

**PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS MINUTES**

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

**Members Absent:** Robert Grosshans.

**Others Present:** Carol Rebbeck, Pamela Blevins, Paul Blevins, Tom Lane, Betty Lane, Tom Gannon, Lois Gannon, Dan Stange, Maureen Walters, Ed Walters, William Anderson, Jeanette Myszyrski, Mary Jane Bell, Bruce Laidlaw, Assistant Planner Suzanne McCoy, 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 6:35 p.m. A quorum was present. He noted that Member Grosshans would be absent this evening.

**2.0 Approval of Agenda**

Chairperson Naik stated that the meeting would end at 9:30 p.m. He said that if there was unfinished business at that time, the meeting would be postponed.

The Members agreed to accept the agenda as presented.

**3.0 Communications and Announcements**

None.

**4.0 Items from the Floor**

None.

**5.0 Old Business**

**5.1 ZBA #05-01 Mark Lewis – Wolverine Commerce**  
[submitted for a use variance]

Member Brostrom offered a few corrections for the Resolution of Denial.

**Motion by Member Resha, supported by Member Brostrom, to approve the Resolution of Denial for ZBA 05-01 Mark Lewis-Wolverine Commerce.**  
(Attachment #1)

**MOTION CARRIED**  
(Denied)

## **6.0 New Business**

### **6.1 ZBA 05-02 Orco Investments, Inc.**

[submitted for a use variance]

Chairperson Naik reviewed the suggested format to be followed and opened the hearing.

Planner Montagno reviewed his report noting the location, and the size of the proposed lots. He said that this site is outside the sewer and water service district. He said that the original rezoning request for R-1A was denied, and the property was rezoned to R-1B in accordance with the Township's Comprehensive Plan. He reviewed part of the Township Zoning Act concerning the Zoning Board of Appeals and the basis of the findings. He said that there was information that was not provided concerning well and septic systems on the site.

Member Brostrom asked about the date of the purchase agreement for the proposed property.

Planner Montagno replied that he thought the agreement was after 2002.

Chairperson Naik asked about the availability of water and sewer service.

Planner Montagno replied that if water and sewer were available the development must connect.

Member Brostrom said that the Township makes the decision of where the utilities are available and that the existence of utilities does not mean they must connect.

Chairperson Naik said that they have not received an application.

Planner Montagno stated that if the density was granted the development would have to be connected. He said that it is difficult to put well and septic on 10,000 square foot lots.

Member Resha commented that the applicant is making their own hardship. He said that the ZBA did not know if the Township Board would allow them to connect. He said that if the lot size was reduced with an increased number of lots the applicant would still need to come to the Board.

Robert Jacobs, representing Orco Investments, stated that this is a "use variance" and the ZBA does have the power to grant a variance. He said that if approved, the ZBA could add conditions that would be subject to the Board granting utilities. He said that they have asked for sewer and water service. He said that recently the Township passed an Ordinance that became law after they had been to the Planning Commission and the

Township Board. He said that this law is part of the Utility Code that states that if there is a practical difficulty in obtaining utilities, the Township Board has the authority to place a property in the district. He said that without water and sewer service they could not have the R-1B zoning. He said that Mr. Brad Strader, of LSL, stated that during the Comprehensive Plan review this property was removed from the service area. He said that until then this property was served with sewer and water. He said that the Township rezoned the property to R-1B because the Township is saving for future development. He said that public utilities are at the front of this property.

Mr Jacobs stated that there is pipe capacity as well as contractual capacity. He said that the studies are based on 148 units. He said that none of the studies included the cost of the land. He said that in a third (3<sup>rd</sup>) study dated December 30<sup>th</sup>, the figures were worked backwards and found not to be feasible. He said that the Township, County, and State codes state that you must hook up if there is water service available. He said that the property was arbitrarily eliminated from the utility district that caused it to be zoned as it currently is. He said that the property cannot be used and allow the applicant to receive a return on their investment. He said that the soil conditions have placed limitations on the site. He said that the R-1A zoning is one (1) acre lots served by septic and well. He said that they are asking for a density of 0.5 units per acre which is consistent with the R-1B zoning. He said that they could, under existing law, apply to the MDEQ, for a discharge permit for a package treatment plant with lagoons.

Chairperson Naik said that this is being presented as a variance request, but is it a rezoning change.

Mr. Jacob replied no. He said that he is asking for the ability to use the property consistent with the dimensional requirements included in the R-1B zoning district. He said that he was not asking to rezone the property.

Chairperson Naik asked what the difference was.

