

BOARD OF ZONING APPEALS MINUTES

Tuesday, March 9, 2010

7:00 P.M.

A. ROLL CALL

Members Present:

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

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

Members Absent:

None

B. ELECTION OF OFFICERS

Mrs. Daily nominates Mr. Hall as President. Mr. Nelson seconds. All in favor. None opposed. Motion carries.

Mrs. Daily nominates Mr. Pope as Vice-President. Mr. Nelson seconds. All in favor. None opposed. Motion carries.

Mr. Pope nominates Ms. Webb as Secretary. Mrs. Ohlmansiek seconds. All in favor. None opposed. Motion carries.

C. APPOINTMENT OF ATTORNEY

Mr. Pope makes a motion to retain Mr. McGill as legal counsel. Mr. Nelson seconds. All in favor. None opposed. Motion carries.

D. ACTION ON MINUTES

Mr. Pope makes a motion to approve the December 8, 2009 minutes as written. Mr. Nelson seconds. Mrs. Ohlmansiek abstains. Mr. Pope, Mr. Nelson, Mrs. Daily in favor. None opposed. Motion carries.

E. OLD BUSINESS SCHEDULED TO BE RE-OPENED

There was no old business.

F. OLD BUSINESS TO REMAIN TABLED

There was no old business.

G. NEW BUSINESS

- 1. Request:** **Conditional Use to allow the sales of outside storage barns.**
- Applicant:** **Bill Farmer / Owner: Charles Daugherty**
- Site Location:** **South State Street**
- Legal:** **Sec. 24, T7, R1, Map #01-24-104, Parcel #029**
- Township:** **Harrison Size: .628 Acres**
- Zoning:** **Restricted Business (B-1)**
- Note:** ***This property is within the Town of West Harrison.***

Ms. Webb explains that the applicant is proposing to establish a conditional use for outbuilding sales on this 1.27-acre site. This property is located within the Town of West Harrison on the west side of South State Street, and is situated within a Restricted Business District (B-1). The Existing Land Use of the property is designated as Commercial. She states that this use will operate within an area of USA Choppers’ parking lot (approximately 8,100 square feet of the total 34,000 square feet); the area will house up to 15 outbuildings for sale and provide parking for six vehicles. She also states that the applicant is also requesting a dimensional variance to place a second free-standing sign incidental to the outbuilding sales use on site. The proposed permanent sign will be 40 square feet at maximum and will conform to the other requirements of Article 20. This request is only necessary if the conditional use request is approved. Ms. Webb reviews the staff report and shows slides.

Mr. Charles Daugherty, property owner, states that he is willing to answer any questions from the Board.

Mr. Hall clarifies that Mr. Farmer will be operating the business on Mr. Daugherty's property.

Mr. Daugherty states that is correct.

There was no public to comment.

Mr. Nelson makes a motion to approve the request for a Conditional Use to sell storage buildings on site and to grant a Dimensional Variance for a sign, with the following conditions: 1) the buildings must be located according to the site plan presented; and 2) there must be 15 buildings or less sold on the site at any given time. The findings for this approval are that the proposal does not endanger the public, health, safety, and welfare of the community. This proposal is consistent with the uses in the surrounding area and the circumstances for this request are not resulting from the actions of the applicant. Mr. Pope seconds. All in favor. None opposed. Motion carries.

2. 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)

Mr. Hall states that he has a conflict of interest and steps down and leaves the room. Mrs. Daily states that she also has a conflict of interest and must step down, she requests to leave the meeting for the remainder evening to care for a sick family member. The Board approves and Mr. Hall and Mrs. Daily leave the room. Mr. Pope now chairs the meeting.

Ms. Webb states that the applicant is seeking approval of an excavating business (S & S Excavating) on this 15-acre property. She explains that this case is coming to the Board as an enforcement case which originated in September of 2009. She states that 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 previously created as a foundation for a barn lean-to. This use 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. In addition to the excavating business, a residential and farm use are on site. She also states that if approval is granted, the site will be reviewed under Site Plan Review. Ms. Webb reviews the staff report and shows slides.

