

Milton Township
Zoning Board of Appeals
Special Meeting Minutes
May 1, 2006

Members present: Chairman Lein, Anderson, Atkinson, Bryant, Jankowski and LLewellyn

Also present: twenty-two audience members

Also present: Weinzapfel

The chairman called the meeting to order at 7:08 p.m. and the Pledge of Allegiance was recited.

Approval of Agenda:

Motion by Chair Lein to amend the Agenda adding approval of the past meeting minutes dated March 9, 2006. Motion to approve Agenda by Anderson, second by Atkinson. Motion carried.

Approval of past meeting minutes dated March 9, 2006:

Motion by Chair Lein to amend the minutes by striking the “s” on Moyers (page 3, Para 6) and add “the” before MTA (page 3, Para 8).

Motion by Atkinson to approve, second by Anderson. Motion carried.

Variance request 06-03:

Mr. Whit Blakeslee, 8804 Whitney Rd., Williamsburg, MI aka: **Gmoser's Septic Service** and Agent Mr. Anthony Whittbrodt, seek a ruling by the ZBA on the ZA's ruling denying construction of a “Slurrystone Structure—Septage Silo” in Milton Township on Ag zoned land.

Chair Lein inquired of ZBA Secretary Jankowski if any correspondence was received regarding this matter. Jankowski replied negatively.

Agent Wittbrodt presented the case stating that new MDEQ regulations in October 2006 will not allow septage to be spread on the frozen or wet ground. He stated further that his client Blakeslee will have to haul the septage to the Grand Traverse County treatment facility and charge his

customers a fee of \$300 to \$400 for a septic tank pump out or build a storage structure to store the septage until spring when the ground thaws which would allow him to continue to keep the pump-out fee low for his customers. He stated additionally that local farmers want to continue to have the septage spread on their farmland as fertilizer instead of having to pay for fertilizer. He presented an exhibit showing plats of Mike Gmoser's acreage on US-31 north of Cairn Hwy. and the location of his nearby neighbors. He proposes to build a "slurrystone structure/ septage silo on Ag zoned property. He further presented an exhibit showing pictures of the property and pictures of the process of injecting the septage in the farmland. Additionally he stated that Blakeslee has purchased a septage injector truck, which tills the soil and injects the septage below the surface

Jankowski asked Wittbrodt why he didn't seek relief from the PC under 117.601d? He stated that the ZA stated that they could also seek relief from the ZBA, which could be timelier, since they are in a rush to get this completed by October 2006.

Llewellyn asked what the capacity would be? Blakeslee responded that nothing had been decided and capacity could start out small and be enlarged.

Atkinson asked if the septic pump out fees would be held down for only Milton Twp. Residents only or for all of his customers. Blakeslee responded that he would try to hold down fees for all of his customers.

Llewellyn asked about the use of septic ponds and Wittbrodt responded that that was not a viable solution because of the possibility of ground water pollution and the danger of someone walking into the pond in the night.

Mr. Chuck Edwards, NW MI Community Health Agency, reviewed proposed MDEQ regulations regarding septage storage and disposal. He stated that it was a common accepted practice to inject the septage in farmland as fertilizer. He stated that if the local government gives approval, that construction and use would come under MDEQ regulations, and that he acts as eyes and ears for the agency.

Tinus Koorn, NORTHERN MI HARVESTORE, Lake City, MI. indicated that he builds "slurrystone silos" and has discussed various options with Blakeslee but nothing has been decided regarding the size or placement of a cover. He stated that there are monitoring wells placed around the perimeter

of the silo to monitor any possible leakage. Lein asked about odor and Mr. Koorn indicated that usually odor is minimal but that a roof or cover can be constructed to control odor if needed.

Llewellyn asked who oversees the operation of the storage silo? Edwards replied that the NW MI health Department would oversee the operation.

Anderson asked why he didn't have firm plans regarding the capacity and type of structure he would use? Blakeslee stated he was waiting for a reply from the other farmers regarding injecting during the summer but he still needs capacity for storage during the winter due to new MDEQ regulations which do not allow spreading the septage on frozen ground.

Anderson asked if storage was required? Mr. Edwards replied that after October 1, 2006, MDEQ would not allow the injecting of septage on wet or frozen ground.

Mike Paradise stated that He is a farmer and that farmers need the septage as fertilizer.

Atkinson asked if the silo violates 117.603 that prohibits commercial enterprise on Ag zoned land? Wittbrodt stated that it was not a commercial activity, that it was a farming activity to spread the septage on the farmland as fertilizer.

