

MINUTES OF THE  
ZONING BOARD OF APPEALS  
March 8, 2018

At a meeting of the Attica Township Zoning Board of Appeals held on the 8<sup>th</sup> day of March, 2018 at the Attica Township Hall, 4350 Peppermill Road, Attica, MI, 48412. The meeting was called to order at 6:30 p.m. by Chairman Gierman. PRESENT: Kent Gierman, Elaine Thayer, Bill Winslow, Carol Eisenhardt and Richard Lacey. ABSENT: None. Also present: Attorney Michael Gildner.

Chairman Gierman informed the audience that the meeting was being recorded.

1. **ZBA HEARING for LANNY and LINDA KAEDING:**

Chairman Gierman opened the Public Hearing at 6:31 p.m. to consider the request of Lanny and Linda Kaeding to be granted a variance from the zoning ordinance to divide their property which does not meet the required minimum acreage and rear parcel requirements in an AG district. The parcel is situated in the Township of Attica, Lapeer County, Michigan, described as 3596 West Road, Metamora, MI 48455. Chairman Gierman explained the request of Mr. and Mrs. Kaeding.

Mrs. Kaeding stated that she would like to sell her home to her son and would like to build a smaller home on the front parcel in order to be close to family so they can help each other. Mrs. Kaeding stated that her family has lived on their property for 29 years.

Mike Lindy lives across the street from Mr. and Mrs. Kaeding and stated that he supports the Kaedings splitting the property. Mr. Lindy also sent a letter in support of the Kaedings.

There was discussion. Chairman Gierman closed the Public Hearing at 6:35 p.m.

**MOTION** by Thayer, seconded by Winslow to deny the request of Lanny and Linda Kaeding for a variance from the zoning ordinance to divide their property which does not meet the required minimum acreage and rear parcel requirements in an AG district. The parcel is situated in the Township of Attica, Lapeer County, Michigan, described as 3596 West Road, Metamora, MI 48455. The reason for the denial is that it is a self-created hardship. A roll call vote was taken. Winslow: Aye; Eisenhardt: Nay; Thayer: Aye; Lacey: Aye and Gierman: Aye. Ayes: Four (4); Nays: One (1). Absent: None. **MOTION CARRIED.**

2. **ZBA HEARING for THOMAS and MARY TULLIO:**

Chairman Gierman opened the Public Hearing at 6:37 p.m. to consider the request of Thomas and Mary Tullio to overturn the Attica Township Board's finding of fact (at the January 11, 2018 Township Board meeting) approving Randy Owen (Owen Tree Service) moving his mulching operation from his current property to his new site at 1585 S. Lk. George Road. The type of variance request is an official order of decision.

Mr. and Mrs. Tullio's attorney, Jim Porritt, discussed the legal effect of the township board's finding of fact approving Randy Owen (Owen Tree Service) moving his mulching operation and discussed the following points:

- Attorney Porritt stated that the board authorized the move based upon a determination that it is AG use.
- A site plan has not been submitted.
- He has not found anything allowing the board to do a finding of fact.
- It appears the board bypassed procedure by making an interpretation of the zoning ordinance thereby usurping the authority of the zoning board of appeals.

Mary Tullio read the attached letter.

Tom Tullio turned on a back-up alarm to simulate the sound of the back-up alarm on the equipment at the mulching operation. Mr. Tullio stated that his campground business cannot survive with the noise of the back-up alarms. There was discussion.

Brian Haley, of 1561 Lake George Road, stated that he has to listen to the sound of the back-up alarms at his home. Mr. Haley read the definition of farming that he found on the State of Michigan web site.

Angela Haley, of 1561 Lake George Road, read the attached statement that she wrote and discussed her concerns with the mulching operation. Ms. Haley submitted a petition (attached) requesting the reversal of the township board's motion regarding Owen Tree Service.

