

**PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS MINUTES**

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**Members Present:** Edward Resha, Robert Grosshans, Alayna Stagg, Kenneth Brostrom, and Ishwar Naik.

**Members Absent:** None.

**Others Present:** Mrs. Vila, Jon Sniderman, Esther Leo, Marian Sumner, Linda Klenczar, Robert Van Oel, Ruth Van Oel, Bob Vandercook, Philip Pucillo, Mark Pascoe, Sue Pascoe, Kurt Bynum, Victor Lillich, Associate Planner Paul Montagno, and Recording Secretary Marge Burkheiser.

**1.0 Call Meeting to Order/Determination of a Quorum**

Chairperson Naik called the meeting to order at 6:42 p.m. A quorum was present.

**2.0 Approval of Agenda**

**Motion by Member Brostrom, supported by Member Stagg, to approve the agenda, as presented.**

**MOTION CARRIED**

**3.0 Communications and Announcements**

None.

**4.0 Items from the Floor**

None.

**Motion by Member Resha, supported by Member Grosshans, to move item 5.0 to follow item 7.0.**

**MOTION CARRIED**

**5.0 Election of Chairperson, Vice Chairperson and Secretary**

Item moved to follow Item 7.0 of the agenda.

## **6.0 Old Business**

### **6.1 ZBA #04-10 Martin R. Vila**

[submitted for a variance from the private road requirements]

Chairperson Naik introduced the item stating this was tabled from the last meeting (November 22, 2004) and stated that the applicant is requesting a variance from the private road requirements. He gave the order of items for discussion that would be followed.

**Motion by Member Grosshans, supported by Member Brostrom, to open the public hearing.**

### **MOTION CARRIED**

Chairperson Naik noted there are two communications: one from Planner Montagno and the second one from Mr. Lillich, the Township attorney.

Victor Lillich, Township attorney, noted his letter is a "client/attorney privilege" communications and should be discussed in a closed session. He also said he was not prepared to release his letter without an expressed waiver.

Member Resha stated he felt this should be kept privilege information.

The Members agreed that the letter from Mr. Lillich should not be part of the public hearing.

Planner Montagno reviewed his report noting this property is currently zoned AG, the land use designation is low density (one dwelling unit per acre) and that this lot is buildable. He said the access is the issue per the Zoning Ordinance (Section 56.05D). He noted that currently there is a 66 foot easement and that issuing a building permit would be for a 6<sup>th</sup> house on this road. He said the Zoning Ordinance, Section 56.05C 1A requires a Class A road for six (6) or more single family residential lots and this road does not meet those standards. He also noted that the additional information requested from the last meeting has been provided. He noted the 12 foot gravel lane was added to provide access to the Jasinski lot. He related some past ZBA history noting the road was inspected by the Township and approved.

Member Stagg stated there is some question to why the Jasinski property was approved and whether it should be discussed now or later on.

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting

January 24, 2005

Page 3 of 14

Planner Montagno replied this is a separate issue and should be discussed later. He restated the reason for today's meeting was whether the current road was appropriate for a building permit to be issued. He noted that past issuance of building permits could not be considered but the status of the road could be.

Member Resha inquired about Township staff approving the road.

Planner Montagno replied the road was approved per the court order.

Member Resha stated he was confused and the majority of Members agreed with him. He said he did not remember anything in the court order about the road.

Planner Montagno said the application to the ZBA for Jasinski proposed using this setup with 12 feet of paved driveway and adding 12 feet of three (3) inch thick gravel. This was denied by the ZBA and was taken to court and overturned.

Mr. Lillich stated the court overturned the ZBA denial [ZBA 03-08 Jasinski] and said the applicant then returned to the ZBA. Based on the court order Jasinski was able to construct the road and make improvements in accordance with the plan.

Member Resha stated the road was, is and continues to be a hazard to the community. It is unsafe, unhealthy for the people who live there. He said you could not build a road with trees, signs and whatever in the middle of the road.

Mr. Lillich said the ZBA was under the misimpression that they had to issue the variance along with the building permit based on the application before them.

Member Resha said that it did not say the Township staff had to approve a road that legally could not be approved. He said they are in violation of their own Ordinance and the laws of the State.

