any evidence in front of you tonight to suggest, one, you did do testing, so I think your first approach is the right approach, planning commission review it. It's actually the Board of Trustees that would amend the ordinance, but the planning commission would make the recommendation to the Board to amend it and then you would have a standard for next Spring. I'd just be a little concerned that we haven't applied this same standard to the other applicants.

Board Member Walker noted that he would be happy to take that to the planning commission at the next meeting.

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING - MONDAY, JULY 8, 2013

Attorney Kelly noted that the planning commission needs to consider the cost if they're going to amend the ordinance, because they'll be applying that to everybody.

Chairman Yaros commented that for right now while we're dealing with this particular case, we have evidence in front of us that suggests, from our own engineers, that the contamination is within ordinance limits. The culvert has been put in and those were the requests made by this board.

Moved by Vice-Chairman Durham, supported by Chairman Yaros regarding case AB-99-02-2013B, 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). 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 working areas. I move that this request **be granted** due to the fact that the information that was provided to this board indicates that there was a disconnect and a certain degree of confusion between the Township and the petitioner, Dan's Excavating, Inc., regarding some issues on soil testing and the placement of the culvert, which essentially makes the issue of timeliness of the renewal a moot point at this time. Soil testing by Orchard, Hiltz, and McCliment, Inc. (OHM), our certified engineers employed by the Township indicates that fill, to the best of their ability to determine, meets Ordinance No. 99 requirements at this time. The culvert has been installed as requested to alleviate water pooling on property to the east of the subject site as this board had requested. Also, finding of fact is that a copy of the Road Commission for Oakland County (RCOC) haul route was included with the amended application as of today. Roll call vote was as follows: Durham, yes; Walker, yes; Koscierynski, no; Cook, yes; Yaros, yes. **Motion carried 4-1.**

6. PUBLIC COMMENTS

Public comments were heard.

7. COMMUNICATIONS

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

8. COMMITTEE REPORTS

None.

9. MEMBERS' COMMENTS

None further.

10. ADJOURNMENT

Moved by Board Member Walker, supported by Chairman Yaros to adjourn at 8:40 p.m. **Motion carried 5-0.**

* Attachment