



Armada Township
ZONING BOARD OF APPEALS
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ZONING BOARD of APPEALS

Minutes

March 24, 2015

7:00 p.m.

- 1. CALL TO ORDER**
 - 2. PLEDGE OF ALLEGIANCE**
 - 3. ROLL CALL**
 - 4. APPROVE / AMEND AGENDA**
 - 5. APPROVAL OF MINUTES**
 - 6. PUBLIC HEARING:**
 - A.) Zoning Compliance Permit Interpretation**
 - 7. NEW BUSINESS:**
 - A.) Zoning Compliance Permit Interpretation**
 - B.) Election of Officers**
 - 8. PUBLIC COMMENTS**
 - 9. ADJOURNMENT**
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- 1.) Call to Order:** Chair Hicks called the meeting to order at 7:00 p.m.
- 2.)** Chair Hicks led the audience in the **Pledge of Allegiance**.
- 3.) Roll Call:** Members Present: Chair Hicks, Xagoraris, Goetzinger. Members Absent: Kappa and Kehrig. Also present: Christine White, Recording Secretary, and Colleen O'Connor-Worden Township Attorney.
- 4.) Approve/Amend Agenda:** Motion made by Goetzinger, seconded by Xagoraris, to approve the agenda as presented. All ayes; Motion Carried.
- 5.) Approval of Minutes:** Minutes from November 12, 2014
- 6.) Public Hearing: Zoning Compliance Permit Interpretation**
 - A.) Motion made by Hicks, seconded by Xagoraris to open the Public Hearing at 7:04 p.m. All ayes; Motion Carried.** Chair Hicks explained the public hearing procedure. She explained that this hearing is in regard to a zoning compliance permit interpretation not a variance which is usually what the ZBA is called to do. She stated there where members of the public here and letters were received from residents indicating that they would like us to deny this kind of operation in the township. She stated that this is beyond the scope of this hearing.

It is beyond the authority of this body. We will strictly be looking at an application for a zoning compliance permit.

State Representative Ken Goike, 22440 32 Mile Rd., who represents this area, was present. There are concerns in Lansing on all aspects of this issue. This is a constitutional matter. Michigan Township Associations are having many discussions about this issue. He is here to observe.

Mr. Aaron Keyes, representing Jack Medley stated that this request is for an appeal of the building department's denial of a zoning compliance permit. He presented the board with the property located at 20101 33 Mile Rd. is 2.8 acres and is zoned agricultural. The structures at issue are two greenhouses in which Mr. Medley grows and cultivates medical marijuana pursuant to the Michigan Medical Marijuana Act. In the original zoning compliance permit application, Mr. Medley included a copy of his care giver card pursuant to which under Michigan State law he is allowed to grow and cultivate medical marijuana legally. The structures at issue are composed of galvanized steel tubing and covered in visqueen and the floors are dirt and gravel, they do not have cement floors. The structures are surrounded by a wooden fence on the outside. On the inside they are surrounded by a metal cyclone fence. They are secured by an alarm system, video surveillance system and a motion detector system. Mr. Keyes said the question here tonight is a simple and limited question and whether a structure like this requires a zoning compliance permit or a building permit. It has been fairly well established that in this area that a greenhouse on agriculturally zoned property is going to require a zoning compliance permit. There are some things that this is not about. First of all, it is not about the Michigan Medical Marijuana Act and whether it is a good or bad idea, it is the law and we will abide by it. Second, it is not about Mr. Medley and whether or not he can grow medical marijuana in these structures that has already been established in circuit court litigation. It clearly held he was not doing anything illegal. Third, some of you may know Mr. Medley and whatever you may feel about him, this is not about him. This is about a simple issue. What is the proper type of permit for a structure of this nature? Mr. Keyes gave the background on how we came here today. After the Michigan Medical Marijuana Act was passed, Armada Township passed an amendment to the zoning ordinances. A portion of that amendment stated that medical marijuana had to be grown in the main building on a given piece of property. When Mr. Medley erected these greenhouses, the township told him he couldn't grow medical marijuana in these greenhouses, because they are accessory structures and that was violating the township ordinances. Eventually this issue worked its way into a lawsuit in Macomb County Circuit Court. The township requested that the structures be immediately torn down. The second issue in this law suit is that prior to building the structures Mr. Medley did not receive a permit to construct the greenhouses. Mr. Medley raised a number of issues. He argued that the amendment to the ordinance was invalid to the extent that it restricts medical marijuana to the main building of a given parcel of property. He also mentioned the Medical Marijuana Act states it can be grown in an enclosed locked facility and the act specifically states that it can be grown in an outdoor facility. This ordinance directly conflicts with state law and is invalid in his argument. In addition he argued because of this ordinance it would have been futile to seek any type of permit prior to erecting the greenhouses because they would have been denied based on the ordinance. That is true. He asked the court to find the ordinance invalid and to be afforded the opportunity to apply for a permit with the building department. After extensive litigation, the judge found that the township ordinance was invalid because it directly conflicted with the Michigan Medical Marijuana Act. He then ordered that Mr. Medley apply for a permit for his structures. The township believes that the court expressly told Mr. Medley to apply for a building permit. Mr. Medley believes that the proper permit is a zoning compliance permit. He applied for a zoning compliance permit, and was denied. Mr. Keyes believes the sole basis of denial was that he was required to obtain a building permit per the court. An appeal was filed with the ZBA. The township filed a motion to hold Mr. Medley in contempt and to be sanctioned with a fine. At the hearing it was decided to proceed to the ZBA. Mr. Medley believes that under the state construction code and under Armada's own zoning ordinance that the proper permit is a zoning

