

## Westfield Township Zoning Commission Minutes

October 9, 2012

The meeting was called to order by Chairman Sturdevant at 7:32 pm. Members in attendance: Jill Kemp, Scott Anderson, Greg Brezina, Sue Brewer, Heather Sturdevant and Zoning Secretary- Sherry Clarkson. Member absent: Dennis Hoops. Guests in attendance: Gary Harris and Matt Witmer.

### North Coast Soccer

Information was presented to the board last month. Chairman Sturdevant was absent and in her absence along with several members absent, it was requested that this information be tabled until our October meeting. It was also requested that more information be provided at the October meeting. Chairman Sturdevant advised that Bill Thorne met with the trustees earlier to discuss North Coast Soccer prior to the September meeting. Chairman Sturdevant advised that information was just submitted today. Chairman Sturdevant advised that she has some concerns, as a lot of things on the plan do not comply. How can this be approved as built and/or not built and in the future not have other individuals do the same thing and come before the board and state, "You did this for the soccer field, you need to do this for us too, and setting a precedence." Chairman Sturdevant advised she called Bill Thorne because she had questions, as well as the rest of the board, and North Coast Soccer has been difficult to deal with from the beginning. Upon talking to Bill, he advised this wasn't a typical site plan review; this is a site plan as built which we would be approving. He advised we need to approve this, because they cannot prove that there was or wasn't a site plan approved way back when Gregoire's owned it which was prior to when Willy & Sweeney's owned part of it. It was noted we cannot prove that they did not follow the restrictions going way back in time. We can't look to the fact that they didn't comply with the BZA because this is two separate issues and in court you cannot bring the two together – (zoning commission & board of zoning appeals). And if we cannot prove this and we took to court and requested a court mediator site plan review (zoning inspector asked this) since Willy and Sweeney hired an attorney back then, it was noted that we would lose. We cannot prove that this wasn't in compliance back in the 90's when this started to be used for soccer. And we cannot hold restrictions against Gregoire's or Willy & Sweeney, as they should be grandfathered. We cannot prove when trees and/or parking spots/lots appeared. Chairman Sturdevant advised that is no variances were granted, wouldn't this reflect they were not in compliance? Bill Thorne advised that if this information was approved in the original site plan, variances would not have been applied for. They are saying there was a site plan and it was adhered to and it was before they were in business.

It was noted by Jill Kemp, she may have information at home and she will check. There was discussion as to who sat on the board way back when this information was brought forward. Jill Kemp and Scott Anderson discussed separately as to who may have sat on the board back when this was brought forward. (It was noted that Wayne, Scott, Jill, Dave Riedel and Lorn Mahoney may have sat on the board when this was presented). Chairman Sturdevant asked that if anyone has information to bring this forward at the next meeting.

The most we can do is put it off and then get information to Bill Thorne. We will have to hold a special meeting. This will allow you time to go through your notes. Chairman Sturdevant advised that she is uncomfortable with this, what is to stop someone in the future from doing the same thing and not comply and when we go to shut it down, they will advise that we did the same thing for North Coast Soccer. We are only looking at the front part, the back half is under the control of BZA. Jill Kemp advised that this occurred to her knowledge back in the late 90's. She started in 96. In discussion it was noted that Stan Fox may have been the zoning inspector back then. It was noted that Jill Kemp replaced Jeff Plummer on the board and this is when soccer came into play. Scott Anderson advised he came in on the board in 1989. It was noted that we should have the minutes in the office and we need to get the information to Bill Thorne. The last site plan goes to 1996, although they are stating there is a plan prior to this. Chairman Sturdevant advised we want to move forward, but there is concern by the board we want to do research, which will take at least a month.

