

**CHARTER TOWNSHIP OF FENTON ZONING BOARD OF APPEALS
MINUTES FOR REGULAR MEETING OF OCTOBER 24, 2017**

FENTON TOWNSHIP CIVIC COMMUNITY CENTER
12060 MANTAWAUKA DRIVE, FENTON, MICHIGAN
MEETING HELD AT FENTON TOWNSHIP CIVIC COMMUNITY CENTER

Chairperson Cady called meeting to order at 7:05 pm.

Present: Cady, Lorraine, Marko, Matta, Reid, Spear
Recording Secretary, McDonald

Absent: Baran

Also Present: Township Attorney, Jack Belzer and Zoning Administrator, Doug Piggott

PLEDGE OF ALLEGIANCE:

Chairperson Cady led the pledge of allegiance to the flag.

APPROVAL OF AGENDA:

Motion to approve the agenda as written

Motion by: Cady
Seconded by: Lorraine
All in favor

APPROVAL OF MINUTES:

Motion to approve the meeting minutes of September 26, 2017

Motion by: Cady
Seconded by: Matta
All in favor

Chairperson Cady explained meeting procedure

UNFINISHED BUSINESS:

ZBA16-004 Martin Vyskocil, 8284 Peninsular Dr. Fenton:

06-31-300-008

Appeal

Appealing the decision of the Zoning Administrator that they are not permitted to spread manure at the equestrian center in Lakeview Farms located at 6323 Lobdell Rd. Postponed 2-23-16

Secretary Reid reviewed the file, Marilyn Direzze, 12315 Fairbanks, attorney for Vyskocil, stated her client's property is a class 3 farm according to the Michigan Department of Agriculture and Rural Development (MDARD). In a letter dated October 28, 2016 MDARD classified the site as a category 3 farm based on zoning information, soil tests and a manure management plan. She stated the farm meets or exceeds all of the department's standards. She added the farm has also been environmentally verified by MDARD for the farmstead, livestock and cropping systems. She explained, as a category 3, site the property is suitable for 50 livestock units or 25 horses; currently there are 6 horses and a pony on the property. The farm sells bailed hay and boards horses so it is a commercial farm and it is the applicant's position that spreading manure as part of the farm operation is protected under the Right to Farm Act (RTFA). George Rizik, 9400 Saginaw St. Ste. E, Grand Blanc, attorney for the Lakeview Farms Homeowners Association, stated the Zoning Administrator was correct in determining that spreading manure is prohibited. He noted the property was previously zoned AG and it was rezoned to Planned Unit Development (PUD) for a residential development with an equine component not a commercial farming component. The PUD concept plan adopted as part of the ordinance states and shows the location of a 30 yard dumpster labeled as "for horse waste removal", the concept plan also notes that horse waste shall be removed as necessary. He argued that first, this is not a commercial farm and second the RTFA protects farmers from nuisance lawsuits or ordinances that conflict with the act. It does not exempt them from zoning requirements. He explained the RTFA was enacted to help address clashes between farmers and the residents that moved close to the existing farming operations. In this case, the PUD was intentionally designed to be an area where the residents and equine center would coexist. He cited Ordinance 464 that added a PUD/EQ category for equestrian village in the PUD development classification. This ordinance was adopted at the same