Mr. Jacob said that there was a substantial difference. He said that they could only use it in that quadrant. He said that it is not a rezoning of the property. He said that they had to show the reasons of the hardship. He said that the question is whether we met the criteria under Janssen v. New Holland.

Chairperson Naik said that the end result was the same, and requested what the optimal number of lots would be.

Mr. Jacob replied that 148 lots would be needed to receive a reasonable return on investment. He said that this Board has the power to grant any number, but this is what they are asking.

Rodney Arroyo, Birchler Arroyo, reviewed the standards under Janssen vs. New Holland. He said that there are sever limitations for septic tanks with the soils on the property. He said that only ten (10) homes could be built because of the soil limitations. He said that the property is ¼ mile west of US 23 and south of Michigan Avenue. He said that being close to highways made sense for the high density and activity levels. He noted other R-1B zoning in the immediate area. He stated that there is no reasonable use of the property without a variance. He said that this is not a self created hardship. He said that the applicant did nothing to create the soil conditions on the property, and they did not place the site near US 23, Michigan Avenue or Platt Road. He said that Platt Road would be an arterial road and a target over the years. He said that this area is part of an activity center. He asked if the property could be used as zoned and said no, stating the applicant could not get a reasonable return with the current zoning. He asked if granting the variance would change the essential character of the area; he said no. He said there is currently R-1B zoning in the surrounding areas and throughout the Township.

Member Stagg noted that there are many "AG" uses in the area and the Township.

Member Resha noted that the property is surrounded by larger lots.

Mr. Arroyo said that the traffic impact study showed a minimal impact from this site that would add a one (1) second delay at the Michigan Avenue/Platt Road intersection.

Member Stagg asked for an explanation of the one (1) second delay.

Mr. Arroyo gave an explanation of how the traffic figures were determined.

Member Stagg asked when the property was purchased.

Mr. Jacob stated that the property was purchased after 2002.

The Members, staff, and the applicant discussed whether the property was purchased or there was a purchase agreement. It was determined that the property has not been purchased at this time.

Member Brostrom asked what the number of vehicles would be, per unit, per day.

Mr. Arroyo stated that the assumed vehicle trips per day are 1,491. He said that this would be about one (1) trip per peak hour.

Member Brostrom stated that the ZBA had no power to make decisions regarding water and sewer, and he asked why the majority of the time is being spent discussing water and sewer service.

Mr. Jacob stated that because of the removal of the property from the water and sewer service district they cannot develop the property in a reasonable manner. He said the ZBA has the power to grant variances for hardship. He said that the Township's own ordinances allow them to make a variance that relates to health, safety, and welfare and things the Board feels necessary. He said that they could approve and make conditions to the Township Board to provide water and sewer. He said that if at a public meeting they believe there is a practical hardship, then it could be granted.

Member Brostrom asked if the ZBA can overturn a zoning denial from the Township Board.

Mr. Jacobs said that they have the power to condition the approval.

Member Stagg said Mr. Jacob's stated that the property was purchased after 2002 but it has not been purchased. She said that the Comprehensive Plan was adopted in July 2002 which states the "subject property is not within the service area." She said that they petitioned the Township Board in November 2004 and now are before the ZBA.

Mr. Jacob said that they did not petition nor had anything to do with the property being rezoned to R-1A.

Member Resha stated that removing the property from the service area was done through the Comprehensive Plan, making this a transitional area to the rural neighborhoods.

Mr. Jacob said that he felt it was not a transitional area, but it was taken out of the service area to preserve the utilities with concern to capacity.

Bill Anderson, Atwell-Hicks, stated that he was requested to look at the utility elevations and soil conditions of the site. He said that the utilities were constructed for 2.5 dwelling units per acre and were designed for forty (40) years ago providing service to the property. He said that this site is in the sanitary sewer service area. He said that there is ample waste water capacity. He said that the current usage is at 62% capacity. He said that there is water service along Platt Road. He said that the utility use policy encourages connections to public sanitary sewer. He said that septic systems are subject to failure and constitute a threat to health, and all water systems and that a sanitary sewer is available within 200 feet of the site. He said that all State, County and local codes encourage connection to sanitary sewer. He said that not being allowed to connect is not logical. He said that the soil information was reviewed and found to have sever limitations. He said that in a letter from Mr. Banush, of the Hunter' Ridge subdivision, it states that they have the same soils and that the septic systems work. He said that the soils are different and that you cannot do an engineered system in a subdivision.