**Chairman Sturdevant asked for a motion to table the North Coast Soccer as built proposed site plan until November 13, 2012 in order for zoning commission to do research to verify that we do not have any other further information on the subject prior to moving forward. Such motion was made by Scott Anderson. A second to the motion was made by Jill Kemp. A roll call was taken: Greg Brezina-aye; Scott Anderson -aye; Jill Kemp-aye; Sue Brewer-aye; Heather Sturdevant-aye. The motion passed. It was noted information will be kept in the zoning inspector's office until the board meets again in November.**

#### September 11, 2012 Meeting Minutes

The meeting minutes were emailed along with a copy placed before board members. Chairman Sturdevant asked members for any changes/corrections. Scott Anderson advised the date on the second page should be Wednesday the 18<sup>th</sup>, not Tuesday as typed. Chairman Sturdevant asked for any other corrections/changes. **There being none she asked for a motion to approve the minutes with the changes. A motion was made by Scott Anderson to approve the minutes with the change made. A second to the motion was made by Greg Brezina. A roll call was taken: Jill Kemp-abstain; Scott Anderson-aye; Greg Brezina-aye; Sue Brewer-aye and Heather Sturdevant-abstain. The motion passed.**

#### Training Session

Chairman Sturdevant advised we have a training session coming up on October 17<sup>th</sup> will Bill Thorne at 7:30 pm. Chairman Sturdevant advised she has not received any questions from anyone to date, with the exception of one question from Lee Evans. Chairman Sturdevant did receive a call from York Township in asking if the training session was for zoning commission members and board of zoning appeals members. There was some discussion regarding canceling the session. Bill advised we can plan on moving forward even if our board members attend. Chairman Sturdevant advised she will go through the training materials and come up with some questions. It was noted that circumstances always come up when you are working with something. Scott Anderson asked the question of "How do you categorize a nuisance?" It was noted that this is a good question to ask. Chairman Sturdevant asked members to email her questions.

### Update with Wind Energy Systems

The Trustees have our information and were going through it. The Planning Services is presently creating a document and working with Hinckley Township and the Prosecutor's office. This document will be for the entire county and should be ready by the beginning of October. The Trustees have decided to keep the public hearing process open until the document comes through. Once it arrives, it will be approved and used as Model language for the whole county. The Trustees can then take this document and create language specific for our township. It was noted that the reason the Zoning Commission exists is a check and balance system for the township. It was noted when the document comes through the trustees can create their own document and it does not go through our board. It was noted by Gary Harris that their thought was to combine the two documents into one for the township. Bill Thorne advised that if Hinckley puts in something that we do not want, we do not have to keep as a township. It was noted that the Zoning board worked months and months on this and then we gave to the Trustees. By taking what Hinckley has, this is a "slap in the face" to our board. It was noted when information comes back, it should be brought before our board to review. This is the same thing being done with wood fired boilers. We worked with the Prosecutor's office and then turned it over to the Trustees. The Trustees looked at it and then sent to the Prosecutors office, and then Mr. Falk from the Prosecutor's office tore it apart. This is doing double work. Chairman Sturdevant noted that in the Trustees' minutes they voted to accept the document and revise it to fit the township, this is "skirting" the process, and not including the board. I know you want the best for the interest of time, but this document which would be created will have never gone through the Planning Commission and we firmly believe this is "skirting" the system; as the Zoning Board along with the Planning Commission will have never looked at the document and provided input. Even if the Planning Commission reviewed it in its entirety for Hinckley, they will not have reviewed it with your changes. Scott Anderson advised this is just cause for misrepresentation. Even if you combine the two documents and/or take our document and add item to it, it should still be sent back to us. Chairman Sturdevant advised you need to review your minutes. Ron made a motion to close the public hearing, deny what we sent you and send back to us once you got the new language and have us develop it and resubmit to you. That was Ron's motion. Gary Harris asked what meeting. Chairman Sturdevant advised it was in the September. That was what Ron proposed, then Jim stopped and said "Wait a minute, we have been working on this a long time, so why don't we keep public hearing open wait until document comes in and then vote on document in the interest of time, since it has already been approved by the Planning Commission, we can just tailor it to us." Chairman Sturdevant advised that is what you voted on. Your motion was turned down or revoked and the new motion was set forth. I don't think that you meant to do something like this. Gary Harris, advised that they just wanted to move things along, not destroy everything the zoning commission did.

