

# BOARD OF ZONING APPEALS MINUTES

Tuesday, April 13, 2010

7:00 P.M.

## A. ROLL CALL

Members Present:

Mike Hall– Chairman  
Rick Pope – Vice-Chairman  
Jane Ohlmansiek  
Ken Nelson  
Nicole Daily

Mark McCormack – Director of Planning  
Arnold McGill – Attorney  
Ashley Webb – Enforcement Officer  
Ron Barnhart – Assistant Planner

Members Absent:

None

## B. ACTION ON MINUTES

There were no minutes to approve at this time.

## C. OLD BUSINESS SCHEDULED TO BE RE-OPENED

- 1. Request:** Conditional Use to allow operation of an excavating business at their residence.
- Applicant/Owner:** James & Donna Sterwerf
- Site Location:** Holt Road
- Legal:** Sec. 23, T7, R3, Map #04-23, Parcel #002
- Township:** Manchester Size: 15.02 Acres
- Zoning:** Agricultural (A)
- Note:** Tabled from March 9<sup>th</sup> meeting.

*Mr. Hall and Mrs. Daily explain that they have a conflict of interest and step down and leave the room. Mr. Pope chairs the meeting.*

Ms. Webb states that the applicant is seeking approval of an excavating business (S & S Excavating) on this 15-acre site —2.88 acres of the total is being utilized for the business use, or 19 % of the total acreage. No additional improvements are proposed, however the applicant is proposing additional grading on site to create a berm and extend a filled area which was created as a foundation for a barn lean-to. She explains that the business will operate within two accessory structures (30' x 64' and 30' x 48') and part of the residence (office – 20' x 20'), totaling 3,760 square feet, or 24% of the total square footage on site. The site is serviced by a 56' wide access point and a graveled circulation area. The applicant proposes paving the entrance access apron (50' in length from edge of pavement for Holt Road) with concrete. She further explains that all equipment (pickup trucks, dump trucks, semi truck and trailers, bucket loader, etc.) used for the excavating business use are either stored on site or on a job site; typically, 25% of vehicles and equipment for the business use are stored on site. In addition to the Sterwerfs, their son, two full-time employees, and two part-time employees are employed by S & S Excavating for a total of five employees which do not reside on site; their high school-aged son also helps on an irregular basis. She states that traffic incidental to the business use is generated by employee personal vehicles and business vehicles, accounting for an estimated 18 maximum trips per day during peak season/warmer weather—see applicant's enclosures for hours of operation. The applicant estimates four parking spaces are needed for employees. There are no regular deliveries for this use and no customers visit the site. She also explains that this case is coming to the Board as an enforcement case which originated in September of 2009 and was tabled from the March 2010 BZA hearing. If this request is approved, the site will be reviewed under Site Plan Review. She states that in regards to parking requirements for this proposed use, Article 21, Section 2185 does not have a classification that the use explicitly fits. Therefore, Section 2190(1) would prevail and required parking would be determined by the Planning Director based on Institute of Transportation Engineers (ITE), American Association of State Highway and Transportation Officials (AASHTO) or similar professional organization standards. Ms. Webb reviews the staff report and shows slides.

Mrs. Terry Hall, of Michael S. Hall Land Surveying, addresses the concerns from the March meeting, stating that the scope of the business will be 2.8 acres used for maintenance and repair. She states that they have requested a letter of compliance from IDEM, and believes that staff received a letter in the office. Holt Road measures between 13.4ft. and 18.6ft. wide, and is maintained by Dearborn County. County Line Road is maintained by Ripley County. She also states that the Sterwerfs have issued a no Jake brake usage policy, except in emergency situations, to address the noise concerns. She requests to submit a topography drawing to clarify any concerns regarding the Sterwerf business and the Luchow property's well.

Mr. McGill states that since the deadline has passed for new submissions, no new information may be submitted tonight. He instructs the Board not to consider any information that was received after the deadline.

Mrs. Hall uses the staff's slide show presentation to illustrate the topography between the properties. She states that the Sterwerfs business activities are located over 200ft. away from the Luchow's well, and meet the State of Indiana's requirement for private wells. She further states that the Sterwerfs are willing to extend the berm if the Board desires increased buffering of the property.

Mr. Eric Holzapfel, attorney for the Sterwerfs, states that they are requesting a Conditional Use permit for the Sterwerfs to park and maintain equipment, and store materials on their property. He feels that it is undisputed that the Sterwerfs use this property as a farm with a residence, and that this business is operated off-site. The storage of the vehicles and equipment will be held to the 2.8 acres and will include the storage of farm equipment and materials. He addresses the list of equipment that S&S Excavating owns, and states that only 25% of the vehicles are located on the property at any given time, which would be four or five vehicles, three trailers, and seven pieces of equipment. He clarifies that the screening will be a 6ft. high treated fence 350ft. in length that is existing, and a berm that will be constructed to the Board's requirements.