compliance permit. He also believes that because they are plants that they are exempt and it is a crop, an agricultural use. He believes that medical marijuana is a farm product and is farming.

Chair Hicks states to stand under a definition of a farm you must have ten acres. The documents that the ZBA have been given are not contending that they are a farm.

Colleen O'Connor presented that the judge did not rule that the medical marijuana in the greenhouses were legal. He ruled that the greenhouses were a nuisance per se, because no permits were obtained. The court did not order this to the ZBA. It is a retail use of the property. He is allowed to pursue this legally. Colleen O'Connor asked Mr. Keyes if he had brought any documentation or evidence that establishes that Mr. Medley is engaged in the commercial production of farm products. Mr. Keyes did not bring any documents or evidence that in fact showed that Mr. Medley was indeed engaged in farming. The ZBA is trying to establish if he is engaged in farming. Is there any recognition that Mr. Medley is involved with the Department of Agriculture or is he in compliance with GAAMPS from the State of Michigan. Tax returns were asked for during litigation. Mr. Medley has not filed tax returns. No farming income has been reported in the last few years. Chair Hicks states that property is not automatically considered a farm. It is substantially smaller than 10 acres and therefore is not automatically exempt. After searching through the Department of Agriculture and the MCL, she found no evidence that the State of Michigan has ever recognized medical marijuana as a crop. Whether or not it is or isn't a crop, the greenhouses are non-compliant. There is no permit. The dispute is not about medical marijuana, it is about the greenhouses.

Member Xagoraris is an attorney and read through all the briefs in full and believes that Mr. Keyes is trying to ask the ZBA to make an interpretation of whether or not medical marijuana is a crop. That is beyond the board's capability.

Chair Hicks states that what qualifies as a crop or doesn't is not the question. The line was drawn at ten acres because if you have forty acres it's a crop. For parcels under ten acres, Michigan has the GAAMPS, that you may qualify for under the Michigan Right to Farm Act. These are the regulations that a smaller parcel can comply with to engage in farming.

Colleen O'Connor states it's not the fact that it is a greenhouse it is what is happening in the greenhouse. For example you could not put up a greenhouse and run a machine shop out of it. That would be an illegal use of property in an agriculturally zoned district. It is not fair to say we put up greenhouses therefore they are legal. It is what is happening on the inside that is illegal. Also, this issue was fully litigated in circuit court. Ms. O'Connor filed a motion for summary and dedicated a major portion of her brief to the farming question and it was never responded to. In addition to the areas being talked about she believes this is precluded from raising this at this time. Mr. Keyes had a full opportunity to litigate this in circuit court and he failed to do so. Bringing this up now is improper.

Linda Counts, 71330 Coon Creek Rd., commented that you can only grow seventy-two plants as a care giver, and she can grow twelve. It is a safe facility, it is locked and there are cameras.

Chair Hicks states we are not disputing the fact that he has the right to grow medical marijuana in this township or in this state. It is legal, and he has gone through the proper procedure and he does have the state permit to do so. We are disputing the location and the circumstance in which he is growing. It is in regard to the permitting of the structures, on the property itself.