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time the PUD for the property was approved. Ordinance 464 says in part that uses generally allowed in AG district shall not apply to this zoning category. Rizik submitted a “frequently asked questions” fact sheet from MDARD. Rizik said that MDARD is not an enforcing agency and the Generally Accepted Agricultural and Management Practices (GAAMPs) are a voluntary set of standards, which help provide guidelines for using the RTFA as an affirmative defense in court. It is not a preemption. Chairperson Cady called for public comments. Secretary Reid read letter from August & Shirley Kovacic, 16382 Horseshoe Ct., objecting to the spreading of the manure, they stated they have lived in Lakeview Farms since 2001 and have had no issues with owners of the horse farm until they stated spreading the manure and now on certain days they cannot go outside because of the smell. They also stated concerns about runoff from Vyskocil’s property to Buckbee Lake. David Goldstein, 13340 Crane Ridge and Remax Platinum agent stated his client owns a large parcel that encompasses most of Buckbee Lake’s shoreline and his concerns were about the runoff and the condition of the lake itself. He said the lake seems to be deteriorating in quality and he submitted a google aerial photo. Spear asked whether his client has had the water tested: - Goldstein said they had not. Allison Paulson, 16484 E. Horseshoe Trail, stated she has made a large investment in her property and pool and for the last year, she cannot even go outside, let alone use the pool. She said it smells terrible and the flies are horrible. Piggott explained that, in late August after the Township received the October 28, 2016 letter from MDARD, he wrote a memo in which he said based on that letter that he is reversing the previous decision that Vyskocil cannot spread manure. The ZBA members stated they did not have a copy of the memo. Piggott read the memo dated August 29, 2017, which stated in part that the PUD “allows for agricultural uses by right” and he assumes they believe the PUD is an agricultural zoning district. The facility and the spreading of manure conforms with the Manure Management GAAMPs and the facility complies with the 2016 Site Selection GAAMPs as a Category 3 site that allows for up to 50 animal units or 25 horses. Based on this, it would appear that MDARD has determined that Mr. Vyskocil’s operation of the horse facility, including the spreading of manure on his property, is preempted by the RTFA. He added they do not explicitly state that in the letter, but it appears that the operation meets all the tests required, as Piggott understands them, for preemption. Given that, Piggott reversed his previous administrative decision that Mr. Vyskocil cannot spread manure on his property, provided the operation remains in compliance with the Manure Management GAAMPs. Piggott stated, after the Township received the memo, a discussion took place with the Township Attorney about his reversing the decision making the appeal a moot point. When Attorney Belzer learned that the matter was postponed at the February 2016 meeting, he said the ZBA must take action on the postponed request. Recording Secretary McDonald explained it was her understanding that the case would move forward to the ZBA as it was when it was postponed she did not provide the memo. Attorney Belzer said he felt Ordinance 464’s prohibition in this PUD/EQ of generally allowed uses in the AG district applies to this zoning category. Marko stated concerns that the Township experts did not agree about the preemption or whether ordinance 464 applies. Piggott said that he and Belzer have worked together for other Townships a number of times and they do not always agree. He noted he is the Zoning Administrator and Belzer is the attorney. There was discussion about the ZBA relying on advice from those who are the Township’s advisors on legal and zoning matters. Cady stated the ZBA will make their decision based on the testimony of all.

Motion to approve the appeal and overturn the ruling of the Zoning Administrator that they are not permitted to spread manure at the equestrian center in Lakeview Farms located at 6323 Lobdell Rd.

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Reid, Spear
Nays: Matta, Lorraine, Marko
Absent: Baran

Motion failed

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Motion to deny the appeal and uphold the ruling of the Zoning Administrator that they are not permitted to spread manure at the equestrian center in Lakeview Farms located at 6323 Lobdell Rd.

Motion by: Cady
Seconded by: Matta
Ayes: None
Nays: Cady, Lorraine, Marko, Matta, Reid, Spear
Absent: Baran

Motion failed

Members of the public did not understand the result of this vote. Chairperson Cady explained the motion to overturn the Zoning Administrator's original decision stating they could not spread manure did not pass the second motion was made to uphold that decision and that motion failed also. As a result, both motions failed leaving the original Zoning Administrator's decision that they cannot spread manure to stand.

ZBA17-032 David Overway, 12183 Margaret, Fenton:

06-11-501-057

Requesting 5 ft. side yard and 10 ft. sight line variances to extend and cover a portion of the deck, Postponed 8-22-17

Secretary Reid reviewed the file. David Overway was sworn in. He explained that he bought this house in 2010 and the deck was already built. He said they have done things to maintain it, however, the deck has deteriorated to a point now that it needs to be replaced. He said that when they started planning to replace it they decided to go 4 ft. further toward the water and cover a portion of the deck with a post and roof structure. He explained that he knew the neighbor to the north was opposed to this but he did contact the neighbor to the south who is most affected by this and that neighbor did not have any issues. Overway submitted a letter from that neighbor stating they are in favor of the request. He also submitted a letter that the neighbor to the north had distributed throughout the neighborhood. He pointed out that the letter implies that the request is to reduce access to the easement on the south, which is misleading. Reid asked if the grill on the north corner of the deck is permanently attached to the gas main. Overway said it is connected to the gas line. Chairperson Cady called for public comments. Don Kirkwood, 12179 Margaret stated he has lived in his home for 30 years. He said he was there when Overway's house was built in 1995. At that time there was a request for many variances, which he objected to because it was too much house for the lot. During the course of the 1995 meeting, the applicant was asked to modify his request to provide relief for Kirkwood's view. He said since then there was a request for other variances on the roadside of the property to which he did not object because it did not affect his view of the lake. He said other than sanitary sewer the sight line is the most important protection lakefront property owners have to rely on and it must be protected and upheld. Lynn Campbell, 12151 Margaret stated she felt the sight line should always be protected. Marko stated concerns about the grill and the portion of fence erected on the north side of the deck. Attorney Belzer stated he did not hear anything about a hardship in this case.