Chairman Sturdevant advised in all honesty the Prosecutor's office and the Planning Commission have been working on something for 3 years and it just isn't getting done; so we undertook this project to get it done. It is the understanding of the zoning commission that this is Hinckley's work not ours, and until we see the document we do not know. Even if you make changes, it needs to go back through the system. The zoning board feels that we put together good information and changes were made via the Prosecutor's office advice. It was noted that the Zoning Board does not feel comfortable with what is going on.

## Outdoor Wood Fired Boilers

We submitted information based on information received from the Planning Commission and Prosecutor's office. This was sent to the Trustees for action. The trustees looked at it, sent it back to the Prosecutor's office and a Mr. Falk reviewed it and "ripped it up". We never received information from the Prosecutor's prior to being advised by Bill Thorne that this is a real hard thing to deal with on a zoning stand front. It was noted that information was then sent to the Trustees after we submitted it to you, in which Mr. Falk addressed. This is a letter dated August 7<sup>th</sup>. Re: Outdoor Wood-fired boilers; section 606, subsection 23

As you may recall, you requested that this office review the above mentioned proposed text amendment. Proposed sections are underlined. My comments follow:

### *Article VI, Conditional Zoning Certificate*

#### *1. Section 606 Specific Supplementary Conditions*

##### *A. Specific Conditions:*

*23. Outdoor wood fired boilers shall be considered a conditional use in the Rural Residential and Local Commercial District only on lots equal to or greater than three (3) acres. Only one (1) OWB shall be permitted on any lot or parcel in those specified districts. A zoning certificate is required for all OWB's.*

*a. OWB's shall be located in the rear yard only*

*Comments: Limiting OWB's to the rear yard may be overly restrictive. Consider permitting them in the rear and side yards. (Zoning Board Comments: This is something we talked about; these systems have the potential to be nasty for neighbors. They have the potential to be a nuisance to the property owner themselves! There is a cloud of smoke. If you restrict to rear yard, you like to think that it goes across yards, not in houses! We would like to think this, but sometimes it doesn't. This is our justifiable reason. Do you want to change this? The board's feelings are "no". We as a township want to minimize how many people are going to suffer. By placing in rear yard, it is easier. This is why they are not in our Commercial area, due to smoke. This is the best way the board feels it can be handled. We may have one problem come up, but they would have to go for a variance due to lot lay out.)*

*b. OWB's shall be located not less than two hundred (200) feet from all property lines.*

*c. OWB's shall be located not less than fifteen (15) ft. from the principal building or any accessory structure*

*Comments: Please indicate the unit of measure – e.g. fifteen feet moreover, what is the purpose of fifteen (15) foot buffer? Is there a safety purpose? If so, you have documented this?*

Board Discussion: Yes, safety purpose...These are huge boilers which can cause a fire, sparks can fly out of them and it is a safety concern. 23c. should have feet added after 15.

d. Fuels shall be limited to seasoned hardwoods, corncobs or woodchips.

*Comments: This provision is not a land use control. It is this Office's opinion, that you may restrict the types of fuel to those recommended or in conformance with the manufacturer's instructions. In addition, based on limited case law, it is our opinion that you may limit the types of fuel to those as approved by the Environmental Protection Agency for such structures. However, we do not feel the Township may impose stricter requirements.*

**(Board Comments: We checked with the EPA and they do not have anything. Regarding the Manufacturer having information, every manufacturer has different rules, this is why we placed something in, we can change to manufacturer's instructions, The zoning board needs to have Manufacturer's regulations/instructions on file, so when Matt goes out on a problem, we have to add into information so if Matt needs to address, it needs to be in the file at the time of filing for a zoning certificate. In all honesty-this is a conditional use, so the BZA would require (We need to obtain copy of manufacturer's instructions, at time of zoning certificate issuance)**

e. The stack height of any OWB shall be no less than twenty (2) feet or at least two (2) feet above the peak of any structure within three hundred (300) feet, whichever is greater.

f. OWB's shall be installed, maintained and operated according to the manufacturer's specifications. (Another reason why we need them).

g. OWB's shall not be permitted on steep slopes as defined by the Township Zoning Regulation.

h. No person shall operate or maintain an OWB in such a manner that creates a nuisance as defined by the Township Zoning Resolution.