Mr. Nelson asks if there is any Zoning District in which this use is permitted in.

Ms. Webb states that currently there are no Zoning Districts in which this would be listed as a Principally Permitted Use or Conditional Use.

Mrs. Terry Hall, of Mike S. Hall Land Surveying, states that the client is requesting a Conditional Use to continue the operation of their excavating business. She explains that the property is zoned Agricultural (A) and contains some farm animals and farm equipment, which includes diesel trucks. She clarifies that the applicant is not requesting a Zone Map Amendment. She further explains that some violation issues regarding the property have been resolved, and states that Mr. Hall spoke to Mark Amik from IDEM and that the issues with the burning have been resolved and Mr. Amik commended the property owners for their quick compliance. She states that the outside storage items have been placed inside and the tires have been placed on the vehicles. She further states that all the vehicles are licensed and operable, with the exception of the off road vehicles.

Mr. Nelson asks what the scope of the business is. He would like to know how many employees and vehicles there are, if the business is on a portion of the property or is contained on the whole 15 acres, and if there is anyone living on the site.

Mrs. Hall states that this is the family farm and the Sterwerfs have owned and lived there since 1989. She explains that the excavating business began in order to support the farm; however, the economy has had problems and business has been poor so the Sterwerfs have been more recently keeping their excavating vehicles at their farm, causing concern with their neighbors. She states that they are trying to comply with the neighbors requests and have no signage on the property, have begun turning the lights off during the night, and have also purchased barking collars for their dogs. She states that they have installed a privacy fence along one side of their property line and have begun construction on the berm to better conceal their property.

Mr. Nelson asks if there are any plans for paving the parking area.

Mr. Eric Holzapfel, attorney for the Sterwerfs, states that the property contains approximately 9 pickup trucks with a gravel driveway. He states that his clients would like to park these vehicles on their property along with some storage, while conducting their business offsite. He explains that the property is used for farming of cows and pigs. There are six buildings on site and two are used for the business, the other four are used for the farm. He states that the traffic generated is from 3 employees who drive their personal vehicles to the Sterwerf property and park them so they may get their equipment vehicles and go to work. He also states that there is one driver who operates a semi/tri-axel vehicle. He acknowledges that a complaint that was filed by the Luchow family and it was founded that permits were obtained for the building. He feels that all complaints have been addressed; the owners have removed some outside storage and some vehicles to try and be a good neighbor. They have also installed a 6ft. fence and are constructing a 4ft. berm to shield the Luchow property. He states that the Sterwerfs asked their neighbors to sign a petition in support of their Conditional Use, which the Luchow family signed, and later asked that their names be removed. *He presents the petition of support to the Board.* He explains that in his review of the Board's historical decisions on similar business operations, this Conditional Use request falls within those guidelines and is consistent with what has been granted over the years. He asks that this request be granted.

Mr. Pope states that he drove by the site and observed several large trucks on site. He asks for clarification on the types of vehicles and the amount of them. He also asks if there will be any further expansion of the business on site.

Mr. Jim Sterwerf, applicant, states that there are 9 or 10 big trucks, a couple of semis, some dump trucks, and several pickup trucks and fuel trucks.

Mrs. Ohlmansiek asks if there are any dozers or backhoes and how are they transported?

Mr. Sterwerf states that they do have them and they transport them by trailer and usually park those on the job sites. He states that business is slow right now so they are parked on the farm.

Mr. Pope asks how many employees work for S&S Excavating.

Mr. Sterwerf states that he has 5 full-time employees and his one son is part-time when not in school.

Mrs. Ohlmansiek asks how many pieces of equipment have been purchased within the last 2 years.

Mr. Sterwerf states that he has bought a couple of items when he has been able to afford them. He states that some have been purchased to repair his current vehicles.

Mr. Nelson clarifies that if approved, the next step would be Site Plan Review, which requires a detailed site plan showing paving, landscape, and storm water control.

Mr. Holzapfel states that it was his understanding that a gravel drive is considered a paved surface. He states that Mr. Sterwerf keeps his property organized and neat.