Mr. McGill states that these items were discussed at the prior meeting, and that he would like to hear only the new information presented tonight.

Mr. Holzapfel asks for a show of hands in support of this request from the audience.

Mr. Pope states that the request for a show of hands is inappropriate. The Board is aware the audience is made up of supporters and opposition.

Mr. Holzapfel states that he would like to address a letter submitted by the Luchow family.

Mr. McGill states that he has instructed the Board not to consider anything submitted after the deadline.

Mr. Holzapfel states that if the letter is not being considered then he will not respond to it. He states that the use that is being proposed for the 2.8 acres, vehicles, equipment, and buildings, is consistent with farm usage. The request complies with Section 2558 regarding parking, and is consistent with the Conditional Uses that have been granted by this Board over the past 9 years. He is willing to answer any questions the Board may have.

Mr. Pope states that the public comment portion of the meeting was closed during the last meeting. He asks the Board if they would like to re-open public comment.

Mr. Nelson feels it should remain closed.

Mrs. Ohlmansiek feels it should remain closed.

*No public comment.*

Mrs. Ohlmansiek states that the focus is on whether this use is a proper use for this property, in this area.

Mr. Pope states that he is undecided, and that the following items sway him against not granting the application:

- Will it endanger the public health, safety, morals, comfort, or general welfare.  
He states probably not.
- Will it be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the same area.  
He states no.
- Will it be served adequately by essential public facilities and services such as highways, streets, police, and fire protection, drainage structures, refuse disposal, water and sewer, schools, etc.  
He states that if this was to remain a dead-end street, it would not be adequate; however, if we knew a new bridge was going to be built then it would be adequately served. The road issue is a concern.
- Will not generate traffic on the existing street network that will cause congestion or unsafe ingress and egress as a result of the development.  
He states that obviously it is generating traffic, some of it large.

Mrs. Ohlmansiek states that Article 9, Section 912, Item 21, under Conditional Uses states “Commercial services or activities that provide a needed and useful service to rural lifestyles described within the intent of this article provided the use does not disrupt or detract from the primary purpose of this article.” She states that her family is a farming family and she knows of farmers who have excavating equipment as part of their farm equipment, and some who do not have the equipment, but are very glad to have neighbors who do have it. She explains that things arise in an agricultural area, such as drainage issues in a field or creek issues, where excavation equipment is very useful. She feels that excavating equipment is something that fits within an agricultural area. She further states that there is not any other place in the Ordinance where this use would fit any better.

Mr. Nelson states that in giving consideration to Article 9, Section 912, Item 21, all of the off-site equipment would not be to provide a useful service to an agricultural zone, but to another part of the business. He explains that a farmer who owns some excavating equipment that he uses to install field pipe and drainage tile would be part of the Agricultural Zone, however, a construction company having all their equipment on-site is not part of the intent of an Agricultural Zone. He struggles with what the scale should be to limit this request, so that it would be appropriate as a

Conditional Use. He states that with 36 pieces of equipment, a restriction of only 12 pieces permitted on the property at one time could be required; however, there are other excavators who also do commercial excavating, and do not operate out of their farm, they have a business in a business district.

Mrs. Ohlmansiek asks how the concerns can be addressed.

Mr. Nelson states that he would be willing to consider the business with some limits placed on the site. He states that the site plan should delineate the parking area for the vehicles, a paved entrance, the fuel area, that the area be limited to 2.88 acres, a 60 day timeline for the inoperable vehicles, and the hours of operation. He also states that mounding is the most feasible screening, for an excavating company to do, and the staff can determine the size and location of the screening.

Mr. Pope states that he is concerned with placing the limits on the use and the neighbors becoming the watchdogs. He does not want to see the burden put on the taxpayer.

Mrs. Ohlmansiek states that she is also concerned with the monitoring of the property.

Mr. McCormack states that staff perform inspections once a month; however, if we receive complaints regarding the operation, we would monitor it more frequently. He clarifies that due to the location of the site, the staff would be unable to inspect at a moments notice.

Mr. Nelson states that in granting a Conditional Use, it is similar to a license to operate within a certain parameter. He explains that if the business fails to operate within the parameters set, then the Conditional Use can be revoked.

Mrs. Ohlmansiek asks what is handled through the Technical Review Committee.

Mr. McCormack states that the Technical Review would oversee the construction plans including the dust free durable driving surface and landscaping design. He explains that Technical Review can not limit operations; however, if the Board designates stipulations, then Technical Review can enforce those.

Mrs. Ohlmansiek clarifies that if the Board would limit the number of vehicles onsite, staff would enforce that number.

Mr. McCormack answers yes.