Motion to approve 5 ft. side yard and 10 ft. sight line variances to extend and cover a portion of the deck

Motion by: Cady
Seconded by: Spear
Ayes: None
Nays: Cady, Lorraine, Marko, Matta, Reid, Spear
Absent: Baran

Motion failed

Motion to deny 5 ft. side yard and 10 ft. sight line variances to extend and cover a portion of the deck

Motion by: Cady

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Seconded by: Lorraine

Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear

Nays: None

Absent: Baran

Motion carried

ZBA17-034 Matt & Jen Ream, 13470 Enid, Fenton:

County Road right of way Appeal

Appealing a decision of the Zoning Administrator that the applicants cannot build a garage on property not under their ownership, the property is Genesee County road right of way

Postponed 8-22-17

Secretary Reid reviewed the file. No one was present to represent the request. The Board discussed postponing the action. Belzer stated the Board does not have to postpone if they are ready to act on the application. He said the Board should have a policy defining the procedure for continuing a matter to another date. McDonald stated Matt Ream had called the office and said they had nothing to add for testimony. Chairperson Cady called for public comments. There were none. Matta stated the Board has no authority to approve something to be built in a Genesee County Road Commission Right of way. Cady and other Board members agreed.

Motion to approve the request and overturn the Zoning Administrator's decision that the applicants cannot build a garage on property not under their ownership, the property is Genesee County road right of way

Motion by: Cady

Seconded by: Matta

Ayes: None

Nays: Cady, Lorraine, Marko, Matta, Reid, Spear

Absent: Baran

Motion failed

Motion to deny the request and uphold the Zoning Administrator's decision that the applicants cannot build a garage on property not under their ownership, the property is Genesee County road right of way

Motion by: Cady

Seconded by: Lorraine

Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear

Nays: None

Absent: Baran

Motion carried

NEW BUSINESS:

ZBA17-040 Donald Kirkwood, 12179 Margaret, Fenton:

Appeal

Appealing the decision of the Zoning Administrator that a section of privacy fence erected at 12183 Margaret is not located in the sight line

Secretary Reid reviewed the file. Donald Kirkwood was sworn in. He has lived in his house for 30 years and was there when the house was built in 1995. At that time there was a request for many variances, which he objected to because it was too much house for the lot. During the course of the 1995 meeting, the applicant was asked to modify his request to provide relief for Kirkwood's view. He said since then there was a request for other variances on the roadside of the property to which he did not object because it did not affect his view of the lake. He explained he filed a complaint about the section of fence Overway erected on the north side of his deck and the result of the complaint was a letter stating this fence is not in the sight line. Kirkwood said the fence obstructs his view of the lake. Chairperson Cady called for public comments. David Overway, 12183 Margaret, stated the fence was

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there when he bought the house in 2010. It was a wooden stockade section of fence that, over a period of about 8 years, deteriorated into rough condition and finally fell down. He said he simply replaced it with the current vinyl fence section. He said the fence is not in the sight line as defined in the ordinance. The Board explained the sight line ordinance is to protect a person's reasonable view of the lake from their home and because a person can see the fence does not necessary mean it is in the sight line as defined in the ordinance.

Motion to approve the appeal and overturn the Zoning Administrator's decision that a section of privacy fence erected at 12183 Margaret is not located in the sight line.