Open public comment.

Mr. Lawrence Neumann, adjoiner, states that he farms his land of an evening sometimes and he understands that in a farming community there may be noise during the evening. In the past couple of years, the noise has increased with bulldozers operating at 9:00-10:00pm and he feels this is too late to be operating. He states that he moved in after the Sterwerfs and has never really had any problems until more recently. He would like to see the noise decreased during evening hours and on Sundays. He states that he moved into this area with the hopes it would stay Agricultural and he is concerned with this use opening the door to more businesses.

Mrs. Cindy Luchow, adjoiner, states that she has always liked the Sterwerfs, but has objected to the business all along. She states that within the past two years this business has become overbearing; the equipment has grown and the noise is unbearable and not consistent with that of an Agricultural farm. She has counted 16 vehicle trips per day and feels that the Sterwerfs have become un-conscientious of their operation. She states that there has been tire burning, mishandling of the waste from vehicle maintenance, and outdoor storage. She has been concerned with her well and has tested the water, which shows that there has been contamination. She states that the Sterwerfs are currently operating on 1/3 of an acre and she does not want to see this business grow to the entire 15 acres. She feels that there is a way to operate a business and that this is not the way. *She presents a petition opposing the business.*

Mrs. Nancy Lanning, neighbor, states that she would like to address the criteria in which the Board must abide by when making a decision. She states that public health and safety are the responsibility of society through organized efforts and informed choices, and it is the government's responsibility to make every effort to prevent health issues. She explains that the onsite toxic burning and documented violations of oil dumping have put the public's health at risk. According to Article 9, a business of this type is not permitted within an Agricultural District, and she feels the business needs to be located in a Business District so proper monitoring will take place. She states that the constant noise of trucks traveling, vehicle maintenance, and daily operations have contributed to decreased enjoyment of her property and the value of the community. Berms and trees will not buffer this use and its problems. She asks that due to the acts of intimidation, this property be monitored by the authorities and not be left to the neighbors to report violations.

Mr. David Lanning, neighbor, states that he is here to enforce the law of an Agricultural area and feels that the Sterwerf property is not an Agricultural property; having a couple of cows does not make an Agricultural property. He had his property appraised and was told the value went down due to the Sterwerf business located in the neighborhood. He explains that the Sterwerfs buy tandem trucks, which do not always sit around, and that the place has been disorderly until this proposal came about. He states that Mr. Sterwerf uses semi-trailers for storage, dumps fuel, burns tires, and operates at all hours. He moved here to enjoy peace and quiet, but can not do that now due to the heavy traffic, dust, and constant noise from this property.

Mr. Tom Luchow, adjoiner, states that he has lived here for the past 15 years and within that time the Sterwerf farm with one piece of equipment has grown into the business that it is today; he feels this is no farm. There are 5-6 large trucks, 3 huge earth vehicles, and industrial wastes on the property. He is concerned with the maintenance shop and the handling of the fluids properly. He further states that neither fence nor berm will buffer him from the daily operations, or the obnoxious and wreckless drivers of vehicles on the road. He also explains that recently his dog was shot and killed and he has filed a report with the police department to find out who is responsible. He states that with respect to the location of his dog, the shot originated from the direction of the Sterwerf property. He asks that this request be denied tonight.

Mrs. Luchow presents a slide show and asks if the business is approved that the business be completely fenced, and the paved areas be located away from her well water.

Mrs. Anita Reckers, of County Line Road, states that her concern is with Section 315c and that the request is served adequately with public facilities that include roads. She states that she did not have much trouble until 2-3 years ago when the bridge on Holt Road was closed. Now the trucks are constantly passing her home and using their jake brake down Holt Road. *She presents pictures of the road.* She further states that she did not realize that this business had been in operation all these years with no permits, and that, if granted tonight, the Sterwerfs would continue to operate outside the County's regulations. She also states that her research shows that surrounding States do not allow for the maintenance of the vehicles to occur on the property when a Conditional Use of this nature is granted. She explains that while this is an important business to the area and economy, it needs to be in the appropriate business area under business laws and regulations.

