

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES
July 10, 1991

The Hayes Township Zoning Board Of Appeals meeting was called to order by Chairman Parsons at 7:30 p.m.

Board members present were Fred Parsons, Lloyd Kuebler, James Rudolph, Betty Straw, and Craig Golovich. James Rudolph was taking William Henne's place as the Planning Commission's representative, and Craig Golovich was the alternate used for Robert Alexander. Others present were Secretary Knepp, Paul Hoadley, Judy Anderson, Lee Sneathen, Russ Mize, Walter Griffin, Shirlene Tripp, Jim Zboril, and Steven Little. Zoning Administrator Hess was absent because he was admitted to the Hospital, for surgery, on July 8, 1991. Supervisor Hoadley represented the zoning administrator.

The purpose of the meeting was to make an interpretation of the Township Zoning Ordinance, per Section 7.05(A), at the request of the Zoning Administrator, in relation to buildings and uses on property owned by Scots Ventures, Inc.

Zoning Administrator Hess, with application for a hearing, submitted an explanation of why he was asking for an interpretation of the Zoning Ordinance. The case involved an application for a permit to construct a clubhouse on the golf course and a permanent roof structure over the spectator area located at the barn. When asked, by William Henne and Robert Alexander, if he planned to issue the zoning permits for the two structures, and he advised them he would, they disagreed with his decision. He therefore thought it would be prudent to request an interpretation of these uses from the Zoning Board of Appeals.

Hess cited that a site plan had been presented, over a year ago, indicating that a clubhouse was to be placed upon the Scots Venture property and that grading had occurred to accomodate the new structure. In April of 1991, Russ Mize gave the zoning administrator plans to place a permanent roof structure over the spectator area located at the barn. The area is now covered, in the summer months, by a temporary tent structure. The Township Board amended the zoning ordinance in June, 1990 which changed the status of golf courses in the A-1 Zone District from allowed use to a special use.

The zoning administrator's position was that Scots Ventures had given the township Planning Commission and zoning administrator site plans and physical tours indicating where the club house and new roof were to be placed. Determination was made that since Scots Ventures had proposed the developments, prior to the ordinance change, and that the structures were legal uses which

fulfilled the requirements of the zoning ordinance, prior to the change, they were legal non-conforming proposals. Section 5.19(F) was cited in the application for a hearing, which states:

"Nothing in this ordinance shall require any change in the construction or intended use of a building or structure under construction at the time of the enactment of this ordinance, provided the construction is completed within twelve months of such enactment."

A memo from Bill Henne was reviewed by the Board of Appeals members. The memo cited that Bill was disqualifying himself from the subject hearing because of questions about his initial involvement in the matter. He confined his comments to the proposed clubhouse because he was not familiar with the other proposal. Bill questioned if it was proper procedure for the zoning administrator to issue the permit rather than requiring Scots Ventures to make application for a Special Use Permit. The zoning administrator's decision that construction of the building had started because of some grading that Scots Ventures did constitutes a building start, in Bill Henne's opinion, was both mistaken and arbitrary because:

1. It is illegal to start a building without a permit. They didn't have one when grading was done.
2. Based on a visit to the site, June 26, 1991, there is no evidence that grading has taken place in preparation for the building.

Bill Henne's memo stated that he felt everyone should be treated equally and consistently when it comes to enforcing the zoning ordinance and the zoning administrator must be objective and must not appear to show partiality to any party. Bill suggested the only way for the ordinance to be applied consistently and objectively is for Scots Ventures to follow the rules for a Special Use permit.

A memo from Robert Alexander was reviewed by the Board of Appeals. He could not attend the hearing because of a previous commitment and was not aware of the hearing until July 7, 1991 as he had been out of the country until that date. Mr. Alexander's memo cited:

"Agreed that Mr. Hess had expressed the appropriate understanding of the zoning ordinance, however he believed the zoning permit request should be treated as a "Special Use". The reasons Mr. Alexander expressed for this opinion was that he felt the purpose of Section 5.19(F) of the ordinance was:

Not to require an individual(s) to change the construction or intended use of a building or structure due to the enactment of a change to the zoning ordinance which affects a previously granted zoning permit.

Section 5.19F requires that all construction be completed within twelve months of enactment of the zoning ordinance change. Therefore, since the ordinance change was enacted in June, 1990 that all construction underway would have to be completed by June, 1991.

Mr. Alexander also stated, in his memo, that he thought the concert area for which the shelter construction was requested was in the portion of the property covered by a previous P.U.D. which would require revision to add a shelter. If this is not true, the concert area (i.e. the Barn at Dunmaglas) is located in an A-1 zone district. This does not appear to be an approved use per the Hayes Township Zoning Ordinance."

Clerk Knepp advised Chairman Parsons that since John Hess was absent, and she used to be the Zoning Administrator, she thought it may be helpful for the Zoning Board of Appeals to be made aware of the history of Scots Ventures, Inc. golf course. Therefore, she had taken the liberty of preparing a synopsis of the history as well as an educated analysis of the interpretation of the zoning ordinance.