Motion by: Cady
Seconded by: Matta
Ayes: None
Nays: Cady, Lorraine, Marko, Matta, Reid, Spear
Absent: Baran

Motion failed

Motion to deny the appeal and uphold the Zoning Administrator's decision that a section of privacy fence erected at 12183 Margaret is not located in the sight line

Motion by: Cady
Seconded by: Spear
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

ZBA17-041 Ghassan Saab, 3407 Torrey Rd., Flint:

06-11-504-010

vacant land Sonora

Requesting 10 ft. front, 19 ft. rear, 5 ft. side and 10 ft. total two side yard variances and a variance from the required 4/12 roof pitch for a flat roof to build a new house

Secretary Reid reviewed the file. No one was present to represent the request. The Board stated they did not understand why the applicant could not repartition the lots on the water in order to build without so many variances. They also stated concerns about a flat roof. Chairperson Cady called for public comments. Peggy & Tom Smith, 2316 Sonora, stated concerns about the amount of variances requested. Peggy said she had petitioned the Board for variance to build a new garage. She said the current garage is dilapidated and nearly falling down and she was denied. She stated concerns about a 5 ft. side yard setback and both felt the applicant is trying to fit 3 homes in an area where only 2 home would fit appropriately. Matta and Reid said they have questions for applicant that cannot be answered. The Board agreed that the variances requested were excessive and not adequately supported.

Motion to approve 10 ft. front, 19 ft. rear, 5 ft. side and 10 ft. total two side yard variances and a variance from the required 4/12 roof pitch for a flat roof to build a new house

Motion by: Cady
Seconded by: Matta
Ayes: None
Nays: Cady, Lorraine, Marko, Matta, Reid, Spear
Absent: Baran

Motion failed

Motion to deny 10 ft. front, 19 ft. rear, 5 ft. side and 10 ft. total two side yard variances and a variance from the required 4/12 roof pitch for a flat roof to build a new house

Motion by: Cady
Seconded by: Matta

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Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

ZBA17-042 Dave & Jeri-Ann Cypher, 12160 Margaret, Fenton:

06-11-501-129

Requesting a 7 ft. side yard setback variance to build an attached garage

Secretary Reid reviewed the file. Dave & Jeri-Ann Cypher were sworn in. Dave Cypher explained the request to build an attached garage. Cypher said one hardship is that the lot is a corner lot that requires 2 – 30 ft. front yard setbacks. He added that lots 60 ft. or less at the building setback line are given an exception to the required 10 ft. side yard setback allowing for a reduction to 5 ft. He also noted the location of a 4 ft. walkway on the west side of his property that is part of the plat and the location of his well. He explained that even though he is asking to be only 3 ft. from the west property line, with the 4 ft. walkway easement, the garage actually will be 7 ft. from the to the east property line of the neighbor and there will be 14 ft. between the garage and the neighbor's house. He concluded by stating the garage will be 24 ft. X 24 ft., the minimum size to be able to accommodate their 2 trucks. Cady asked if the garage could be moved closer to the house to allow more of a side yard setback. Cypher explained that the stairway to the upper level of the garage is within the floor area of the garage and this will provide a place to keep trash and recycle bins as well as enough space for a small laundry room. Reid asked if he planned to finish the upper level. Cypher said not at this time, but the room will be roughed in during the building of the garage so it may be finished later. Chairperson Cady called for public comments. Carol Wyman, 12125 Margaret, supported the request stating everyone needs a garage. Paula Manzardo, 12159 Margaret, stated she had no objections to a garage but she had concerns about the 3 ft. side yard setback. She said she felt they could make the garage smaller. David Campbell, 12151 Margaret, agreed and said he supported a garage, but it should be downsized. Lynn Campbell, 12151 Margaret, said the 14 ft. space between the proposed garage and neighbor's house is not an open space because the neighbor to the west has a fence that runs along the walkway. Cady stated there is a practical difficulty with the shape of this lot. Reid concurred and stated that 2 front yard setbacks and the well location add to the difficulty in fitting a 2-car garage on this property and the request is for the minimum necessary to provide relief.

Motion to approve a 7 ft. side yard setback variance to build an attached garage

Motion by: Cady
Seconded by: Matta
Ayes: Marko, Matta, Reid, Spear
Nays: Cady, Lorraine
Absent: Baran

Motion carried

RENEWAL OF HOME OCCUPATIONS

Chairperson Cady explained he will read through the renewals and noted that if anyone has public comments on any case, the Board will hear that now.

Sandra Williams, 1453 Butcher Rd. stated concerns about the number of home occupation permits for gun sales.

Les Scott, 12499 Margaret, said he had no problem with home occupations and he complimented the Board for the way they conducted the meeting.

Marko addressed the gun sales in the homes. He said for the most part these applicants do no sell guns out of their homes. They need an address and a place to do their paperwork. Most sell on line, at

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gun shows or from a commercial gun store, and they are regulated by the bureau of Alcohol, Tobacco and Firearms.