Mr. Lillich said he did not know how that may have happened. He did know there was a plan with the appeal that showed some improvements that were attached as conditions to the approval.

Planner Montagno stated he was not responsible for the inspections, but the road was inspected based on the standards of the variance which was an additional 12 feet wide with three inch thick gravel.

Member Brostrom commented that he could not believe there were 3 inches of gravel.

Planner Montagno said the road could be inspected again and not issue a Certificate of Occupancy if the gravel is not three inches thick.

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting

January 24, 2005

Page 4 of 14

Member Stagg asked if the depth was the only thing the ZBA could comment on and not whether there is a turn-around or anything else.

Mr. Lillich stated he felt the ZBA was under a misimpression when it granted the variance and it is stuck with that variance, which is part of a court order.

Chairperson Naik suggested to the Members that they finish the public hearing and then this could be discussed in a closed hearing.

Planner Montagno noted the ZBA could offer some relief or an outright approval or denial. He also noted that currently there is not a submitted plan.

Mrs. Vila stated she owned an acre and half of property and someone is coming on to her property and cutting down the trees. She asked why her private property is not private.

Members asked if this was reported to the police.

Mrs. Vila stated she was not there to call the police.

Members asked when this happened.

Mrs. Vila replied in the last 6 to 8 months.

Members asked where the trees were removed from.

Mrs. Vila stated along the driveway.

Grosshans asked if this was in the 66 foot easement.

Mrs. Vila replied yes but that it is private. She said that easements are for public utilities. They are not for the public to drive on. She restated the easements is private and on private land. As an example, she said that lots in town are measured from the middle of the road to the rear of the property and that the front 15 feet are for the utilities easements.

Member Grosshans asked if Mrs. Vila knew who cut down the trees.

Mrs. Vila replied she had a pretty good idea who but did not elaborate. She said that because of all these things she was being denied.

Member Grosshans said not because of the trees being cut down.

Mrs. Vila stated that back in 1966/7 some lawyer said it appeared to be public access. She said it was never a public driveway.

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting

January 24, 2005

Page 5 of 14

Planner Montagno stated that at some point Mrs. Vila had deeded access of that easement to the neighbors who are using it.

Chairperson Naik asked if she (Mrs. Vila) deeded the easement to the east end of the properties to allow access.

Member Resha stated to Mrs. Vila that when she subdivided her property the easements went with the various lots and also noted the road is a private drive but it must meet the Ordinances.

Mrs. Vila state her property was grandfathered.

Member Resha disagreed with Mrs. Vila about her property being grandfathered. He said this is a private road and that all the homeowners have responsibilities on this road. He said no one was trying to penalize anyone; the Board is only interested in bringing the road up to a standard that is safe for everyone.

Mrs. Vila said they have had heavy oil trucks on the road in the winter and during the spring thaws without problems going back to 1970.

Chairperson Naik asked if there were any further comments from the audience.

Mrs. Leo, 7555 Fosdick, said the question today is whether the new house should be allowed to be built. He said that originally there was a 2.5 acre minimum and with 10 acres, four (4) splits would be allowed. He said that today if she was to divide her land, she would not have the same opportunity. He said that if this is granted, she wanted to know where she stood as well as the neighbors to the south in being allowed to split their properties.

Planner Montagno stated that in an AG district one acre per unit is allowed unless the Comprehensive Plan designates residential agricultural, agricultural preserve, or recreation open space which allows 2.5 [dwelling unit per acre). He said the Vila property fell in the one-acre lot zoning area.

Mrs. Leo asked when was this Plan was adopted.

Planner Montagno replied 2002.

Mrs. Leo replied that she did not know anything about this.

Planner Montagno stated there was an extensive public process.

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting

January 24, 2005

Page 6 of 14

Member Resha stated the current Comprehensive Plan was updated from the 1995. He noted there were many notifications made to Township residents along with public meetings at the Township Administration Building.

Member Grosshans stated (to Mrs. Leo) that this did not affect her. He said she was still in the 2.5 acre per unit zoning area.

Mrs. Leo referred to a pass ZBA petition that was denied.