Ms. Sheena Applegate states that she is a Dearborn County resident who has lived at the back of the Sterwerf property for 13 years. She explains that in listening to the comments tonight, she would like to clarify some items mentioned. The Holt Road Bridge has been collapsing since the 1980's. She feels that the noise that has been discussed can be contributed to several factors including a nearby park and a nearby farm that operates late of an evening. She states that she has filmed videos around her home and does not notice excessive noise outside of a normal farming community. She also feels that contamination to the well can be caused by farming chemicals just as easily as a business. She states that the Sterwerf business location could not be placed back any further due to the steep hillside, and she reminds the Board that the Sterwerfs along with their business were in this area of the community first. She feels that the Sterwerfs keep their property neat and orderly, and that this situation has become personal. She states that she does taxes for a living and sees too many businesses closing due to the economy. She states that she backs the Sterwerfs request to operate a business 100%.

Ms. Christy Ludwig, Sterwerfs daughter, states that she feels this is a personal attack; her parents are only trying to operate a business to hand down to her brothers and her. She states that the only time you can see between the properties is during the winter time. Otherwise, trees block the properties during the summer time. She clarifies that the oil is loaded into a tank and driven away from the property. She explains that her father has burned tires from time to time; however, he will not do that anymore. Addressing the litter along the road, she states that her family is not the only ones who live on the road. She also states that at the time the bridge was open on Holt Road there was more through traffic than now.

Mr. Joe Wurzelbacher states that he lives in Hamilton County and has gone through this same situation with his business. It took 10 years to resolve the issues. He explains that if this use is not granted then it will force the Sterwerfs into a situation where they have to keep fighting for their business legally. He states that he does not speak to his neighbor and that all this has cost him and his neighbor a substantial amount of money. He states that he neither won nor lost.

Mr. Matt Zerbe, attorney, states that he represents the Luchow family and would like to address some of the legal criteria for a conditional use. He states there are concerns with the public health, safety, and welfare of the community with the illegal fires, obnoxious fumes, uncontained and uncontrolled loss of fuels coming from the Sterwerf business. He explains that the community depends on wells for their water since there is no city water in the area, and his clients are concerned with encroachment into the ground which would contaminate their well. *(He shows pictures of burn sites, with burning tires and heavy smoke; large equipment on the property, and a garbage truck stopped on Holt Road to demonstrate the width and passing ability of Holt Road.)* He feels the visual effect, traffic, and noise generated from this business are not in harmony with the residential aspect of the area. He states that the application as presented tonight does not meet the criteria in the Ordinance to grant a Conditional Use. *He presents a binder as exhibit 1, a power point presentation, and video of a Sterwerf vehicle using its jake brake down Holt Road.*

Ms. Melissa Sterwerf, daughter-in-law, states that in the beginning there were some late operations; however, due to some personal problems, the Sterwerfs no longer work late and have not for the past seven years. She explains that noise occurs all year long with the 4 wheelers that go up and down the road and the farming equipment operating. She feels this is a personal attack. She states that the Sterwerfs would like their business to thrive so it can support the family and be handed down to the children.

Mr. Kevin Applegate, adjoiner, states that he is currently home all day due to layoffs and the equipment leaves in the morning and comes back at night. He feels this business creates no more noise than farm equipment operating. He states that the burning occurs about two times a year and from what he sees it is wood and debris off the property. He feels the Sterwerf property is neat and organized and there are no signs of oil dumping. Mr. Sterwerf parks his trucks neatly on the gravel. He further states that Holt Road is wider than 1 lane and that North Hogan is narrower than Holt. He states that Baylor Trucking is right up the street and he does not recall hearing any complaints about their noise. He rides a bike on Holt and has never had a problem with the Sterwerf's vehicles being dangerous. He further states that well contamination does not occur from hilltop to hilltop. He feels this is a personal attack and issues are being brought up that have nothing to do with this request.