Mr. Anderson stated that in 2002 Washtenaw County started septic and well evaluations which published their findings in the 2004 County Comprehensive Plan. He said that the County's findings showed that 18% of systems inspected were failing, one (1) out of eighteen (18) systems had illegal discharges, 15% of the wells inspected did not have adequate protection against contaminants and that one (1) out of every seven (7) wells tested showed chemical or bacterial contamination. He added that these are disturbing facts. He explained the factors that are involved in producing an appraisal mentioning schools, proximity to roads, site features, along with a number of additional items to consider. He said that Legacy Heights is a completely separate situation which has the best sand ever witnessed, with Saline Schools. He said that Gibly Meadows is in the Saline schools, and has a completely different marketing trail.

Mr. Anderson stated that the "clustering" or "open space" plan still requires well and septic. He said that the soils are bad and an open space project cannot be done on this site. He said that the other option is a PUD which is a different zoning and not being questioned. He said that the economical viability is considered based on the development yield on the straight zoning regulation. He said that clustered residential lots would save about 10% to 15% of the construction cost. He said that clustering would create smaller units and lot sizes. He noted that a number of items that are added to clustering that are used to increase the lot cost. He said that major roadway costs are approximately the same. He said that clustering happens only by request.

Member Brostrom asked what number of the surrounding properties have well and septic systems, and whether the systems are failing.

Mr. Anderson said that he did not know. He said that it is possible one (1) in five (5) of the systems are failing. He said that to develop this property under R-1A you would not get a maximum number of thirty-two (32) units. He said that he felt the actual number would be less than ten (10) residential units.

Member Brostrom referred to a letter from Jon Caterino, and said that when the study was done only the ground water observations were made. He said that if only ground water was considered he felt that was inadequate to determine.

Mr. Anderson said that they have done adequate studies that were above protocol for proceeding to the site plan review process. He said that this was at the rezoning level and the soil information was premature. He said that the County approval is after site plan approval. He said that they are satisfied that they have done a reasonable amount of investigations that this is not suitable for development under the R-1A zoning classification.

Member Brostrom asked if they hired McDowell and Associates to do the studies.

Mr. Anderson replied that he believed it was McDowell that was commissioned to do the borings.

Member Resha asked that if the property was in the water and sewer service district and a maximum of thirty-two (32) lots were developed, would this not be financially profitable.

Mr. Anderson replied no.

Member Resha referred to a letter dated October 7<sup>th</sup> from Mr. Jacobs which stated "...it is not possible to develop the subject's property due to Township planning residential density without the availability of sanitary sewer service." He said that this letter sounded as if with water and sewer it is possible.

Mr. Jacob replied that the letter is being taken out of context. He read from the 2004 Washtenaw County Comprehensive Plan; Chapter 11 "Failing of on Site Systems." He said that the County in 2001 started an inspection program upon the sale or transfer of ownership. He said that as a result of the inspection program, the County has found that 15% to 20% of the systems inspected have some type of deficiency. He said that the County is saying development should take place where there is existing infrastructure.

Chairperson Naik asked Mr. Jacobs if he felt that the property was unilaterally rezoned and that it was done because of the water and sewer issue.

Mr. Jacob replied absolutely. He said that he talked with Brad Strader and was told that was what he was to do. He read a letter from Mr. Strader dated March 15, 2004 for a different case.

Planner Montagno said that this concerned pipe capacity. He said that the property was taken out because the area is on the fringe and made more sense to remove this area.

Chairperson Naik said that this was designed for transition zoning.

Member Brostrom said that pervious Comprehensive Plans indicated that properties on Platt Road would be serviced by water and sewer. He said that it was his understanding that those utilities were installed for the State facility on Bemis Road.

Mr. Anderson stated that this was incorrect. He said that those utilities on Platt Road were designed in the service area and included the properties on the east and west side of the road, including the subject property. He said that this was designed at a density of 2.5 dwelling units per acre. He said that the Township was looking at removing properties in the water and sewer districts, starting in 1998. He said that staff provided recommendations for the properties to remove.

Mr Anderson stated that the following five (5) reasons were used: 1. Areas without immediate available water and sewer. He said that this was available in Platt Road. This was denied. 2. Areas are served by poorly maintained gravel roads. This is a paved primary County road. This was removed against recommendations. 3. They are some of the most aesthetically and environmentally beautiful areas of Pittsfield Township. He said that this area is not the most aesthetically beautiful and environmentally sensitive area of the Township. He said that the soils are primarily flat clay without any natural features. This was ignored. 4. An area provides a logical separation between the east and west utility areas of the Township. He said that this is clearly within the east district of the Township utility areas. 5. Providing of service to this area would add thousands of feet of infrastructure that would have to be maintained and operated by staff. He said that this is not the case; there was water and sewer at the time on Platt Road adjacent to the site. He said that no additional infrastructure would be needed to service this site. He said that taking this property out of the utility district is completely based against recommendations on how to take properties out of the water and sewer district.