Member Resha said that issue was before the Planning Commission. He added that Mrs. Leo's issues should go to the Planning Commission and not the ZBA.

Member Brostrom offered the suggestion that Mrs. Leo visit Mr. Montagno and he would be happy to talk.

Planner Montagno replied he would be happy to do so.

Planner Montagno said the assumption is the property easement would have to have been deeded.

Member Grosshans asked if there is a record.

Planner Montagno replied yes at the [Washtenaw] County records.

Member Grosshans asked if he (Mr. Vandercook) had the papers.

Mr. Vandercook replied yes. He said that Mr. Curran felt this was his private property and not a private road. Mr. Vandercook said that there is a new basement there now.

Member Grosshans asked if Mr. Curran had made any promises about the road.

Mr. Vandercook said Mr. Curran told him he had the blueprints and that this was going to be a 24 foot asphalt drive with the curbing. He said after seeing those documents of Tom Curran and Varsity LLC he thought they came to Pittsfield Township and received a variance. He said he was never notified. He said that he (Curran) has cut down trees and is working in the wetland. He also said there are trees with pink ribbons on them.

Planner Montagno stated he was aware of the work being done and has issued a stop work order. He also said he has notified the Township Wetland Consultant to visit the site and they have tagged the trees.

Mr. Lillich said we are talking about some of the history and how Curran got access to the parcels to the north and that this exposes the type of person he is but did not feel this had any relevance to the issue tonight.

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting

January 24, 2005

Page 7 of 14

Member Grosshans asked when Mr. Vandercook decided to [Mr.] Curran whether that was for one or two parcels.

Mr. Vandercook said he thought he was decided the right to use; but not sure.

Member Grosshans stated that we (ZBA members) were in a dilemma. He said you have 12 feet of asphalt and 12 feet of unknown road structure. He said it looks trashy and asked what would be your solution to the issue.

Mr. Vandercook the people would have to pay to do and that.

Member Resha suggested a SAD [Special Assessment District] and have the County built and maintain the road.

Mr. Vandercook said he was not in favor of doing that. He said every realtor would be trying to sell and built. He also said that Mr. Curran put in a drain for my property and ever since Hunters Ridge was put in there.....and there will be a XXX year flood. He said that one year, if there is a heavy rain, there will be floods.

Chairperson Naik asked Mr. Vandercook if he was opposed to this.

Mr. Vandercook said he agreed (yes).

Unknown person stated he has two concerns. One is the house to the east, asking that he would like to hear from Mr. Lillich and the Members about the specific ruling from the judges. The other was to bring to the Township's attention his neighbor spotted workers who were hired by Mr. Curran who were removing trees in the wetlands.

Planner Montagno said there is a stop work order and our wetland consultants have been notified.

Mr. Vandercook the pictures show trees that have been cut down since early summer.

Robert VanOel, 7675 Fosdick stated he lives just south of Mrs. Leo, that he has 15 acres and has lived there for 30 years. He said that every subdivision that has come into Pittsfield has the roads first. He said this situation is backwards.

Member Resha stated this has not been to the Planning Commission. He noted this is from the past and an error made by a previous planner to allow the building. He said a precedent was set.

Member Grosshans stated that this Board was not fully informed as to what it could and could not do.

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting

January 24, 2005

Page 8 of 14

Staff said that they were given a court order and told we had to approve.

Mr. VanOel related information concerning his recent property split. He stated he was required to spend a large of money to meet the requirements. He also said he was told he would be required to put in a road meeting County standards or the back 4 acres of his property would not be buildable.

Chairperson Naik asked Mr. VanOel if he was opposed to this.

Mr. VanOel replied yes.

John Sniderman, 7495 Fosdick asked how the zoning got moved to the south from what it previously had been. He said that Mrs.Vila has had this property for 30 years and built off the existing private drive. He said that he had 3 acres that could be split and now could not be split.

Marian Sumner, 7464 Fosdick stated that she did not want additional water in her pond. She also agreed the street looked terrible. She asked how would a fire truck get in and turn around.

Planner Montagno noted that a cul-de-sac or tee would not have to be at the end of the road.