Comments: I advise rewording to read "By authorizing Outdoor Furnaces, the township is not authorizing a nuisance"

**Board Comments: Under comments, isn't this we just said? Gary Harris advised the only difference can be lawyer language. We feel that our wording is strong. We can add a second sentence: By authorizing Outdoor Wood Fired Boilers, the Township is not authorizing a nuisance." This way we are not losing what we have, but we are also giving the Prosecutor's office what they want.**

i. *Prior to the installation of an OWB, the owner or occupier of the real property where the OWB shall be installed, shall make application to the township on the proper form to include:*

a. *A scaled drawing detailing the location of the OWB. The drawing shall clearly indicate parcel lines, setback distances from the property lines and principal building, proposed stack height, neighboring structures and steep slopes as applicable.*

**Board Comments:** Add within this section, - Add in that the Zoning Board needs to obtain a copy of the manufacturer's instructions of the particular unit.

**B. Definitions:**

1. Nuisance: The unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual trespass or physical invasion to the land.

Comments: We would not recommend defining nuisance for zoning purposes in such a manner as to imply that the Township will prosecute private nuisances. Writing language to the effect that the authorization of OWB's is not intended to authorize a nuisance would be appropriate. A Township should only be involved if a public nuisance is involved and such can be prosecuted whether it is legitimate or illegitimate under zoning.

**Board Comments:** Looks like legal mumbo-jumbo....this is a good one to take to our training session and ask Bill Thorne, what a nuisance is. The board is confused by the verbiage. Isn't zoning to address neighboring disputes, if you are in compliance, there should be no nuisance, this is what zoning's job is. Don't you look at "Burden of Proof?"

2. Steep Slope: Lands having slopes over twelve (12) percent as measured over horizontal distances of fifty (50) feet or more that are not bluffs.

Comment: As an alternative to restricting the placement of OWB's on Steep slopes, consider adding a regulation stating that they may only be placed on flat ground.

**Board Comments:** The board breaks out in laughter. Is flat ground considered as level ground? We need to leave the way we presently have, not regulation of a slope; not all steep slopes can be a nuisance and we have provided a definition (over 12%) What do you consider flat ground? Is our zoning inspector to take a level to the property owner's property? A 60 ft. level, GPS & Transit?

Outdoor Wood Fired Boiler: Any equipment device or apparatus which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat to a principal residential structure or any other site structure on the residential premises. OWB's can also be used to heat domestic hot water.

Comments: Under this definition, an OWB located in the "Local Commercial District" is not an OWB. Please revise your definition accordingly. Also throughout the proposed regulation, you refer to Outdoor Wood Fire Boiler so "OWB's. Please identify this acronym in your definitions section. E.G OWB – An Outdoor Wood Fired Boiler.

**Board Comments:** We can do this. Some of our properties are dual zoned; we want this specifically for residential, not commercial. Our local commercial district allows for residences they may not be aware of this.

(The zoning inspector came forth with a map from 2003 regarding North Coast Soccer in the file. It was noted that a copy would be made and given to Bill Thorne.) Will be discussed in Open Discussion later.