HO02-001 Mark Wendling 12075 Torrey Rd:

06-11-503-021

Requesting to renew a home occupation permit to operate gun sale business in residence

Motion to approve renewal of a home occupation permit to operate gun sale business in residence

Motion by: Cady

Seconded by: Matta

Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear

Nays: None

Absent: Baran

Motion carried

HO02-004 Craig Allen 11533 Torrey Rd:

06-02-300-042

Requesting to renew a home occupation permit to operate an auto wholesale business in residence

Motion to approve renewal of a home occupation permit to operate an auto wholesale business in residence

Motion by: Cady

Seconded by: Matta

Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear

Nays: None

Absent: Baran

Motion carried

HO02-010 Ronald Kellaway 1473 Wiggins Rd:

06-01-300-020

Requesting to renew a home occupation permit to operate gun sale business in residence

Motion to approve renewal of a home occupation permit to operate gun sale business in residence

Motion by: Cady

Seconded by: Matta

Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear

Nays: None

Absent: Baran

Motion carried

HO02-012 Tonya Gerow-Borucki 2352 Belle Glade Ct:

06-02-553-006

Requesting to renew a home occupation permit to operate dog-grooming business in garage

Motion to approve renewal of a home occupation permit to operate dog-grooming business in garage

Motion by: Cady

Seconded by: Matta

Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear

Nays: None

Absent: Baran

Motion carried

HO07-040 Sharon LaFee 2509 Fenton Creek Ln:

06-23-503-017

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Requesting to renew a home occupation permit to operate sewing business in residence

Motion to approve renewal of a home occupation permit to operate sewing business in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO08-042 William Molpus 2355 Thompson Rd:

06-02-552-006

Requesting to renew a home occupation permit to operate small deck installation business from residence

Motion to approve renewal of a home occupation permit to operate small deck installation business from residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO12-048 Diane Tushim 3332 Horrell Ct:

06-15-501-013

Requesting to renew a home occupation permit to continue to operate pet service establishment in residence

Motion to approve renewal of a home occupation permit to continue to operate pet service establishment in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO13-051 Melvin Spencer, 14283 Hogan Rd:

06-19-300-001

Requesting to renew a home occupation permit to continue to operate gun sale business in residence

Motion to approve renewal of a home occupation permit to continue to operate gun sale business in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO13-053 Sharon Schneider, 15074 Meadow Ln:

06-30-601-012

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Requesting to renew a home occupation permit to continue to operate salon in residence

Motion to approve renewal of a home occupation permit to continue to operate salon in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO14-009 Timothy Paige, 5450 Blossom Ln:

06-32-601-101

Requesting to renew a home occupation permit to continue to operate gun sale business in residence

Motion to approve renewal of a home occupation permit to continue to operate gun sale business in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO14-021 Michael Conway, 4401 Silver Lk. Rd:

06-28-100-001

Requesting to renew a home occupation permit to continue to operate barbershop in residence

Motion to approve renewal of a home occupation permit to continue to operate barbershop in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO14-026 Daniel Corbett 2410 Torrey Grove Ct:

06-11-651-012

Requesting to renew a home occupation permit to continue to operate gunsmithing business in residence

Motion to approve renewal of a home occupation permit to continue to operate gunsmithing business in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO15-014 Diana Gibbons, 13507 Haddon St:

06-14-577-109

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Requesting to renew a home occupation permit to continue to operate personal training business in residence

Motion to approve renewal of a home occupation permit to continue to operate personal training business in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO16-047 Daniel Maldonado, 4237 Crystal Cove Ct, Linden:

06-21-626-034

Requesting to renew a home occupation permit to continue to operate gun sale business in residence

Motion to approve renewal of a home occupation permit to continue to operate gun sale business in residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

HO16-005 Alexander Adams, 13260 Marvin Dr. Fenton:

06-15-100-018

Requesting to renew a home occupation permit to continue the operation of heating and cooling business at residence

Motion to approve renewal of a home occupation permit to continue the operation of heating and cooling business at residence

Motion by: Cady
Seconded by: Matta
Ayes: Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: Baran

Motion carried

COMMUNICATION: Proposed 2018 Meeting Schedule – There were no suggested changes

PUBLIC COMMENT: 5 minute limit

ADJOURN: 10:15 p.m.

Chairperson Cady

Minutes Posted 10/27/17

Secretary Reid