Mr. John Pruitt, of Holt Road, states that the Sterwerfs have a nice property and nice home. He states that with regards to well contamination, the rule is go one mile north for however deep the well is, so the Sterwerfs are not contaminating the Luchow's well. He states that the road is in good shape and that Ripley County maintains County Line Road, so not much can be done about that. He remembers a wood fire occurring on the Sterwerf property. Mr. Sterwerf bought a new wood stove and it caught fire, which did create a lot of smoke that afternoon. He agrees that there are a few times that if a job is far away, that the trucks do pull in later in the evening.

Mr. Daniel Bischoff states that his family owns 160 acres on Holt Road. He has been friends with the Sterwerfs since the Sterwerfs moved in on Holt Road. He explains that he was laid off and spent a lot of time out at his pond, he remembers a couple of trucks out in the morning and not much during the day. He states that he does not understand the traffic and noise that everyone is talking about.

Close public comment.

Mr. Holzapfel states that there is no heavy equipment operating onsite, the business is operated offsite. He knows in the recent past that the Sterwerfs put an addition on their house and did their own excavating, which may lead to some of the confusion about operating onsite. He states that the trips per day are expected to be two or three in the morning and two or three in the evening. He would like to clarify the Christmas Day event where Mr. Sterwerf and his son were in tractors having family fun on the property. He feels that the statements about this being a residential neighborhood are inaccurate; this is an agricultural neighborhood with farm equipment operating, and there is going to be noise in a farming community. He also states that there was never any discussion of expanding the business, only maintaining the business to leave to their kids. He states that the Sterwerfs did not kill the Luchow's dog. To address the safety concerns he reads a letter from the fire department and presents it to the Board. *He presents a letter from Cindy Luchow to the Sterwerfs.* He feels that this letter shows some inconsistencies with the dispute between the neighbors. He further states that there has been no expert testimony to the fact that the Sterwerfs have contaminated the well. Mr. Zerbe stated that there were reckless activities occurring on the property and he believes this statement is inaccurate; the uses on this property are consistent with the uses on a farm. He requests this application be granted.

Mr. Pope asks if the livestock on the property is for sale or personal use.

Mr. Sterwerf states that they raise some and sell some. He raises bucket calves, hogs, and he gets a steer for the kids. He sells some to pay for feed. He would like to clarify the Christmas Day event and states that he and his son were playing.

Mrs. Hall explains that there is a 25ft. elevation difference between the Sterwerf property and the Luchow property, and the Sterwerfs are lower. She states that the storage of fuel and oil has been approved by the State.

Mr. Nelson states that this is a Conditional Use request in an Agricultural (A) Zone in which agricultural would be a permitted use. When you ask for a Conditional Use, it may be required to conform to a higher standard, since it is a Conditional Use and not a Permitted Use. He explains that in the past with these types of cases special conditions have been placed within the motion. He feels that this application is an inadequate proposal, missing important information that needs to be addressed: the scale of the business, the number of vehicles and pieces of equipment, amount of acreage for the business location, paved parking design, addressing of appropriate disposal of chemicals and fuels, conditions for burning, screening/buffering of business, hours of operation, and addressing of long term storage of vehicles.

Mr. Nelson makes a motion to deny the request for a Conditional Use due to inadequate application. Mrs. Ohlmansiek seconds.

Mrs. Ohlmansiek asks if these items would be addressed under the Technical Review process.

Mr. Nelson states that Technical Review could address this, but he feels it is inappropriate to have staff determine what the scale of business and number of vehicles should be.

Mrs. Ohlmansiek states that there are two options: deny the application causing the business to close or relocate, or table this request to allow the applicant to address the Board's concerns. She feels that in an Agricultural area the owner has the right within limits to make use of their land for their families use and support; however, she feels that there are safety issues and community issues that the Board needs to consider when deciding about this proposal and what is safe and appropriate for the community.

Mr. Nelson agrees and states that the Board needs to know the scale of the business before any conditions can be set. The Board needs to know what the applicant wants.

Mr. Nelson withdraws his motion to deny the application. Mrs. Ohlmansiek seconds the withdrawal.