Member Resha said that this sounded like they are arguing at the wrong place. He said that this should be taken to the Board of Trustees.

Mr. Jacob stated that the ZBA has the capacity, power, and the ability to grant a variance subject to the Board. He said that the ZBA has the power to relieve practical difficulties. He said that they have demonstrated this.

Member Resha said that Mr. Jacobs is contradicting his own report. He read sections of "Feasibility Study for 54 ½ net Acres of Land Existing...." He said that he was trying to determine how a loss was calculated. He said that his figures did not agree with the report.

Mr. Jacob gave some explanations of how the appraiser arrived at his figures with and without utilities. He said that they could not develop the land without utilities. He said that the report was prepared by David Burgoyne.

Mr. Anderson stated that the home price is about four (4) times the price of the finished lot.

Member Brostrom said that earlier they said that the land cost was left out.

Mr. Jacob replied yes; they used the approximate land value without utilities.

Planner Montagno asked that even if the land price is zero they cannot make a profit.

Mr. Anderson said that no one would develop this property if it is zoned R-1A.

Mr. Jacob stated that if the Members did not agree they should vote against the request.

Chairperson Naik replied that he did not feel any of the Members have made up their minds. He said that this is a confusing report. He said that the Members are trying to find out the facts.

Mr. Jacob said that they have produced the reports and have had experts in the fields.

Chairperson Naik said that Mr. Burgoyne is highly qualified but the report is not very clear or precise.

Chairperson Naik asked if anyone in the audience is in support of the petition.

There were no comments.

Chairperson Naik asked if anyone in the audience was against this application.

Maureen Walters, Merritt Road, said that the people did not own the property. She asked how they could be affected by well and septic. She said that most of the residents in the area have well and septic and their systems work. She said that this is against the Master Plan [Comprehensive Plan].

An unknown man, who lives in the area, said that this is against the Master Plan [Comprehensive Plan]. He said that the applicant does not own the property and asked how they could be adversely affected by something they do not own. He said that he has lived in the area for many years and that many homes have been built over the years with well and septic, that work. He said that there is nothing in the Township Code or the Master Plan [Comprehensive Plan] that says that you have to develop every piece of property to the maximum extent.

Carol Rebbeck, 6585 Platt, said that this is a nice agricultural community. She said that Merritt Road is a dirt road. She said that this would make a significant change in the character of the area. She noted that traffic is not good and this would add more traffic. She said that when they moved to the area, they asked for water service and they were told that the line on Platt Road was built for the prison; not for a high density development.

Member Brostrom asked Ms. Rebbeck about traffic in the evening on Platt Road and how far north the traffic was backed up.

Ms. Rebbeck replied that most of the time traffic backed up to Morgan Road and sometimes to Ellsworth Road.

Member Brostrom agreed that peak traffic times on Platt Road are becoming worse.

Tom Gannon, 3050 Merritt Road, encouraged that the ZBA use government agencies to verify the reports. He said that the traffic situation is progressively getting worse over time. He said that anything that would compound the traffic situation could be considered good. He said that it is hard to understand undue hardship when the property has not been purchased.

Mr. Jacobs summarized the basis for their request.

Bruce Laidlaw, Township Attorney, said that the transition question deals with whether the property should be rezoned. He said that he found that the appraisal was based on utilities that would not be available. He said that, if utilities were available, was not a fair question.

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

**MOTION CARRIED**

Member Resha said that the figures are out of line and he could not agree with the appraiser.

Member Brostrom stated that the Members, staff, and an outside agency should review the information.

Chairperson Naik asked Planner Montagno if there was someone who is qualified to review the numbers.

Planner Montagno stated that he was not qualified to review the figures and thought possibly that the Township Assessor might be.

Member Resha said that the applicant has come up with a cost, but he did not see how the applicant arrived at that cost. He said that every developer would have the same overhead. He felt that the prices were high and out of range.

The Members discussed the applicant petitioning the Township Board for water and sewer service.

Member Brostrom said that the Hunter's Ridge subdivision is on well and septic. He said that the only well that failed was the fault of the owner. He said that he has had well and septic for thirty (30) years without any problems. He said that he would like to know more about the soil. He stated that he would like to review the cost and feasibility study and have an independent expert review the feasibility study.

The Members and staff discussed a traffic study.

Member Stagg asked that if the site is so impossible to develop, why is the applicant still considering purchasing the property.

Chairperson Naik asked Mr. Jacobs if he could provide a cost of the land.

Mr. Jacob said that he was not able to provide this information.