Mike Gmoser stated that he owns the farmland upon which the silo would be built. He further stated that the septage injection is beneficial to the crops and cherry trees.

Mark White stated that he allows Blakeslee to inject on his crops and orchards and that he will save money on fertilizer costs. He stated that he has 300 cows and that their manure smells worse than the septage spread on his crops. He stated that any area farmer would benefit from having the septage injected.

Tinus Koorn stated that he has been building storage tanks for many years and that they are safe, approved tanks and have leak monitoring wells on the perimeter. He stated that the first stage, which he feels would be adequate, would only be 5 ft. high but could rise to 86 ft.

Samantha Blakeslee indicated that she works as the office manager for her husband's business. She stated that when prices go up for septic tank pump-out that people delay pump-out or eliminate it which causes the systems to fail prematurely.

Mike McIntyre states he is a resident and that the proposed storage structure is a win-win for everyone. He stated that the farmer wins with lower fertilizer costs and the residential customers win with lower pump-out fees than if Blakeslee had to haul septage to TC and pay the higher treatment fees during the winter.

Ron Boals stated that he owns and farms the adjoining acreage to the proposed building site. He stated that hauling the septage to TC does not benefit anyone; everyone pays more, the farmer and the customer. He stated that he has not noticed any smell from septage injection.

Mark White emphasized that people will let septic systems fail because of the cost of pump-out.

Pat McGuire stated he farms land in 4 Townships and counts on septage injection to keep his fertilizer costs lower. He states that the process has less odor than the spreading of manure. He stated further that if farmer Mark White came to the Township for approval of a storage silo for manure, it would be approved without a problem. Does it matter what animal it comes from?

Larry Bargy stated that he has known Blakeslee for years and he does a good responsible job.

Jankowski asked Blakeslee why he did not seek relief from the PC? He replied that the ZA told him he could seek relief from the ZBA.

Chair Lein asked if anyone else wanted to speak against or for the proposed structure. With no response, Chair Lein stated he was closing the hearing to public comment and that deliberation by the Board would begin.

Llewellyn stated that approval could set a precedent in the Township for the proliferation of septage silos. Chair Lein replied that it could indeed set a precedent or it could be an allowed practice of agriculture.

Anderson replied that if approved, MDEQ rules would apply regarding the building and operation of the silo.

Chair Lein stated that this issue could be skirting the ordinance.

Atkinson asked how is this different from section 117.603?

Anderson stated that the commercial business is the removal of septage from customer's tanks, not the storing of the septage for later injection.

Bryant stated that the MDEQ changed regulations on the application to wet and frozen ground and that might require a change in the ordinances. He added that we have plenty of "Big Brother" in our lives.

Chair Lein stated that he sees the benefit to the farmers and township residents.

Jankowski asked Edwards if the MDEQ regulates the spacing, density or proliferation of septage storage structures? Edwards replied that the MDEQ does not regulate those areas and made references to the MDEQ document titled SEPTAGE WASTE STORAGE FACILITY MANGEMENT PRACTICES, which is in final draft. Chair Lein stated he read the document, which he found informative.

Anderson asked does the storage tank constitute a building? Atkinson then asked if 117.601H could apply which prohibits sewage treatment plants? Chair Lein stated that that depends on how we interpret that section. Jankowski added that Blakeslee probably does not treat the sewage that he only stores it until it until the ground thaws, that if we did not have winter he would spread the septage 12 months a year. Atkinson then asked if it was a solid waste disposal plant? Lein replied that a solid waste disposal plant would be a processing plant. Atkinson asked if it was a warehouse? Anderson added that it was as the structure brochure states a "WASTE MANAGEMENT SYSTEM". Jankowski added that it was "waste management" and not "waste treatment". He is storing it not treating it.

Anderson asked if section 117.602 might apply which makes reference to silos? Anderson further asked Blakeslee if MDEQ only allows storage of septage for 6 months? Blakeslee stated that it did. Atkinson asked what would happen if we had a long winter and the ground was still frozen after

6 months? Blakeslee replied that if the ground was frozen after 6 months then he would have to haul it somewhere, but he has never seen the ground frozen for 6 months. Pat McGuire added that farmland is not like residential land or parking lots that freeze during the winter. He stated further that because of the tilling of the snow cover, soil and biological action that the ground freezes later and thaws sooner.

Chair Lein asked if freeze weight limits impact hauling to TC in the winter? Blakeslee stated that it would and he would have to use smaller trucks, which would cost more.