Bill Baden, of 371 North Lake George Road, has lived next to the Owen Tree Operation since 1995 and has not heard any of the problems that he is hearing at the meeting.

Max Fowler, of 175 North Lake George Road, stated that his property adjoins Randy Owen's property and that he doesn't smell anything and hears machines backing up but it doesn't bother him. He stated that Mr. Owen conceals everything and puts up barriers.

John Russell, of 995 Lake George Road, stated that he lives across the

street from Owen Tree Service and that the most noise he hears is a truck running. Mr. Russell went on to state that he spoke with the manager of the plant while the grinder was running and the only thing he heard was a humming noise and that he very seldom hears a back-up alarm.

Brian Rowley, of 127 North Lake George Road, stated that he lives quite a distance from Owen Tree Service and that he seldom hears noise from the business.

Vicki Baden, of 371 North Lake George Road, stated that she felt the gravel pit across from the campground would make more noise than the mulching business.

Attorney Tim Denney, representing Randy Owen (Owen Tree Service) discussed letters in support of Mr. Owen and reviewed a display of photos of the business and neighboring properties and discussed the following points:

- The history of the operation
- How the machinery works
- Grinder noise levels
- Truck route
- Additional buffers to address neighbor's concerns
- Owen's Tree Service will be a good neighbor

Attorney Denney respectfully requested the township board's decision stand.

There was lengthy discussion between Attorney Gildner, Attorney Denney, Attorney Porritt, Randy Owen and the Zoning Board of Appeals.

Chairman Gierman closed the Public Hearing at 7:36 p.m.

**MOTION** by Eisenhardt second by Thayer to deny the request of Thomas and Mary Tullio to overturn the Attica Township Board's finding of fact (at the January 11, 2018 Township Board meeting) approving Randy Owen (Owen Tree Service) moving his mulching operation from his current property to his new site at 1585 S. Lk. George Road, Attica, MI 48412 due to the fact that Owen Tree Service qualifies as an agricultural operation according to the ordinance and all information given with the stipulation for the proper authority be at the Planning Commission to insure the impact will be equal to or less that a typical modern farm operation. A roll call vote was taken. Winslow: Nay; Lacey: Nay; Thayer: Aye; Eisenhardt: Aye and Gierman: Nay. Ayes: Two (2). Nays: Three (3). Absent: None. **MOTION FAILED.**

**MOTION** by Winslow to refer the decision regarding Owen Tree Service to the Planning Commission for Site Plan Review.

The motion died for lack of a second.

**MOTION** by Winslow, seconded by Lacey to approve the request of Thomas and Mary Tullio to overturn the Attica Township Board's finding of fact (at the January 11, 2018 Township Board meeting) approving Randy Owen (Owen Tree Service) moving his mulching operation from his current property to his new site at 1585 S. Lk. George Road, Attica, MI 48412. The reason for the approval is because it should go before the Attica Township Planning Commission. A roll call vote was taken. Thayer: Aye; Eisenhardt: Nay; Winslow: Aye; Lacey: Aye and Gierman: Aye. Ayes: Four (4) Nays: One (1). Absent: None. **MOTION CARRIED.**

A special ZBA meeting was scheduled for Thursday, March 22, 2018 at 6:30 p.m. for the purpose of approving the minutes of this meeting.

**REVIEW MINUTES:**

The Board having reviewed the last meeting minutes of January 11, 2018 meeting and:

**MOTION** by Eisenhardt, seconded by Thayer to approve the January 11, 2018 Zoning Board of Appeal minutes as amended (attached). A vote was taken. Ayes: All (5); Nays: None (0). Absent: None. **MOTION CARRIED.**

There being no further business before the Zoning Board of Appeals, **MOTION** by Lacey, seconded by Eisenhardt to adjourn the meeting at 8:15 p.m. A vote was taken. Ayes: All; Nays: None. **MOTION CARRIED.**

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Kent Gierman, Chairman

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Valerie Schultz, Recording Secretary