

ATTICA TOWNSHIP
MINUTES OF THE
ZONING BOARD OF APPEALS
August 8, 2019

At a meeting of the Attica Township Zoning Board of Appeals held on the 8th day of August, 2019 at the Attica Township Hall, 4350 Peppermill Road, Attica, MI, 48412, the following members were present: Elaine Thayer, Erman Rowley (alternate) and Dana DeClark (alternate). Recused: Bill Winslow, Patty Clendenan, Rich Lacey and Kent Gierman. Absent: None. Also present; Attorney Mike Gildner, Planner Doug Pickett, and the public per the sign in sheet attached.

Erman Rowley called the meeting to order at 6 p.m.

Comments from Attica Township Attorney Mike Gildner: Attorney Gildner informed the ZBA members that an acting chairperson to preside over the meeting was needed and reviewed the order of the meeting.

Elect Acting Chairperson:

MOTION by Thayer, seconded by DeClark, to elect and appoint Erman Rowley as acting Chairperson for this (August 8, 2019) ZBA meeting, to replace Chairperson Gierman who has been recused for this meeting. A vote was taken. Ayes: Three (3) DeClark, Thayer, Rowley; Nays: None. Absent: None. Recused: Lacey, Winslow, Clendenan and Gierman. **MOTION CARRIED.**

Roll Call: Present: Rowley, Thayer, DeClark

Approve minutes of the February 14, 2019 ZBA meeting:

MOTION by Thayer, seconded by DeClark, to approve the February 14, 2019 ZBA meeting minutes as presented. A roll call vote was taken. DeClark: Aye; Thayer: Aye and Rowley: Aye. Ayes: All. Nays: None. Absent: None. Recused: Lacey, Winslow, Clendenan and Gierman. **MOTION CARRIED.**

Acting Chairperson Rowley recessed the meeting at 6:08 p.m. to allow the Tullio's attorney, James Porritt, to arrive.

Acting Chairperson Rowley called the meeting back to order at 6:16 p.m.

Thomas and Mary Tullio's attorney, James Porritt, discussed a letter (reviewing the background of the Owen Tree Service proposed mulching operation) he delivered to the ZBA that morning. Attorney Porritt stated that the township has changed their position regarding Owen's business a number of times and that the township has made a concerted effort to help Mr. Owen get his way regardless of the requirement of their ordinance and without regard to the consequences to the Tullios. Attorney Porritt indicated that the Tullios have been consistent in their position that the Owen Tree Service operation does not belong in an AG district. Attorney Porritt went on to discuss there is not documentation of the Zoning Administrator's determination that Owen Tree Service is an Agribusiness and the lack of a certificate of zoning compliance. Attorney Porritt informed the ZBA that the Tullios were not allowed to go on the ZBA's guided tour of Owen's current operation. Attorney Porritt submitted an email stating that the Tullios were not to come on the premises of Owen's current mulching operation from Attorney Denney for the record.

Acting Chairperson Rowley opened the Public Hearing at 6:35 p.m.

Randy Owen's attorney, Tim Denney, reviewed Judge Holowka's prior ruling that Owen Tree Service mulch operation is properly classified as an agribusiness and is binding on all parties. ~~Attorney Denney went on to discuss the fact that the township does not issue certificates of compliance.~~ ATTORNEY DENNEY STATED THAT THE ZBA'S APPROVED MINUTES SERVES AS THE CERTIFICATE OF ZONING COMPLIANCE. A summary of General Special Land Use Findings was submitted to the ZBA for the record. Attorney Denney asked that the Planning Commission and Township Board's decisions be respected and not reversed.

- 1) Angela Haley, of 1561 Lake George Road, stated that the proposed mulching is 70 feet from her home and voiced her concerns and objection to the proposed mulching operation. Ms. Haley played a video of work being done on the site and submitted a letter and documents to the ZBA.
- 2) Mario Dimico, of 162 Lake George Road stated that he has no objection to the proposed Owen Tree Service mulching operation.
- 3) Mary Tullio, of 4142 Belle River Road and also has an address at 1645 Lake George Road, stated that she asked but did not insist on being part of the court case. Ms. Tullio went on to discuss the different uses proposed for the mulching operation. Ms. Tullio stated that Lake George is not a primary county road as required for an Agribusiness according to the ordinance. Ms. Tullio voiced her concern about how the mulching operation will affect her campground business. Ms. Tullio said that multiple splits are available on her 97 acres and that she has put together a site plan for splits with lake lots that will not be desirable now that a mulch operation will be adjacent to the property. Ms. Tullio stated that in

the 100 foot buffer required there are large trees that you can see through and that at times there will not be berms due to the mulch being sold and went on to state that the dense forest in the 100 foot buffer is on her property and the Haley's property and that the noise from the operation will funnel directly to her campers and her home.

- 4) William Baden, of 371 North Lake George Road, stated that he has lived next to Mr. Owen since 1995 and that although there are not berms he cannot hear anything.

Acting Chairperson Rowley closed the Public hearing at 6:54 p.m.