The property is located in the A-1 Zone District which listed, as uses allowed (prior to the amendment in June, 1990), Golf courses, country clubs, etc.. The golf course construction started in May of 1989 and construction of the course and structures have continued since that date. The ordinance states that any lawful building or use existing at the time of the amendment of the zoning ordinance may be continued at the discretion of the owner. In Clerk Knepp's opinion the only way Scots Ventures would be required to apply for a special use permit would be if the use, as a golf course, was discontinued for a continuous period of twelve months before it is considered a non-conforming use. Because all golf courses have clubhouses it is considered to be a direct use for a golf course and should be allowed. The history of the use being a golf course is backed up by minutes of the Planning Commission and Township Board.

Clerk Knepp did not address the issue of the roof structure on the barn, because her memories are very vague, and the only evidence that has been found for this use was in 1989 (she became clerk in November, 1988). The zoning administrator could have issued the permits when applied for. If there was a problem, from any resident, the zoning administrator could have then asked for an interpretation from the Zoning Board of Appeals. The permits would have been valid unless/if the Zoning Board of Appeals ruled against their issuance.

Betty Straw stated she was not aware there was a dispute regarding this matter until she received the notice for a hearing. Chairman Parsons stated, in his opinion, the request for this hearing was an act of courtesy and general protection for the zoning administrator. The interpretation and issue is;

was the zoning administrator acting in the best interest of the township and would the issuance of the permits be in compliance with the zoning ordinance?

Paul Hoadley stated "the Zoning Administrator assumed that since a site plan was presented to the township that it had some bearing. Why was a site plan was presented at that time when none was required for golf courses? The issue is whether the property is non-conforming use." Clerk Knepp explained that a site plan is required to obtain a permit for all structures. Knepp continued that the issue was that the property's use has been a golf course, which was a use allowed in the A-1 zone district, until the township amended the zoning ordinance in June of 1990, requiring golf courses to apply for a Special Use Permit. The zoning administrator made the decision that he could issue the permit for the construction of the clubhouse on the golf course because it was a pre-existing use.

Chairman Parsons stated that the use was evident prior to the amendment to the ordinance.

Clerk Knepp reminded the Board that the history reflects that on October 24, 1989 the Planning Commission and Board met at the Mill Restaurant to view the property stopping occasionally to review the layout of the golf course, holding pond, location of structures to be built, and the entire property as a whole.

Chairman Parsons reminded the Board to review the history presented by Clerk Knepp. Clerk Knepp explained that she felt there was some confusion of the issue before them. The bottom line is use of the property, not only structures. There is documented evidence the property's use is a golf course. Verbal approval, for construction of the clubhouse, was given by the Zoning Administrator in May of 1990. Scots Ventures was advised that upon health department approval a permit would be issued. Test holes were dug, in 1990, for the health department's inspection, however, a permit has not yet been issued. When the Zoning Administrator advised Russ Mize that he was asking for an interpretation from the Zoning Board of Appeals Scots Ventures halted all work, leveled the property and reseeded it while they waited for a decision. The health department is ready to issue a permit, however, Scots Ventures has yet to receive a written permit.

Lloyd Kuebler asked if the reason a zoning permit was not issued in 1990 was because they had not received health department approval? Walt Griffin responded that they had been told the intended use of the property was a golf course. The only technical aspect of this thing is that the zoning administrator gave verbal approval rather than a written permit, which they were told they would get. Russ Mize added that there was nothing to prevent the zoning permit from being issued. Paul Hoadley advised Scots Ventures's representatives that the zoning

administrator cannot issue a zoning permit until a health department permit is issued. Lloyd Kuebler asked if they had the health department permit yet. Russ Mize responded they did not. Lloyd Kuebler stated a zoning permit couldn't have been issued then.

Walter Griffin stated he understood that you had to have a health department permit prior to obtaining a building permit. He was not aware of the requirement of a health department permit before a zoning permit could be issued. Clerk Knepp explained that the zoning ordinance states, under issuing a zoning permit process, that health department approval must be obtained prior to the issuance of a zoning permit. Walt Griffin stated then the question is that because the process of obtaining permits prior to the zoning ordinance amendments was started, and they are still in the process, is the use grandfathered in?

Clerk Knepp suggested the Zoning Board of Appeals need to determine if the use is grandfathered in. Will the property owners be required to go through site plan review by requesting a Special Use Permit every time they want to build a structure on the property that is directly related to a golf course?

Walt Griffin said he would like to address non-conforming use. The way Hayes Township's Ordinance is written, in regard to non-conforming use, applies to zoning not Special Use. Therefore if someone was building an industrial use and the zone district was changed to agricultural they could complete the structure. Scots Ventures golf course zoning was not changed. When the amendment to the ordinance was adopted it meant that anyone who wants to add a golf course, skeet range, etc. to their property would have to ask for a Special Use Permit. Mr. Griffin stated he does not believe they are in a non-conforming use situation because they are grandfathered in under the old statute. The question is whether the use is grandfathered in or do they have to go through site plan review?