Mr. Pope suggests limiting the business to 2.88 acres. He feels that with 2.88 acres it would set a limit to the vehicles; otherwise the Applicant would be getting in his own

way with too many items located on the 2.88 acre property.

Mr. Nelson states that he would like to have a defined limit to the number of vehicles on the property.

Mrs. Ohlmansiek suggests designating a parking area to limit the vehicles.

Mr. Nelson makes a motion to grant a Conditional Use to allow the operation of an excavating business at the Sterwerf residence on Holt Road, located in Section 23 of Manchester Township, zoned Agricultural, with the following conditions for the control of the property:

- The site plan submitted must provide delineation of where the equipment is to be parked.
- The site plan must note that there is no storage of inoperable equipment over in excess of 60 days.
- The site plan must show marked area(s) for fuel and lube.
- The site plan must show an approved paved entrance.
- The site plan must contain a note that the scale of the business is limited to 12 vehicles and 10 pieces of equipment at this location.
- The hours of operation for this use must be limited to the hours of operation submitted by the applicant for this public hearing request.
- The site plan must show appropriate mounding and screening, as determined by the Plan Commission staff, to be an appropriate buffer between the neighbors and the site and its use.
- The scale of the use on the site must be limited to 2.88 acres of the total land area; building areas must be limited to 4200 square feet of space.

The use on this site, based on this motion and these conditions, will not endanger the public health, safety, morals, and general welfare. The use will be designed and controlled to be harmonious to the adjoining area. The use will be served adequately by public facilities; it will not impede normal or orderly development. The use will not generate traffic that will cause congestion or unsafe ingress or egress. It will not involve uses, activities, or material or equipment that will be detrimental to any of the persons in the area in terms of smoke, fumes, dust production, etc. Mrs. Ohlmansiek seconds. All in favor. None opposed. Motion carries.

Mr. Hall and Mrs. Daily rejoin the board. Mr. Hall chairs the meeting.

#### **D. OLD BUSINESS TO REMAIN TABLED**

There was no old business.

## E. NEW BUSINESS

- 1. Request:** Variance to create a lot with no road frontage.  
**Applicant:** Jeff Stenger / Owner: John Schmeltzer  
**Site Location:** Thomas Road  
**Legal:** Sec. 2, T7, R1, Map #01-02, Parcel #001  
**Township:** Harrison Size: 80 Acres  
**Zoning:** Agricultural (A)

Ms. Webb states that the applicant is proposing, through a certified survey, to split 5 acres from a parent parcel tract (totaling 80 acres) owned by John R. Schmeltzer for 'buildable' purposes; the new parcel would be utilized for the placement of a single-family residence. She states that this parcel would have 0 feet of road frontage on Thomas Road, thus requiring a dimensional variance of 150 feet or the creation of a legal panhandle (or flag lot) tract – see applicant's comments. The proposed parcel would be accessed by a fifty-foot (50' with 10' graveled) wide ingress/egress easement that stretches approximately 1740' from Thomas Road, through the Schmeltzer remainder parcel, to the subject site. She also explains that the approval of the proposed parcel and access easement would establish Mr. Schmeltzer's driveway as a private lane, pursuant to Article 26, Section 2615 of the Dearborn County Zoning Ordinance. Ms. Webb reviews the staff report and shows slides.

Mr. Jeff Stenger, of JDJ Surveying & Engineering, explains that they looked at several options that contained panhandles that would cut across properties and those options seemed to cause more of a problem than acquiring an easement. He states that access is limited to Johnson Fork Road by the topography and encroachments on an existing house and out buildings. In speaking to the County Engineer, Thomas Road showed maintenance to the Schmeltzer property; however, Mr. Listerman had to adjust some of the old maintenance records to reflect what was actually maintained, and Thomas Road was then shortened. He states that this request is not injurious to the neighborhood, would have the same development effect, just by easement. He suggests that in the event of future development, he has advised them to purchase the roadway and bring it up to County standards.

Mr. Hall feels that a formal easement needs to be drawn up.

*No public to comment.*

Mr. Hall states that he has surveyed near there and the back is rough.

Mrs. Daily states that in looking at the topography, the Applicant is using flat ground available to them.

Mr. Nelson makes a motion to approve the variance to create a lot with no frontage for John Schmeltzer on Thomas Road in Section 2 of Harrison Township, based on the unusual nature of site due to property topography and its restrictions are reason to grant such variance. He states that by granting this variance it does not give a privilege to this Applicant that would not be available to anyone else under similar circumstances. Mr. Pope seconds. All in favor. None opposed. Motion carries.

#### **F. ADMINISTRATIVE**

Ms. Webb presents the Enforcement Report.

Mr. Nelson makes a motion to adjourn the meeting. Mr. Pope seconds. All in favor. None opposed. Motion carries.

Meeting adjourned at 8:16 P.M.

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Mike Hall, Chairman

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Ashley Webb, Enforcement Officer