

**MARION TOWNSHIP  
BOARD OF TRUSTEES  
SPECIAL MEETING  
JANUARY 17, 2019  
2:00 pm**

**MEMBERS PRESENT:** Les Andersen, Tammy Beal, Greg Durbin, Dan Lowe, Scott Lloyd, and Bob Hanvey

**MEMBERS ABSENT:** Duane Stokes

**OTHERS PRESENT:** Dave Hamann, Attorney Mike Kehoe, Planner John Enos

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**CALL TO ORDER**

Bob Hanvey called the meeting to order at 2:03 pm.

**PLEDGE OF ALLEGIANCE**

**BOARD MEMBERS PRESENT**

The board members introduced themselves.

**CALL TO THE PUBLIC**

Tim Ryan, 459 E. Davis stated that the comments made at the December 3, 2018 ZBA meeting about him were inaccurate. He said he was accused of harassing Eddie and had a petition against him, Mr. Ryan stated that neither of those comments were true.

**APPROVAL OF AGENDA**

Les Andersen motioned to approve the agenda. Scott Lloyd seconded. **Motion carried.**

**Review Procedure of the Howell Landscaping ZBA Meeting and Determine Next Action**

Supervisor Hanvey said that at the Dec. 3 ZBA they were asked to interpret land use. He wanted to know how they got to a definition of a Landscaping Operation instead.

John Enos said that the ZBA is our last line of defense they can determine dimensional requirements and interpret our ordinance. We asked the ZBA to interpret this specific use from Eddies to the current Howell Landscaping. They went back and forth and crafted some language for a Landscaping Nursery Operation definition.

Mike Kehoe said it became clear to him what is and isn't a Landscaping Nursery Operation.

Dave Hamann stated that Eddies was never a special use permit, it was a use permitted by right.

Les Andersen said that John's first comment was that a trucking operation was the land use at Howell Landscaping.

John said that the operation has evolved into more than a use permitted by right.

Dan Lowe stated that he has 4-5 large trucks and that this has gotten way out of hand. Eddie did landscaping with nursery plants with one truck at a time in small quantities.

Les asked shouldn't the ZBA just use the language we have and not craft new language?

John says that since we don't have a definition then ZBA got more into defining the Landscaping Nursery Operation saying that you must grow 51% of the plants on site.

Mike said that the ZBA didn't have enough information given to them to define a Trucking Operation. The township is in a better position now because there is a definition of a Landscaping Nursery Operation. ZBA does have the authority to draft language.

John said that we have to allow language for every use out there. We don't have a Trucking Operation language but we have Storage Facilities for sand, gravel stone etc.

Bob asked if the ZBA has the authority to create text.

Dave said that they should have used the language that is there.

Bob said that whether it's a Trucking Operation or a Landscaping Nursery Operation, he thought they would tell us what Howell Landscaping was. How can they create language without going thru the County Planning Commission and publishing it?

John said that the Zoning Enabling Act gives the ZBA the authority to craft language and that is how it has to be enforced.

Dave explained that our attorney has looked at our new Landscape Nursery Operation language. He was asked to read the Landscape Nursery Operation definition from the approved ZBA minutes. It reads-

**A parcel, area, space, building or structure, or combination thereof, used chiefly for the storage, wholesale sale, or retail sale, of live trees, shrubs and plants primarily but not exclusively grown onsite. Incidental or secondary items directly related to a nursery or greenhouse may also be sold, including but not limited to pots, decorations, mulch, stone, rocks, pavers, edging materials, etc. The area and amount of such structures, equipment, vehicle storage and other areas dedicated to the use shall be consistent with the residential character of the area and shall not adversely impact neighboring properties.**

**Using the term "Operations" as part of the permitted use we would conclude are secondary and incidental uses associated with the nursery. This could include equipment used to dig up or plant trees and shrubs, mulch and soil to assist in planting and selling stones and mulch for larger landscape projects and other related uses associated with the primary use which is a nursery.**

Les asked what our next step is, have the ZBA use this language or create a Trucking Operation definition.

Greg stated that we haven't established that he is running a trucking operation.

Dan said that is exactly what he is running there.

Les said if you prove the trucks are not incidental to the landscaping nursery operation.

John feels that trucks are needed in a landscaping nursery operation, nursery is what we should look at and if they are growing a certain percent of the product. If that doesn't fit the language that the ZBA created then they are in violation of the ordinance.

Bob said he thinks that the ZBA should have said that this is a trucking operation or no it is not a trucking operation, they didn't interpret what the land use is, they created new language.

John said they went in the back door by creating this definition, what is our next step Mike?

Mike said we could have another meeting and specifically ask them if it is a trucking operation or a landscaping nursery operation, any new building must be incidental to the business.

Bob asked if the ZBA can interpret what the principle use of the property is.

Mike said yes, if they go out to monitor the site or the Zoning Administrator could monitor what occurs on the property, if it doesn't follow what the ZBA says then it will be a violation.

John stated that it would be taken to the Board of Trustees as a show cause hearing, the Board would make a decision, if the Board turns them down they can appeal to the ZBA. If the ZBA agrees with the Board then it would go to Circuit Court.

Bob asked which language controls it right now.

Mike responded that the new language that we presently have.

Les stated that he hopes that no permits are granted for a new building until the ZBA gets the language fixed up.

Dave stated that when we adopt a new ordinance then the existing use goes under pre-existing non-conforming.

### **CALL TO THE PUBLIC**

Tim Ryan, 459 E. Davis Road, If you look up AJR on FaceBook he picks up product at Unilock, if you read the comments then you will see what he does. Eddies was not a conforming use but this is an expansion of Eddies. Expansion of a non-conforming use should have to go through a site plan.

Mike replied that Eddies was a legal use based on the records that he has seen from the township.

Les asked if he could expand without coming to us.

Mike replied yes, certain expansions are allowed without coming to the township, as long as he stays within the boundaries of his property.

Susan Schooley, 459 E. Davis Road, stated that the ZBA did offer an interpretation of explaining use by right. They made it clear that the preamble point to use by rights point to Ag based, that is plants are primary use and the rest is secondary. His primary use is trucking, he is registered through the state as a trucking operation and he is licensed through the state as a trucking operation. Rob stated at that meeting that he picked up product at one location and takes it to another location. It shouldn't be that hard.

Dan stated that he doesn't want him to get a land use permit until we get this settled.

### **ADJOURNMENT**

Les Andersen motioned to adjourn at 3:45 pm. Greg Durbin seconded. **Motion carried.**

Submitted by: Tammy Beal

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Tammy L. Beal, Township Clerk      Date

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Robert W. Hanvey, Township Supervisor      Date