## II. General Comments

*In regard to the above proposed regulation my main concern is enforceability if challenged A conditional is by definition a use not necessarily inconsistent with the zoning objectives of a district, but whose nature is such that compatibility in a particular area depends upon surrounding circumstances. Making OWB's, a heating system, a conditional does not seem to fall within the parameters of what a conditional is to be used for. Clearly such a system is in reality an accessory use, a heating system, which can be used in all types of structures.*

*Holding such to be accessory uses however does not mean restrictions cannot be applied. Restrictions should however, relate to at least a perceived problem, to be addressed by the restriction.*

*Moreover, as of this date the only problem regarding these devices raised to us is the possibility of their fumes causing problems for neighboring structures and uses. Thus, regulating the stack height would have a legitimate basis. Your board may be aware of issues that have not been brought to our attention and therefore have a basis for restriction dealing with:*

- *The limit to certain zones*
- *The limit to one per lot*
- *The limit to the rear yard only*

*Finally, the Township seeks to regulate the stack heights, setback and location of OWB's. To this end, the township should maintain a file containing the research they have conducted, the documentation they have reviewed, and the training they have had to develop these regulations.*

**Board Comments: We have done the above and this is why the BZA will determine the appropriate stack height; which will be dependent upon the neighbors. This will be treated as a conditional use. With reference to the second paragraph starting with holding such to be accessory.....we would, but this would be a problem for everybody; we have given the proper parameters to follow.**

**Chairman Sturdevant made a motion of what we have been discussing tonight to be tabled until further discussion and questions be answered by Bill Thorne at the October 17<sup>th</sup> meeting. A second to the motion was made by Jill Kemp. A roll call was taken: Jill Kemp-aye; Scott Anderson-aye; Sue Brewer-aye; Greg Brezina -aye; Heather Sturdevant-aye. All were in favor.**

## Medina County Dept. of Planning Services Informal Review of Proposed Amendments to Sections 306 and 1102 of the Westfield Township Zoning Resolution

A letter was submitted by Rob Henwood and read by Heather Sturdevant. With reference to the information read, the board requested a formal review and an informal review was done by the Planning Commission. With reference to questions regarding trade school or training facility it was noted that we should obtain the definition of both for our regulations. Jill Kemp advised that we should only allow for training facilities in conjunction with businesses located to the area. Trade schools could

possibly provide something that would not necessarily be wanted in the area. Chairman Sturdevant read the purpose statement provided and advised we may need to add (after I-71) referring to the letter, as well as local traffic.....or possibly services targeted to local traffic. The board advised we may need a definition of local traffic. The board asked that this be "tabled" until our next meeting and possibly talk more in depth to Bill Thorne regarding our current zoning before discussing any further.

Open Discussion North Coast Soccer

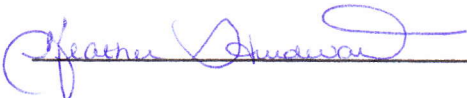
The board looked at the 2003 map. In looking at both maps it shows what was there at each date. It looks like Swaney & Willy were still involved. Both documents show relevancy for Bill Thorne of what was added in between dates. In looking at the site plan you see parking down the sides of Westfield ditch; 2 lane asphalt drive – campground; 50 ft. stone parking. Now in 2003 no parking is shown, has been added since. In looking at the maps, it justifies what has been added in between time frames. All documents should be taken to Bill to review. We should have Bill Thorne, a trustee, a zoning commission member and Matt in attendance to show and discuss.

With no further business, Chairman Sturdevant asked for a motion to adjourn the meeting. Such motion was made by Jill Kemp and a second to the motion was made by Scott Anderson. The meeting was adjourned at 9:00 pm.

Respectfully submitted,

Sherry Clarkson, Zoning Secretary

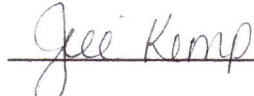
\_\_\_\_\_  
Heather Sturdevant, Chairman



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Date

11-13-2012

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Jill Kemp, Co-Chairman



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Date

11-13-2012

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Scott Anderson, Member

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Date

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Sue Brewer, Member



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Date

11/13/12

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Greg Brezina, Member

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Date