

ISABELLA COUNTY  
ZONING BOARD OF APPEALS  
October 17, 2012

Room 225  
Isabella County Building

A regular meeting of the Isabella County Zoning Board of Appeals was held October 17, 2012 in room 225 of the Isabella County Building, 200 North Main Street, Mount Pleasant, Michigan.

MEMBERS PRESENT: Jim Wynes, Gordon Gilchrist, Tom Courser, Marilyn Fosburg.

MEMBERS ABSENT: Brent Duffett.

SUPPORT STAFF PRESENT: Tim Nieporte, Community Development Director  
Brandy Harger, Recording Secretary

The meeting was called to order by the chair at 9:00 a.m.

The Pledge of Allegiance was recited by the board.

APPROVAL OF AGENDA

The agenda was approved as submitted.

PREVIOUS MINUTES

The minutes of the September 19, 2012 meeting were approved as submitted.

PUBLIC COMMENTS

None heard.

Mr. Gilchrist stated that he had to excuse himself from Appeal #12-01 as he voted at the Planning Commission on the case that is being appealed.

APPEAL #12-01

Mr. Nieporte stated that Steve Malish is appealing the decision of the Isabella County Planning Commission to approve Site Plan Review #12-06 for a Milling and Processing of Farm Products Operation which was proposed by Leroy Weaver. The grounds for the appeal are "the Planning Commission failed to follow their own rules and regulations when issuing permit". The property is located at 6376 West Pleasant Valley Road in Section 13 of Rolland Township. He also reminded the board of the following:

**Sections 14.06 and 14.07** of the Isabella County Zoning Ordinance lay the foundation for an Appeal Request and Hearing Procedures.

**Section 14.06** states in part that any person may appeal a decision where it is alleged there is an error in the decision made by the administrative body (in this case the Planning Commission). The appeal shall be filed within 21 days of the decision being appealed and the Zoning Board of Appeals shall select a reasonable time and place for hearing the appeal, give due notice thereof to the parties, and render a decision on the appeal without unreasonable delay.

In deciding the appeal, the Zoning Board of Appeals shall be limited to determining whether or not the decision that was made was done so using the proper standards and guidelines in the Ordinance. The decision of the Zoning Board of Appeals is limited to the information that was available to the administrative official or body who made the decision initially. Additional testimony shall not be allowed.

Mr. Nieporte also stated the facts of the case as follows:

Proposed use:	Milling and Processing of Farm Products (Saw Mill)
Zoning District:	AG-1 Restrictive Agriculture
Permitted Use:	Land and/or buildings in this district may be used for the purpose listed by right. (Milling and Processing of Farm Products)
Process for App:	All new Commercial or Industrial Uses require site plan approval by the Planning Commission.
Application:	Received July 19, 2012
Date of PC Review:	Agenda Item for August 9, 2012 regularly scheduled PC meeting.
Decision Rendered:	August 9, 2012 by PC
Public Comment:	Not a public hearing....Comment was heard during public comment as agenda item.
Minutes:	Approved at September 13, 2012 regularly scheduled PC meeting.
Appeal Received:	August 30, 2012 (within 21 day appeal period)
Hearing Set:	October 17, 2012 at 9:00 am in Room 225 of the Isabella County Bldg.
Notice Given:	Affidavit of Mailing September 26, 2012...Affidavit of Publication September 30, 2012. (Requirement: not less than 15 days prior to hearing date....both met)
Record for Action:	Application for action including attachments and Approved Minutes.

Mr. Wynes read section 14.06 of the Isabella County Zoning Ordinance.

Mr. Steve Malish requested an adjournment because he is waiting for an engineering and site survey report and notice of the hearing was received only three weeks prior to the meeting. He also stated that they are awaiting a letter from safety personal regarding the setbacks and turn around space.

The public hearing was opened for comments at 9:12 a.m.

Mr. Jeff Rhoads stated that he had no idea that the Planning Commission had the sawmill site plan review on their agenda for the August 9, 2012 meeting. He also explained that the Planning Commission did solve one issue that he had by imposing hours of operation.

The public hearing was closed to comment at 9:15 a.m.

Mr. Wynes asked the purpose of the information that the adjournment would be based on as it pertains to the appeal.

Mr. Malish the reports will provide clarification, such as if there is enough room for the semis.

Mr. Nieporte stated the reasons for requesting adjournment for the record are as follows

1. The notice was not received in a timely manner because it was only received three weeks in advance
2. Awaiting for engineering report and site survey report

Mr. Nieporte further stated that the question Mr. Wynes was getting at was; what is the purpose of the documents, the engineering and site survey report.

