

EVELINE TOWNSHIP
ZONING BOARD OF APPEALS
October 30, 2014-FINAL

Chairman Chris Carson opened the Eveline Township Zoning Board of Appeals meeting at 7:00 p.m. The members in attendance were: Chris Carson, Michelle Johnson and Kevin Schlickau. Others in attendance were Zoning Administrator Barry Wood, Township Attorney Bryan Graham, Township Supervisor John Vron dran, Dan Barron, attorney for Sommerset Pointe Development, John Ferguson, P.S., Ross Hammersley, attorney for appellants, Recording Secretary Lori Parris and 11 visitors.

The meeting began with the recitation of the Pledge of Allegiance.

Chairperson Carson asked for any public comments on issues not related to the public hearing. No comments were received.

Attorney Bryan Graham stated the Zoning Board of Appeals needs to determine if the Planning Commission made the correct decision regarding the application for special use. The attorney for the appellant filed a preliminary appeal. The attorney for the developer responded and raised a legal issue of whether those filing the appeal have legal standing. Legal standing is a legal issue that must be addressed by the Board to determine if they have the jurisdiction to hear the appeal before addressing the merits. Attorney Graham suggested the Chair open the public hearing to attorneys and the public to hear comments solely on the legal standing.

Chairperson Carson opened the public hearing to hear comments on the legal standing.

Ross Hammersley, attorney for the individuals filing the appeal, stated his most recent submission is a supplemental appeal that includes affidavits from his clients to establish the legal standing. He stated his clients are aggrieved parties that did not receive proper notification. He also noted the proposed wastewater disposal system would create noise and light pollution from the waste digesters, lights and alarms. He stated the system could also contaminate their properties with raw or partially untreated sewage. And the forest, livelihood and homes could be damaged by the approved use. He stated his clients clearly have legal standing based on their property location in relation to the proposed project.

Dan Barron, attorney for Sommerset Pointe Development, stated for a party to be aggrieved and have a claim of appeal they must show special damages, which he felt the appellants have failed to do. He felt the parties were basing the claim on worst case scenarios and wild speculations on a system that has been reviewed and approved by the Michigan Department of Environmental Quality with professional expertise backing the findings of the MDEQ. He stated the

fears or concerns have not been confirmed by the parties in the two months since the public hearing on August 19, 2014. He felt there had been adequate time to obtain professional expert opinions to analyze the ground water discharge permits and specific findings and contest that the information provided is incorrect and the fears of system failure can occur and this has not been done. He felt there was only speculation of damages. He stated speculative damages do not meet the threshold to bring claim and the parties must be able to establish and demonstrate, through viable evidence, the level of special damages.

Bob Albrecht stated the noise level of the system was questioned at a previous meeting and no one seemed to know. He questioned what the noise level would be of the pumps.

Unknown audience member questioned why the decibel reading was not taken prior to the approval.

Steve Voice felt the statements made by the parties were more than speculative based on the comments of Fred Taylor at a previous meeting when he stated the noise level would be equivalent to that of a leaf blower or lawn mower. He felt the parties that live around the proposed development have a special standing that others that live elsewhere do not have. He noted the MDEQ was quoted as stating there would be odor.

Tony Williams stated he has been told constantly there will be an odor and it would be minimal and he felt this was not accurate.

Attorney Hammersley stated the parties do not have to prove any adverse effects and possible adverse effects are sufficient to confer standing.

Attorney Barron cited findings in the case referenced by Hammersley stating the damages have to be substantially likely. He felt if there was nothing more than a claim or concern it is speculative and speculation does not meet the threshold to constitute special damages. He noted the odor would be dissipated over the 500 foot distance of wooded topography to the nearest residence.

Unknown audience member stated the property in the area of the proposed system is described by the Tip of the Mitt and the MDEQ as wooded wetland. She stated it is not a dry drain field.

Attorney Barron noted the lack of professional expertise to verify the claims by the appellants.

Attorney Hammersley stated the catastrophic failure is a concern but there are also possible adverse effects from odor, light and noise. He felt that is was substantially likely to occur. He felt the appeal should move forward based on

the particularized interest and the substantial likelihood that they will or may possibly suffer from one or more of these potential impacts.

Unknown audience member stated that God did not put a sewage plant on top of a shale hill above his property.

Unknown audience member stated that a neighboring property owner had to build 8 foot ditches around his home.

Township Attorney Graham recommended the Board adjourn the deliberations to a future date to allow him time to prepare proposed findings of fact on both sides of the issue.

Motion made by Michelle Johnson, second by Chris Carson, to adjourn deliberations on the issue of standing until Thursday, November 13, 2014 at 7:00 p.m. in the Township Hall. The motion carried with all members voting aye.

Motion made by Michelle Johnson, second by Chris Carson, to approve the minutes including the decision and order of the December 12, 2013 meeting as presented. The motion carried with Chris Carson and Michelle Johnson voting aye and Kevin Schlickau abstaining.

Motion made by Michelle Johnson, second by Chris Carson, to adjourn the meeting at 7:45 p.m. The motion carried with all members voting aye.

Respectfully submitted,

Lori M. Parris
Secretary