Betty Straw stated she felt that the golf course was grandfathered in. The golf course was there before the township required golf courses to go through the special use process.

James Rudolph stated that in John Hess's memo he inferred that grading being done was the beginning of construction. The use of property is one issue, but saying that grading property constitutes evidence of starting construction will come back to haunt us. Jim wants to deal with the idea of use of the property and not set a precedence by saying that grading is the beginning of construction.

Craig Golovich asked if this use is grandfathered in and they are allowed to build a clubhouse are they going to have to go through the same thing if they want to build another structure on the property? Fred Parsons responded that they would be required to

get a zoning permit for any structures they want to add to the property. Clerk Knepp clarified that the bottom line the use is not being changed and therefore they should not have to go through site plan review. If they changed the use they would have to go through the applicable sections of the zoning ordinance.

Betty Straw made a motion that the golf course was grandfathered in and does not require site plan review. Motion seconded by Lloyd Kuebler.

Voice Vote. Ayes; All. Nays; None. Motion Carried.

Discussed the construction of a permanent roof structure over the spectator area located at the barn. Chairman Parsons explained that Scots Ventures has been using a tent as a temporary covering until something permanent could be constructed.

Paul Hoadley asked if the barn, where the roof structure is to be built, is part of the existing Mill Restaurant P.U.D.? Clerk Knepp explained that according to the Zoning Administrator it is not.

Chairman Parsons suggested that this was another issue of the use being grandfathered in because its been used for concerts by the previous owners.

Walt Griffin asked if he could shed some light on the matter? The barn had been used previously for activities. Scots Ventures began improving the barn and got non-profit groups to come in and give concerts. Last year, because of time constraints, Scots Ventures didn't have time to put up a permanent structure (roof), even though they had discussed it with the zoning administrator, so they rented a tent structure. This year they had time to build the permanent structure. The roof will be the same as what is being used only it will be permanent. The zoning administrator had given them verbal approval to build the roof. When Scots Ventures made application for the permit the zoning administrator advised them he could not issue the permit because of some dispute. Now, because the concerts start next Saturday, they have had to rent another shelter.

Paul Hoadley advised Walt Griffin that the zoning administrator was not instructed to not issue the zoning permit. He did that on his own volition. Nobody, who questioned whether the permits should be issued, had the authority to request the Zoning Board of Appeals to meet per the ordinance. John Hess decided it would be prudent to ask the Board of Appeals to interpret his decision so bad feelings would not be created between him and the persons who disagreed with him.

Walt Griffen said the issue was that this barn had been used in the past and in the present for holding concerts.

Betty Straw said she really didn't understand why they were deciding this issue because the zoning administrator should know whether the use is allowed or not. Clerk Knepp agreed and stated that he should have known the other permit could have been issued because the use was definitely grandfathered in.

James Rudolph stated the whole contention was in John's logic that grading was the start of construction and that was what Bill Henne and Robert Alexander disagreed with in both their memo's. What the ZBA has determined is that the start of construction is irrelevant because it's the use that is important. Walt Griffin asked to respond to that. He advised the Board that the Construction Lien Act indicates that if you move dirt, get an engineers drawing, or any engineering whatsoever, is an improvement which will trigger the construction act lien. Mr. Griffin understands the statement regarding use.

Chairman Parsons advised that the reason he wanted to separate the clubhouse issue from the shelter issue because he didn't want to confuse the different issues. He also stated that in John Hess's decision to ask the ZBA for a decision **PERHAPS** John should have made them two separate issues in order to clarify a determination. The proposal is to replace a tent with a permanent structure. Chairman Parsons asked for a motion stating the decision has to be made by deciding the intent and continued use over several owners and that the ZBA agrees with the Zoning Administrator and the permit could be issued.

Lloyd Kuebler stated he had a problem with the statement, in the Zoning Administrator's letter, which said in part, "Also there was evidence that structure preparation had been started on both sites to accomodate new structures". This bothered Lloyd because you don't start construction until proper permits are obtained. He was concerned about setting a precedence. Fred Parsons advised Lloyd that he had visited the site and the only evidence of construction is where the tent poles were.

Paul Hoadley stated that it should be determined if this was a commercial venture in the A-1 zone district.

Shirlene Tripp stated that the barn had been used for activities under Stu Boal Enterprises (after the Mill Restaurant closed).

James Rudolph made a motion that since the site plan was presented prior to the Zoning Ordinance amendment the use is allowed. Motion seconded by Lloyd Kuebler.

Voice Vote. Ayes; All. . Nays; None. Motion carried.

Lloyd Kuebler made a motion to adjourn the meeting at 8:51 p.m.
Betty Straw seconded the motion. Ayes; All. Motion carried.

Respectfully Submitted,

Ethel R Knepp

Ethel R. Knepp, Clerk