Mr. Malish stated that purpose is to determine whether the trucks have enough room to maneuver without having to widen the driveway.

Mr. Nieporte stated that the reports will show whether there is enough maneuverability with regard to the truck traffic for this use within the site. He also stated that it is statutorily required for staff to get a public hearing notice out not less than 15 days prior to the hearing date.

Mr. Wynes stated that the appeal needs to be based on procedural information; new information is not applicable to the case.

Mr. Nieporte stated that the new report that is being waited on would not have been information presented to the Planning Commission so it may not be able to be used in the appeal.

Ms. Fosburg stated that the Zoning Board of Appeals is only concerned with the procedure of the Planning Commission, not the information that was given to them.

Mr. Nieporte stated that the ability to adjourn is outlined in section 14.07 (c) of the Isabella County Zoning Ordinance.

Ms. Fosburg stated that she needed to know specifically what the grounds for appeal are, was it something about the site plan. What did Planning Commission not follow that they were supposed to. What specifically is the appeal based on?

Mr. Nieporte stated that when the application to appeal was provided to the applicant it was highlighted that they needed to provide in detail their grounds for appeal; as well it was explained in detail to them. When the application was turned in there was a general description

of what their appeal was and staff was told that their attorney said the general description that was given was sufficient.

Ms. Fosburg again stated that if there was something specific that the Planning Commission did not do, what was it.

Mr. Nieporte stated that the reason for appeal is very general so the board needs to move forward with what was supplied to them and either grant an adjournment or render a decision.

Mr. Courser asked if the applicant had any other questions or concerns about the Planning Commission meeting.

Mr. Malish stated that none of the neighbors got notice of the August 9, 2012 Planning Commission meeting.

Mr. Nieporte stated that a Site Plan Review does not statutorily require a 300' notice or public hearing notice to be sent out.

Mr. Malish stated that the Township Supervisor was not advised of the August 9, 2012 meeting either.

Mr. Nieporte stated that there is not a requirement that the township has to be notified of a Site Plan Review by the Planning Commission.

Mr. Malish stated that he was told by Mr. Zalewski that issues such as size, noise, traffic, and hours of operation would be addressed. Mr. Weaver has already operated after 4 p.m. and they have extended their loading ramp.

Mr. Nieporte stated that the issues of hours and the ramp, these are compliance issues, not grounds for an appeal.

Mr. Courser stated that the appeal has to be based on proper procedure and using the information that was presented at the time of the site plan review.

Ms. Fosburg asked if there was a problem with for example the site plan review checklist, the Planning Commission went through the checklist at the meeting as shown in the minutes. She also asked one last time if the applicant could give something specific that the Planning Commission did not do procedurally.

Ms. Malish stated that they need the reports from the engineer to be able to continue with the appeal that is why they are asking for an adjournment.

A motion was made by Mr. Courser supported by Ms. Fosburg to affirm the action of the Isabella County Planning Commission and deny Appeal#12-01 on the grounds that:

1. The Site Plan Evaluation Checklist that was reviewed by the Planning Commission at the meeting fulfilled the requirements of Section 11.04 Zoning Ordinance and the fact that a Site Plan was submitted and a Checklist was prepared and reviewed at the meeting indicates that the Planning Commission used the checklist along with the site plan to make its decision.
2. On Page 4 of the Approved Planning Commission minutes of August 9, 2012 Isabella County Planning Commission reviewed with the Commission Section 11.06 of the Isabella County Zoning Ordinance, Standards for Site Plan Review. Indicating that the Standards per the ordinance were used by the Planning Commission to make the decision.
3. The minutes also indicate that while the Site Plan Review was not a public hearing, during the public comment section of the agenda, concerns were raised by the public which were addressed by the Planning Commission. The fact that the minutes include discussion about truck traffic, the U-shaped driveway proposed on the plan and a copy of the driveway permit from the Road Commission along with the establishment of reduced hours of operation these were reviewed and considered by the Planning Commission when making their decision. They followed the procedures outlined in the Ordinance.

Roll call vote:

Ms. Fosburg: Yes  
Mr. Courser: Yes  
Mr. Wynes: Yes

Motion Carried.  
Appeal Denied.

#### STAFF COMMENTS

Mr. Nieporte stated that he is attending the Michigan Association of Planning Conference and will bring any relevant information back to the board.

#### BOARD COMMENTS

None heard.

#### ADJOURNMENT

A motion was made by Mr. Courser, supported by Ms. Fosburg to adjourn at 9:43 a.m.

Yes: Wynes, Gilchrist, Courser, Fosburg.

No: None.

Motion Carried.

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Marilyn Fosburg, Secretary

Brandy Harger, Recording Secretary