Mel McNutt, the Building Inspector for Armada Township, states that in regards to the townships policy for applying for a zoning compliance permit, if someone comes in with under ten acres and applies for a permit, it has been a policy for years that you have to show proof with documentation that it is a bona-fide farm, through tax returns. It doesn't matter if it is a large or small parcel; you must show proof that you are a bona-fide farm. We have turned other people down who cannot produce documentation. Mel discussed his job description and duties with the ZBA. He described the difference between the building permit and a zoning compliance. The zoning compliance permit is to make sure that the building is within setbacks. It is required on all parcels even 100 acre parcels. It is to make sure people are not putting buildings up on property lines or in the road right of ways, or possibly on easements. Mr. McNutt supported denying Mr. Medley's zoning

compliance permit because he did not produce the documentation that he needed to meet the criteria of a legal farm. It is no different than what we would ask anyone else. It is Mr. McNutt's opinion that he should apply for a building permit. There are different requirements per the ordinance on size of accessory buildings allowed. It is specific to the size of the parcel. If Mr. Medley applied for a building permit and met the requirements and criteria he could grow his medical marijuana.

John Paterek, Township Supervisor, 22075 McPhall Rd., stated that the accessory structures were brought to his attention through complaints about traffic by the neighbors. That's when we realized the buildings were erected on the property without permits. At that point we found out they were greenhouses for the manufacturing of medical marijuana. He believes the voters in the state supported the use of medical marijuana because there is a use for it. He thinks that the townships should have rights to have a say of where and how it can be manufactured because it is a narcotic. He said he was glad that Mr. Goike was there, because the township needs direction from the state with some of these issues. He does not view marijuana as a crop because he can't grow it, and sell it at market along with his cabbage and apples. It is a narcotic. That's what changes it for him. There is no definition for marijuana and he believes that is where the state needs to get involved. We also do not know how it goes out, who it goes to or where it goes, there is no oversight by the township. The states that are legal have serial numbers on every plant and each plant is weighed, and every leaf is accounted for. When it's sold it is monitored, and this is still federally illegal. His position is that the greenhouses were put up without building permits and inspections, and used to manufacture a narcotic not a farm product.

Leon Mickes, 3060 VanAustin, Wyandotte, MI who grows and manufactures marijuana spoke to board about how cannabis affects the body and some successful treatments with topical oil.

John Cooper, Fenton, MI is a caregiver and business man in the Flint area. He stated that industrial hemp is legal in the state of Michigan and he could plant a hundred acres. It is a sister plant of marijuana. He believes it is a crop. He also spoke about patient benefits.

Member Goetzinger said we are here simply for ordinance violations. He appreciates the comments on the benefits of the use of medical marijuana. There were no permits and that is why we are here tonight.

State Representative Goike talked about some of the problems they are having in Lansing. He anticipates language on the 2016 ballot for the use of recreational marijuana.

Ashley Hills, Fenton, MI is confused on what is going on and asked for clarification. **Motion made by Hicks, seconded by Xagoraris, to close Public Hearing at 8:35 p.m. All ayes; Motion Carried.**

7.) New Business:

A.) Zoning Compliance Permit Interpretation: The members discussed no guidance from the state as to whether or not it is a crop. There are manufacturing issues. At the moment we are defining whether or not it is a farm. Right now just on the most basic level they have not proven they are a farm. We are here because it is a zoning issue. It is not a farm. They did not comply with the zoning ordinance. A zoning compliance permit is allowed if you can prove you are a farm. There are too many buildings on the property for them to qualify for a building permit, because of the lot size and how much square footage is allowed. There is an issue no matter which way you look at it that has not been satisfied. They came in and applied for a zoning compliance permit with the building department. They were denied because they did not provide documentation to prove they were a farm. They are here tonight asking for an interpretation on the zoning compliance permit. **Motion made by Xagoraris, seconded by Goetzinger, to affirm the Armada Township Building Department's decision to deny Jack Medley's application for a zoning compliance permit for the reasons discussed on the record tonight and also, specifically for the following two reasons: 1.) Medley has failed to demonstrate that the greenhouses on the property located at 20101 33 Mile Rd., erected for a marijuana grow operation, are being used for agricultural purposes or that medical marijuana is a farm product. 2.) The issue of whether the accessory structures qualify as an agricultural use of the property has already been raised in the circuit court and**

Medley failed to address that issue in circuit court. Accordingly, requesting the ZBA to make this determination is not proper. Roll Call Vote: Hicks; Yes, Goetzinger; Yes, Xagoraris; Yes. All ayes; Motion Carried.

B.) Election of Officers: Motion made by Goetzinger, seconded by Xagoraris to keep all officers the same as the previous year. Hicks-chair; Kehrig-vice-chair; Xagoraris-secretary. All ayes; Motion Carried.

8.) Public Comments: None.

9.) Adjournment: Motion made by Xagoraris, seconded by Goetzinger, to adjourn meeting at 8:50 p.m. All ayes; Motion Carried.

Respectfully submitted:

Christine White
Recording Secretary

Approved:

Gail Hicks, Chairperson

Date