Mrs. Ohlmansiek makes a motion to table this request to April 13, 2010 so that the applicant can address the following: 1.) the scope of the business; 2) The size of the business; 3.) a letter from IDEM; 4) the driveway pavement design; and 5.) the actual width of Holt Road. Mr. Nelson seconds. All in favor. None opposed. Motion carries.

Mr. Hall re-enters the room to chair the meeting.

The Board takes a five-minute break.

H. ADMINISTRATIVE

- **William Scharold to address the Board on behalf of the American Legion.**

Mr. William Scharold, Commander of the American Legion Post 452, states that they would like to place signs on their property for advertising purposes. He states that the American Legion's neighbor received a letter from the Planning Department that stated a sign that was located on her property was in violation. He feels that the sign should be allowed since it was advertising a non-for-profit event and was located within the right-of-way. He states that staff has been working with him to resolve these issues and has given him a deadline of May to resolve everything. He explains that the Boys Scouts are going to construct the new sign as an Eagle Scout project using grant money, and they will need more time to comply. He states that the American Legion holds several events that will need to be advertised prior to the new sign being completed. He is here tonight to ask to allow their temporary sign for advertising until the new sign is completed.

Mr. McCormack states that they worked out a timeline together for the construction of a new sign. He explains that there are two signs in question, the one on the property and a portable sign which is an off-premise sign that is an illegal sign according to the Dearborn County Zoning Ordinance. He feels that the Eagle Scout project can be worked around to accompany the American Legion's timeline.

Mr. Nelson asks when this project has to be completed.

Mr. Scharold states that the Eagle Scout project must be completed prior to the scout's 18th birthday, which he believes is in September this year.

Mr. Pope suggests a deadline of October 1, 2010. The Board feels that is adequate time to complete the project.

The Board advises staff to allow a deadline of October 1, 2010 for the Eagle Scout to complete the sign.

- **Howard's Home Improvements-sign issue**

Mr. McCormack states that upon a recent sign inspection along Stateline Road, staff came across a sign and issued a letter to the owner. In discussing with the owner and reviewing dated plat maps and aerials, the sign has been up for approximately 25 years. He explains that in reviewing the prior Ordinance the use that is located at the site is not a principally permitted use within that district, and the sign requirements would not have been conformant at that time either. The options to resolve this issue are to rezone the property to allow this use and sign or to apply to the Board of Zoning Appeals for a variance to allow the sign on the property.

Mr. McCormack states that the business being operated there is a home remodeling business where the operations occur off-premise. He asks the Board for direction in resolving this matter.

Mr. Nelson asks if a Conditional Use would be appropriate.

Mr. McCormack states that a Conditional Use is not an option for this type of business in a Residential Zone. He states that the property could be rezoned to Agricultural and then a Conditional Use could be granted.

Mr. Pope asks what the sign advertises.

Audience member states that the sign says 'Howard's Home Improvements' with his address and phone listing.

Mr. Pope states that 3 years ago the sign displayed 'Bright Tree Service' on the Johnston property.

Audience member states yes that is true. He also states that he did not realize the property was zoned Residential when he put the sign up.

Mr. McCormack states that the property was multi-zoned, Residential in the front and Agricultural in the rear.

Mr. Pope asks if the business is being operated from the property.

Audience member states that he answers the phone and uses the pole barn for storage; otherwise he leaves the property to go to the job site.

Mr. Pope agrees with the time frame of the original sign structure being constructed approximately 25 years ago.

Mr. Hall clarifies that this structure could involve a rezone, a rezone with a conditional use, or be grandfathered. He asks Mr. McGill for his legal opinion.

Mr. McGill states that the sign has been there for 25 years, and may have been part of a home occupation years ago.

Mr. Nelson suggests that staff "grandfather" the sign.

The Board advises staff to consider the signage as "grandfathered."

Mr. McCormack gives a brief update on the new website and reminds the Board of the upcoming Comprehensive Plan Meeting on March 31, 2010.

Ms. Webb presents the Enforcement Report.

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

Meeting adjourned at 10:12 P.M.

Mike Hall, Chairman

Ashley Webb, Enforcement Officer