

ATTICA TOWNSHIP
MINUTES OF THE
ZONING BOARD OF APPEALS
July 23, 2020

At a meeting of the Attica Township Zoning Board of Appeals held on the 23rd day of July, 2020 at the Attica Township Hall, 4350 Peppermill Road, Attica, MI, 48412, the following members were present: Elaine Thayer, Patty Clendenan, Gerald Fackler, Arthur Whelan (alternate) and Dana DeClark (alternate). Recused: Rich Lacey and Kent Gierman. Absent: None. Also present; Attorney Mike Gildner, and the public per the sign in sheet attached.

Acting chairperson, Arthur Whelan, called the meeting to order at 6:14 p.m.

Approve minutes of the November 14, 2019 ZBA meeting:

MOTION by Thayer, seconded by Fackler, to approve the November 14, 2019 ZBA meeting minutes as presented. A roll call vote was taken. Ayes: All. Nays: None. Absent: None. Recused: Lacey and Gierman. **MOTION CARRIED.**

Approve minutes of the July 16, 2020 Organizational ZBA meeting:

MOTION by Thayer, seconded by DeClark to approve the July 16, 2020 organizational ZBA meeting minutes as presented. A roll call vote was taken. Ayes: All. Nays: None. Absent: None. Recused: Lacey and Gierman. **MOTION CARRIED.**

Public Hearing:

1. Acting Chairperson Arthur Whelan opened the public hearing to receive comments on a request submitted by Thomas W. Tullio and Mary T. Tullio to reverse the Attica Township Zoning Administrator's decision that a proposed mulching operation by Owen Tree Service is an Agribusiness under the Attica Township Zoning Ordinance at 6:16 p.m. Hearing no comments from the Public the Public Hearing was closed at 6:17 p.m.
2. Acting Chairperson Arthur Whelan opened the public hearing 6:17 to receive comments on a request submitted by Thomas W. Tullio and Mary T. Tullio to reverse the Attica Township Board's decision to approve a Special Land Use and Site Plan request that Owen Tree Service requested regarding its proposed mulching operation at 1585 S. Lake George Road, Attica, MI 48412. At 6:17 p.m. Public comment was

given by Dave Penzien, Scott Harrington, Dena Long, Angela Halley, Mellisa Kyte, Brian Halley, John Russell and Charles Prescott. The Public Comment period was closed at 6:33 p.m.

MOTION by Whelan, seconded by Fackler that this board finds as a matter of fact that the Tullios; appellants herein; are aggrieved parties within the meaning of the township zoning ordinance and are entitled as a matter of law to appeal to this board on the “Owen” matter. A roll call vote was taken. Fackler: Aye; DeClark: Nay; Thayer: Nay; Clendenan: Nay and Whelan: Aye. Ayes: Two (Fackler and Whelan). Nays: Three (DeClark, Thayer and Clendenan). Absent: None. Recused: Lacey and Gierman. **MOTION FAILED.**

MOTION by Thayer, that the Tullios are not an aggrieved party. Motion not seconded. **MOTION FAILED.**

Attorney Timothy Denney, representing Owen Tree Service, stated that he is not taking a position regarding whether the Tullios are an aggrieved party, rather the decision should be based on merits.

Attorney James Porritt, Jr., representing Thomas and Mary Tullio, stated that he feels the Tullios are an aggrieved party but agrees with Attorney Denney’s comments that the decision should be based on merits.

MOTION by Whelan, seconded by Fackler, to reconsider the motion, that this board finds as a matter of fact that the Tullios; appellants herein; are aggrieved parties within the meaning of the township zoning ordinance and are entitled as a matter of law to appeal to this board on the “Owen” matter. There was discussion and a roll call vote was taken. Clendenan: Aye; Thayer: Aye; DeClark: Aye; Whelan: Aye and Fackler: Aye. Ayes: All. Nays: None. Absent: None. Recused: Lacey and Gierman. **MOTION CARRIED.**

Motions/Discussion/Vote:

1. **Motion to Grant or Deny Thomas W. Tullio and Mary T. Tullio’s request to reverse the Attica Township Zoning Administrator’s decision that a proposed mulching operation by Owen Tree Service is an Agribusiness under the Attica Township Zoning Ordinance:**