Mr. Bynum, 7491 Fosdick said he was never notified of any zoning change and that he is affected by it. He said he could see Mr. Curran benefiting if he sold two lots. He said this road is an eye sore and in unbelievable condition. He said the UPS driver will not come down and they have to go to them. He said the road is snow drifted because all the trees have been cut down. He said it is a hazard that never was before. He also said there are more houses on this drive then it can handle.

Member Grosshans said he has the same question; what do we do.

Mr. Bynum replied the gravel should be removed and the house not built.

Member Resha replied that the ZBA would love to do that but it has a court order and we have to follow the Zoning Ordinance. He said the judge overturn our decision.

Mr. Bynum asked if anyone has spoken with the judge.

Mrs. Vila asked if this was misrepresented to the judge.

Member Resha said there is one alternative that the residents have and that is they can take Mr. Curran to court about the easements. He suggested that the residents get together and talk to an attorney and noted that the ZBA has done the best it could.

The Members supported the suggestion of Member Resha's that the neighbors talk with an attorney.

Chairperson Naik stated there are six (6) who have spoken against and one (1) in favor. He thanked everyone for their time.

**Motion by Member Resha, supported by Member Brostrom, to close the discussion.**

**MOTION CARRIED**

**Motion by Member Brostrom, supported by Member Resha, to have a closed session.**

**MOTION CARRIED**

Members adjourned for a closed session at 8:21 p.m.

Chairperson Naik called the meeting back to order at 9:10 p.m.

Chairperson Naik read the findings:

- 1. That strict compliance with the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity with such regulations unnecessarily burdensome.**

Discussion:

Member Resha stated this did not have anything to do with the height, bulk or density.

Chairperson Naik stated this had to do with the road issue and not lot issues.

Member Brostrom stated the.

Member Resha said the lot met the requirements.

Planner Montagno said it did.

Member Grosshans said if read strictly, we are talking about the road.

Chairperson Naik stated this finding is not relevant to the request.

**The Members all agreed this did not pertain to this matter.**

**ROLL CALL:**

**YES: RESHA, GROSSHANS, NAIK, STAGG, BROSTROM.**

**NO: NONE.**

**ABSENT: NONE.**

**ABSTAIN: NONE.**

**MOTION CARRIED**

2. **That the granting of a variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property and be more consistent with justice to other property owners.**

Discussion:

Member Stagg said a lesser solution could be proposed. She suggested talking with the neighbors.

Chairperson Naik stated this is opposed by six people and only one agreed. He said that this tells me

Member Resha stated this does not do justice to the other property owners or I will say no.

Member Brostrom said this would not do substantial justice to the applicant or the other property owners.

Member Grosshans said that if we agree then Mr. Sniderman and Mr. Bynum could subdivide and increase the traffic on the road. I would say not until the road is in place.

**All the Members agreed this would not.**

3. **That the plight of the applicant is due to unique circumstances of the property and not to general conditions in the area:**

Discussion:

Member Resha stated that this is a two fold plight and is due to the division and the division caused the roads. He then withdrew his comments.

**All Members did not agree.**

**4. That the plight or problem is not self-created.**

Discussion:

Member Resha said this is self created due to the division of the property without upgrading the road to meet the Township Ordinance.

Chairperson Naik said prohibits unknowingly at that time. He then restated Member Resha's statement.

**All the Members agreed this is self-created.**

**5. The Board did not consider the non-conforming use of neighboring lands, structures, or buildings in the same district, nor any permitted use of lands, structures or buildings in other districts as grounds for approving the subject variance petition.**

Discussion:

Member Resha stated none was used.

Members Grosshans and Brostrom agreed.

**All the Members stated they did not.**

**6. That the variance observes the spirit of the Ordinance, secures public safety, and does substantial justice.**

Discussion:

Member Resha stated absolutely does not secure public safety.

Chairperson Naik stated on the contrary, defeats.

Member Brostrom stated this is contrary to the spirit of the ordinance.

Member Grosshans restated that Mr.??? previously stated he had to go to the end of his road for UPS and that Comcast would not come up the road. He asked how the fire department would come up (the road). He said this is a safety issue.

Member Stagg wondered who would have the right of way if there was an accident.

Member Resha stated Mr. Bynum is more at risk then anyone since there is no gravel on the road.