Attorney Gildner responded to a letter from Attorney Porritt to the ZBA that was received today. Attorney Gildner stated that the letter suggests that certain players were working behind the scenes to tilt the decision in favor of Owen Tree Service. Attorney Gildner responded to the suggestion that the township is trying to influence the ZBA's decision and asked the ZBA members to consider the following:

1. The ZBA previously overruled the Township Board's finding that Owen's use was agricultural in nature.
2. When Owen appealed the ZBA's ruling to Judge Holowka the Township Board directed him to support and defend the ZBA's decision. The end result was Judge Holowka upholding the ZBA's decision which referred it back to the Planning Commission.
3. What the Tullio's wanted when they first appeared before the ZBA was for Owen to submit to the site plan process before the Planning Commission. Judge Holowka ruled that Owen had to submit to the Planning Commission's review. The Planning Commission's review took place and the Planning Commission approved Owen's use subject to conditions.
4. After the Planning Commission made its recommendation in favor of Owen's use the Tullio's challenged the Planning Commission's recommendation because Maureen Lemons was both an employee of the township and a member of the Planning Commission.
5. As a result Ms. Lemons had to resign her spot on the Planning Commission. She had long been a member of the Planning Commission before the Tullios complained about her ability to serve. The complaint about her arrived after the Planning Commission met and approved Owen's use and not before it. After Ms. Lemons resigned from the Planning Commission it met a second time and approved again Owen's proposed use. When the Tullios filed their second appeal to the ZBA it was known that they would be sensitive to conflicts of interest accordingly the decision was made (by Attorney Gildner) that Kent Gierman and Rich Lacey were disqualified from serving on this board. The decision was made without any encouragement or interference from anyone connected to this case. Two days ago Mr. Porritt called to say that Bill Winslow and Patty Clendenan were also ineligible to sit on the ZBA because they are

employees or contractors of the township. That proved to be true so they both were advised (by Attorney Gildner) that they were ineligible to decide the Tullio's request. This shows the zoning process in this township has worked just as the law intends. The Township Board, Planning Commission and ZBA each have distinct functions and powers that they have exercised at different times in the history of this case. Any changes in the composition of the ZBA and Planning Commission came about because of the Tullio's request and complaints and not from anyone connected to the township.

Attorney Gildner stated that he prepared three options for the ZBA, as he has done at every stage of the process. Attorney Gildner reviewed the three motion document options he prepared and stated that he has not spoken with any of the ZBA members in preparing the options and that he tried to capture both sides of the case. Attorney Gildner informed the ZBA members that if they like any of the options they may use them or if they don't like any of the options they may make their own motion. Attorney Gildner advised the ZBA to decide if the Tullios are an aggrieved person because the ordinance states that only persons who are aggrieved can appeal. Attorney Gildner went on to review a letter he sent to the ZBA members defining an aggrieved party. Judge Holowka's opinion on the definition of an aggrieved person in a Mayfield Township case was distributed to the ZBA members, Attorney Porritt and Attorney Denney.

There was discussion among the ZBA members.

Attorney Porritt stated that he wanted everyone to understand that he was not referring to Attorney Gildner when talking about the efforts to influence. Attorney Porritt asked the ZBA to consider the unique use of the Tullio's property when deciding if they are an aggrieved party.

ZBA member Thayer discussed information regarding the use of wood chips.

Determine if Thomas W. Tullio and Mary T. Tullio-Attica Pines Campground are an aggrieved party and therefore eligible to file an appeal with the Zoning Board of Appeals:

MOTION by Declark, seconded by Thayer, to deny the Tullio's request. The Petitioners have not convinced me that the noise, smell, particulate matter and other environmental effects that they fear about Owen's proposed use are unique to them, as opposed to concerns or harms that others in their position might also experience. Because I do not believe that the Petitioners are "aggrieved" persons, I do not believe that they are able to challenge the Township Board's decision under our Zoning

Ordinance. I move to deny their Application for that reason alone. Having found that the Petitioners are not “aggrieved” persons, I see no reason to address their remaining complaints. There was discussion. A roll call vote was taken. Rowley: Nay; Thayer: Aye; DeClark: Aye. Ayes: Two (Thayer and DeClark). Nays: One (Rowley). Absent: None. Recused: Lacey, Winslow, Clendenan and Gierman. **MOTION FAILED.**

Attorney Denny objected to the possibility of another motion being made due to the fact that the ordinance states that if there is not enough votes to reverse it cannot be reversed.

MOTION by Thayer seconded by DeClark, I am convinced that the Petitioners will experience noise, smells, particulate matter and other environmental effects about Owen’s proposed use that are unique to them. Having found that the Petitioners will experience unique damages on account of Owen’s proposed use, I believe that the Petitioners are “aggrieved” persons who are able to challenge the Township Board’s decision under our Zoning Ordinance. There was discussion. A roll call vote was taken. Rowley: Aye; DeClark: Aye and Thayer: Nay. Ayes: Two (Rowley and DeClark). Nays: One (Thayer). Absent: None. Recused: Lacey, Winslow, Clendenan and Gierman. **MOTION FAILED.**

Attorney Gildner informed the ZBA members that since there was not a unanimous vote that the Tullio’s are an aggrieved party they do not take the next step.

There being no further business before the Zoning Board of Appeals, **MOTION** by Thayer, seconded by Rowley to adjourn the meeting at 7:23 p.m. A vote was taken. Ayes: All; Nays: None. **MOTION CARRIED.**

Erman Rowley, Acting Chairperson

Valerie Schultz, Recording Secretary