MOTION by Whelan, seconded by DeClark, that this board finds as a matter of fact that the operations of Owen Tree Service, the subject matter of this appeal, are “Agribusiness” within the meaning of the township zoning ordinance. WHELAN STATED THAT HE USED JUDGE HOLOWKA’S DETERMINATION THAT OWEN TREE SERVICE IS AN AGRIBUSINESS AS HIS DETERMINATION. After statements by Attorney Porritt and Attorney Denney and restatement of the motion a roll call vote was taken. Fackler: Aye; DeClark: Aye; Clendenan: Aye; Thayer: Aye and Whelan: Aye. Absent: None. Recused: Lacey and Gierman. **MOTION CARRIED.**

2. **Motion to Grant or Deny Thomas W. Tullio and Mary T. Tullio’s Variance Request to reverse the Attica Township Board’s decision to approve a Special Land Use and Site Plan request that Owen Tree Service requested regarding its proposed mulching operation at 1585 S. Lake George Road, Attica, MI 48412:**

Attorney Porritt made the following statements:

- The Planning Commission’s and Board’s decisions were made based on the reasoning of a letter from the township planners and that the analysis was erroneous because the question of whether the property is on a primary road was left unanswered. It is not a primary road it is a local road.
- Section 4.29 of the zoning ordinance focuses on the impact an agribusiness will have on adjoining property. Owen’s mulching operation is not a compatible business.
- The mulching operation is inconsistent with the township’s approved uses. The business is being moved from industrial property to agricultural property. This will have a negative impact on the Tullio’s campground.
- 6.2.c of the zoning ordinance states the proposed use shall eliminate any possible nuisance. Owen is going to minimize nuisance but not eliminate it. This will ruin Tullio’s business and property value.

Attorney Denney made the following statements:

- It is reasonable to believe Lake George Road is a primary road as it

is on the haul route for Owen Tree Service and Barrett. (Displayed exhibits one and two showing the haul routes.) Moving Owen Tree Service to this property will eliminate some of the current traffic.

- Agricultural property use is not just single-family homes and listed some permitted uses from 3-4 of the zoning ordinance: private riding stables, mining, keeping of animals, road side stands, hog farms, etc.
- Mr. Owen has tried to be a good neighbor and has letters from residents living right next door to his current operation saying they have no problems with noise or odors.
- Displayed graph and indicating noise levels and times when the grinder is running. There is much more noise from I-69 than Owen Tree Service.
- Unless the board finds clear error of the law or interpretation of the law, they should respect the Planning Commission and Township Board's decisions.
- Attorney Denney showed a video showing the way the operation is structured and demonstrated the machine with the backup beeper on and how the noise dissipates.

Mary Tullio showed a video of Owen's operation from the perspective of the campground.

MOTION by Fackler, seconded by Thayer, to deny the request of Thomas and Mary Tullio to reverse the Attica Township Board's decision to approve a Special Land Use and Site Plan request that Owen Tree Service requested regarding its proposed mulching operation at 1585 S. Lake George Road, Attica, MI 48412. ZBA member Fackler stated his reason for denying the request is his belief that the Planning Commission and ZBA's decisions were correct based upon the presentations made by both sides and the written materials that were supplied in their packets AND USING 4.29 AND 4.58 OF THE ATTICA TOWNSHIP ZONING ORDINANCE AS REFERENCE (THE SAME AS THE PLANNING COMMISSION AND ZONING BOARD OF APPEALS). ZBA MEMBER THAYER STATED THAT HER REASON FOR DENYING THE REQUEST WAS DUE TO THE ABSENCE OF ODORS AT THE RESEARCH OPERATION ACROSS THE STREET FROM HER

HOME. A roll call vote was taken. Fackler: Aye; DeClark: Aye; Clendenan: Aye; Whelan: Aye and Thayer: Aye. Ayes: All. Nays: None. Absent: None. Recused: Lacey and Gierman. **MOTION CARRIED.**

Attorney Gildner discussed some housekeeping matters:

- The meeting was to take place outside but due to logistical problems with showing videos the meeting was moved into the township hall. Neither counsel had any objection to coming inside in possible violation of the Governor's orders. Attorney Denney and Porritt concurred that they would not use the possible violation of the governor's orders as a basis for appeal.
- Written submissions made by Attorney Denney and Attorney Porritt were given to each ZBA member.
- There was a question regarding ZBA member Clendenan being allowed to serve on the ZBA as she is on the Attica Township Board of Review. Attorney Gildner wrote an opinion stating the reasons Ms. Clendenan should be allowed to serve on the ZBA.

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

Arthur Whelan, Acting Chairperson

Valerie Schultz, Recording Secretary