Llewellyn pointed out that farm animals generate waste on a farm. Chair Lein asked does it matter what animal it comes from?

Atkinson stated she believes that Blakeslee is operating a commercial enterprise on Ag zoned land that is prohibited under section 117.603. Chair Lein replied that he feels there is no commercial enterprise in storing the septage over the winter so that it could be distributed to area farmers for free.

Anderson asked: if a farmer allowed Gmoser to mix the septage with the manure that he accumulates in his silo, would that be allowed for later farmland distribution? Atkinson replied that that activity probably would be approved.

Mike Paradis replied that Mike Gmoser is a farmer. You are punishing Gmoser because he has two businesses, one is commercial and one is farming. Lein added that he works in two businesses and hopes he does not get penalized in one business because he also works in another.

Glenn Paradis stated all farms are commercial enterprises whether it is cows, cherries or strawberries; we do it for the money. We may be zoned Ag but we do it to make money.

Jankowski stated that this was an advertised public hearing and that no opposition came forth but that many farmers came forth supporting the silo. Atkinson replied that the ZBA represents the township residents and interprets the ordinances regardless of opposition or support. Anderson added that the issue is whether the activity is agriculture or not agriculture.

Llewellyn asked if we should consult with the township attorneys?

Chair Lein stated that he spoke to people who have talked to the attorneys and that the township attorney did not have an opinion regarding the issue. ZA Weinzapfel also said the same.

Jankowski asked Atkinson if her opposition was related to the matter of human waste versus animal waste? Atkinson replied that was not the issue, it was whether the activity was commercial or agriculture. She stated further that it dilutes the ordinance if you allow any activity just because it is zoned Ag land. Jankowski replied that he felt that in the past Blakeslee could apply the septage to farmland 12 months a year but due to new MDEQ regulations that he is now forced to store the septage until it can be applied. So it is just a matter of storage to delay application of septage. He further stated that he believed that the commercial activity ended after the pump out and that storing the product, for later injection as fertilizer, was Ag activity. Atkinson asked but this is not the RIGHT TO FARM? Lein and Anderson conceded that it did not fall under the RIGHT TO FARM ACT. Bryant added that the only suitable property for the structure is zoned agricultural, this would not be suitable for other zonings and if our Township does not allow for that then there is nowhere it could be placed.

Anderson stated that the precedent set here would only be related to this process and product.

Pat McGuire stated not get too hung up on the RIGHT TO FARM ACT. He stated that that Act only covers about 65% of what I do. He stated further that the ZA made a decision to deny approval and advised going to the ZBA. ZA Weinzapfel replied that info received from the State Attorney General's office indicated that the RTF did not apply here. Pat McGuire stated that the process only involves storage of the septage until it could be spread later. Chair Lein replied that the ZA made the proper decision and it was up to the ZBA to interpret the ordinance.

Anderson added that he understands the ZA's position but that he sees the process as agricultural activity and a benefit to the community.

Chair Lein asked if anyone wanted to make a motion regarding this matter. Anderson replied that he would make a motion to overturn the ZA's decision and approve the structure. ZA Weinzapfel asked for an ordinance citation supporting the motion? Anderson replied section 117.601B stating that the

section allows all buildings connected with farming and that he sees the storage and later injection on farmland as an agricultural process of fertilization. Jankowski seconded the motion.

Chair Lein stated that he would conduct a roll call vote:

Bryant stated he supports the motion and cited section 117.601B.

Jankowski stated he supports the motion and cited section 117.601B.

Anderson stated he supports the motion and cited section 117.601B.

Llewellyn stated he supports the motion and cited section 117.601B.

Atkinson stated she opposes the motion and cited section 117.603 that the structure is a commercial or business enterprise.

Chair Lein stated he supports the motion citing section 117.603 and also 117.601 that this entire process is on Ag land and will be a benefit to the community. I found the information from the health department helpful. I see this as a farming activity and not as a commercial enterprise.

Secretary Jankowski stated that the vote was 5 Yea, 1 Nay, Motion carried.

Chair Lein stated that the hearing is concluded and asked for a motion to adjourn. Motion made by Jankowski, second by Llewellyn. All in favor. None opposed. Motion carried.

Meeting adjourned at 8:41 P.M.

Respectfully Submitted,
Adam Jankowski
ZBA Secretary

Note: These minutes are UNAPPROVED until APPROVED by the ZBA at its next meeting. Corrections, additions or deletions will be noted in the minutes of that meeting.