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting

January 24, 2005

Page 12 of 14

Member Grosshans stated that if he was his homeowner's person.

Member Resha said there is not [fire] hydrant there and that puts all the houses there in danger.

Chairperson Naik stated this will affect the public safety.

**All the Members did not agree.**

**Motion by Member Resha, supported by Member Brostrom, to direct staff to draft a resolution of denial for the variance for ZBA 04-10 Martin R. Vila to present at our next meeting, for a final vote.**

Discussion:

Chairperson Naik asked Planner Montagno if he understood the motion.

Planner Montagno replied yes.

**ROLL CALL:**

**YES: RESHA, STAGG, BROSTROM, GROSSHANS, NAIK**  
**NO: NONE**  
**ABSTAIN: NONE**  
**ABSENT: NONE**

**MOTION CARRIED**

Member Stagg (addressing Mrs. Vila) stated that this is a very complicated problem. She suggested the possibility of talking with the neighbors and with Mr. Curran.

The daughter in law of Mrs. Vila asked if this (road) is a hazard now.

All the Members agreed that it is.

Member Resha (addressing the neighbors in the audience) said they may want to consider consulting their attorney about the deed. He said Mr. Curran is telling them he owns the road but that is not true. He suggested that what they signed was not legal at the time or even registered (with the County).

Mr. Vandercook asked how he would do that.

Members suggested that Mr. Vandercook visit the County and that he should take his related paperwork with him.

Mr. Vandercook told the Board that Mr. Curran has threatened to sue them if they didn't sign and he (Curran) finds something new every time.

Unknown person suggested that Mrs. Vila should give the private road to the Township.

Member Grosshans stated that if he was prospective buyer and saw a 12 feet of asphalt and 12 feet of gravel with a tree in the middle of the road; your property just devalued.

Member Resha stated that the way things are set up now. He said he also lived on a dirt road and was told if paved with gutter and curbs the property values would go up \$20,000 to \$25,000.

Mr. Vandercook said he knew Mr. Curran is working on the property and asked where the road is coming in to. He asked what would happen if he put in a big wrought iron gate and give everyone an opener to get in. He also said there is someone who now drives through Hunters Ridge and comes out on this road. He gave a description of the person and vehicle and noted they were exiting onto Michigan Avenue.

Mr. Lillich left at 9:46 p.m. The Members thanked him for coming this evening.

## **7.0 New Business**

None.

Item 5.0 moved to follow Item 7.0.

**Motion by Member Resha, supported by Member Grosshans, to keep the same officers elected by acclamation.**

Discussion:

Members discussed briefly about the possible addition of two members to the Board. It was decided that it was not feasible.

**MOTION CARRIED**

## **8.0 Zoning Administrator's Report**

Planner Montagno informed the Members that the Township has received complaints about the Curran property and issued a stop work order last week. He said he also contacted the Township Wetland Consultant to investigate, although he has not heard back, at this time. He added that Mr. Curran does want to develop the property and that most of the area is in a wetland area.

Member Brostrom asked how many trees were cut down.

Planner Montagno replied he did not know but some appeared to be cut down some time ago.

The Members discussed area problems.

## **9.0 Member's Report**

Members inquired about various project within the Township including Miles of Golf (RZ 04-08), Fairwood Green (RZ 03-08/ZBA 04-03), WalMart (CSPA 03-16), Arbor Oaks (RZ 02-09/ZBA 02-07), Pittsfield Glen (CSPA 99-18) and the Multicultural Academy (CSPA 04-18).

Planner Montagno briefly updated the Members on the status of the above projects.

## **10.0 Secretary's Report**

None.

## **11.0 Chairperson's Report**

None.

## **12.0 Approval of Prior Minutes**

### **12.1 Minutes of October 11, 2004**

### **12.2 Minutes of November 22, 2004**

**Motion by Member Stagg, supported by Member Brostrom, to approve the minutes of October 11, 2004 and November 22, 2004, as corrected.**

**MOTION CARRIED**

## **13.0 Adjournment**

Chairperson Naik adjourned the meeting at 9:55 p.m.

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**Alayna Stagg, Secretary**

**Date**