**Motion by Member Resha, supported by Member Stagg, to postpone ZBA 05-02 Orco Investments and direct staff to research requested information and reconvene at a later date, and that all parties will be notified.**

Discussion:

The Members, staff, and the applicant discussed and agreed that everyone would submit their reports one (1) week, on Monday (April 18, 2005), prior to the next meeting. They also agreed the next meeting would be approximately in four (4) weeks (April 25, 2005).

## **MOTION CARRIED**

### **7.0 Zoning Administrator's Report**

Planner Montagno introduced Assistant Planner Suzanne McCoy to the Members.

### **8.0 Member's Report**

None.

### **9.0 Secretary's Report**

None.

### **10.0 Chairperson's Report**

None.

### **11.0 Approval of Prior Minutes**

#### **11.1 Minutes of February 28, 2005**

The minutes of February 28, 2005 were postponed.

**12.0 Adjournment**

**Motion by Member Resha, supported by Member Brostrom, to adjourn the meeting.**

**MOTION CARRIED**

Chairperson Naik adjourned the meeting at 9:28 p.m.

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**s/Alayna Stagg, Secretary**

**June 13, 2005**

(Attachment #1)

**RESOLUTION OF DENIAL  
ZONING BOARD OF APPEALS  
PITTSFIELD CHARTER TOWNSHIP  
ZBA 05-01  
Mark Lewis – Wolverine Commerce  
March 28, 2005**

**WHEREAS** Pittsfield Charter Township received a petition to the Zoning Board of Appeals for a variance from the requirements in Section 45.03 to allow for the use and development of the property known as tax parcel ID # L-12-14-300-019 for multi-family condominiums in accordance with the requirements of the R-3 zoning classification on January 24, 2005; and

**WHEREAS** the Board held a public hearing on this matter on February 28, 2004 and received and considered public comments; and

**WHEREAS** the Zoning Board of Appeals studied this matter and made the following findings:

**1. The property can reasonably be used in a manner consistent with existing zoning.**

Industrial uses are viable uses and a reasonable use of the land.

The petitioner has been granted a rezoning for this use, as well as, given site plan approval and extensions for a site plan designed for this use that conforms to the restrictions of the Township Ordinance. The immediately adjacent land to the north has many existing established industrial buildings. Reportedly this development does not have vacancy issues.

**2. The landowner's plight is not due to unique circumstances.**

The applicant has claimed that light industrial land is currently not marketable. If this is true it stands to reason that this would be true throughout the area and not just this parcel of land.

**3. A use authorized by the variance will alter the essential character of a locality, and the requested variance does not observe the spirit of the Ordinance, secure public safety, or do substantial justice.**

Industrial campuses have an entirely different character than apartment complexes. If the variance were granted a precedent would be set that all land in that area could be potentially rezoned to multi-family housing. Although the applicant claims that this is a down zoning, multi-family residential can be substantially more intense than light industrial. The kinds of uses permitted in this PUD include professional offices, research facilities, light manufacturing, churches, and daycares among others. The maximum lot coverage requirement for the existing PUD is 25% and the maximum for R-3 is 35%. R-3 zoning permits up to 9 dwelling units per acre.

It does not appear that allowing this property to be developed at a density of 9 units per acre, and potentially the entire area, based on the precedent that would be set, would create a safe situation for the public. It would stand to reason that this type of development would put an increased burden on the existing level of fire and police protection within Township.

Regarding traffic issues, industrial and office uses will create more traffic on the roads. However, multi-family residential will also create more traffic. The number of potential trips will be far greater for multi-

family residential because there will be more people per acre using the site. Also, residential use will create trips not only at peak hours, but throughout the day and night.

The potential build out of this area as moderate density may saturate the housing market in this area and therefore detract from the value of existing homes and degrade the viability of housing developments on adjacent lands that are currently zoned for residential.

**4. The hardship is the result of the applicant's own actions.**

The applicant has pointed out that other areas in the Township have had a higher success rate for attracting new tenants. Many of the other business parks and light industrial parks have erected spec buildings. Those who have not invested in spec buildings have at least developed the site as far as installing infrastructure and grading the land. The subject property, in its current state, would take a substantial amount of time to prepare before a building project could even be started.

**NOW THEREFORE BE IT RESOLVED** that the Pittsfield Charter Township Zoning Board of Appeals hereby denies the petition ZBA 05-01 Mark Lewis – Wolverine Commerce to grant a variance from the requirements in Section 45.03 to allow for the use and development of the property known as tax parcel ID # L-12-14-300-019 for multi-family condominiums in accordance with the requirements of the R-3 zoning classification based on the above findings.