

Submitted by: Tammy Beal

Approved: \_\_\_\_\_

**MARION TOWNSHIP  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
AUGUST 8, 2022**

**MEMBERS PRESENT:** Larry Fillinger, Larry Grunn, Dan Lowe, and Diane Bockhausen, Jean Root

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Dave Hamann, Zoning Administrator, Linda Manson-Dempsey, Ed Galubensky

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**CALL TO ORDER**

Larry Fillinger called the meeting to order at 7:00 p.m. The meeting is also available online.

**MEMBERS PRESENT**

The members of the Zoning Board of Appeals introduced themselves.

**APPROVAL OF AGENDA**

Larry Grunn motioned to approve the agenda; Diane Bockhausen seconded. **Motion carried.**

**APPROVAL OF MINUTES**

Larry Fillinger noted that the start time in the minutes should read 7:00p.m. not 7:30 p.m. Diane Bockhausen motioned to approve the amended July 11, 2022 Regular Meeting minutes as amended, Larry Grunn seconded. Jean Root abstained; **Motion carried.**

**CALL TO THE PUBLIC**

No response.

**NEW BUSINESS**

ZBA Case #02-22 Zlatko Blazevski c/o Penelope Roy of 223 Marion Meadows Drive Seeking Administrative Review & Interpretation of Section 8.02B, C, E; Section 15.06; & Section 3.02 Definition of 'Roadside Stand' & 'Farm Market' 4710-11-402-005,

Attorney Scott Brock outlined the letter that he sent to the Board defining Roadside Stand vs Farmers Market. If it has a structure and sells seasonal fruits and vegetables, then it is a commercial business. The Special Land Use process was eliminated because the Zoning Administrator said that it is a seasonal operation. In the January 2010 GAMP they stopped using Roadside Stand and said that Farmer's Markets include Roadside Stands. The building department says qualifying Roadside Stands are exempt from electrical and other permits, but Farmer's Markets must go through the Land Use process, So the question is what is a Roadside Stand and what is a Farmer's Market.

Attorney John Gormley asked if Attorney Scott Brock had given any thought to whether the 2022 GAMP supersedes the zoning ordinance's special use permit requirements for Farmer's Markets. Attorney Scott Brock said that it has not been challenged yet.

Property Owner Clifford John Turner said that he has Roadside stands everywhere and has never had to get a permit. He has stands in Brighton, Howell, Hamburg and Brighton Township; all he has to do is ask permission, He asked Marion Township before he purchased the property at 2160 Pinckney Road, and he had no problem. The only thing that he overlooked was permission from the Drain Commission before he started moving dirt. Once he realized that he needed a permit he went and secured that permit and put up a silt fence. MDARD (Department of Agriculture and Rural Development) was notified and they came out to the sight, they said he met all criteria for the Right to Farm as long as 50% of the offered products are produced by the owner. He went on to say that he is not going to do a year-round stand. His main crop is sweet corn and secondary crop is pumpkins,

Attorney John Gormley asked how many acres it is, how big is the building, opening and closing dates, hours of operation, and the name of the business.

Mr. Turner said it is on 8 acres, the building is 24 x 30, they will be open around June 1<sup>st</sup> through the day after Halloween. They are open from 9am to 7 pm and have an honor system box after that. The name is Bentley Lake Farm Market or Bentley Lake Farms LLC.

Jean Root asked about restrooms, Mr. Turner replied that they have a porta potty for the employees.

Attorney John Gormley asked about the existing driveway and how many signs does he have and are the non-farm residents at least 165' away?

Mr. Turner said that they are using the driveways that were already there and the only permanent sign is on the building and there is a temporary sign out front. The non-farm residents are more than 165' away.

Mr. Turner was asked if he owns the property and he said yes, he is purchasing it on a land contract and the Purvis' are renting the house from him.

One concerned citizen got up and spoke against the business, four residents got up and spoke in favor of it.

Chairman Larry Fillinger closed the public portion of the meeting at 7:35 p.m.

Diane Bockhausen made a motion at 7:36 p.m. to go into a closed session to discuss the written legal opinion of the attorney, seconded by Dan Lowe. Roll call vote: Lowe, Bockhausen, Grunn, Fillinger, and Root-all yes. **Motion carried.**

Diane Bockhausen made a motion to come out of closed session at 8:12 p.m. Larry Grunn seconded. **Motion carried.**

Chairman Larry Fillinger asked the Board for interpretation of Section 8.02 B, C, E; Section 15.06; Section 17.14.

Jean Root said that she believes that it is a use permitted by right, that a Roadside Stand includes nursery and crops, and the owner is well within his rights.

Larry Fillinger said that the current GAAMP's overrides the special use permit, and the owner has the right to be there.

Larry Grunn stated that a structure whether it is a permanent building or a tent fit in the Roadside Stand and the GAAMP's trump the Special Use.

Diane Bockhausen agreed that GAAMP's protects the private party, Department of Agriculture examined the business and found it to completely comply with the Right to Farm.

Dan Lowe agreed with everyone and stated that crop operations fall under and are protected by GAAMP.

Attorney John Gormley suggested the ZBA consider a motion:

The Marion Township Zoning Board of Appeals concludes that the Zoning Administrator's decision was correct, and this is a Roadside Stand under the Zoning Ordinance, which is permitted at this location. However, if it is not a Roadside Stand, then the ZBA concludes that use of the property conforms to the Right to Farm Act ("RTF Act") and GAAMPS as a Farmer's Market.

- 1) 8.02 (E) is superseded by RTF Act and GAAMPS and the Township cannot enforce the regulation for a Special Use Permit for a Farmer's Market.
- 2) 8.02 (B) the RTF Act and GAAMPS now makes Farmer's Markets a use of right in all zoning districts.
- 3) 8.02 (C) accessory uses are inapplicable to the analysis.
- 4) Section 17.14 is superseded by the RTF Act GAAMPS, Special Use Permits are not enforceable on Right to Farm Act and GAAMPS.
- 5) The applicant must comply with the sign section 15.06 beyond one sign, which he has authority to have under the RTF Act and GAAMPS.

Chairman Larry Fillinger moved to adopt the motion to interpret the Zoning Ordinance as stated by Attorney John Gormley, Diane Bockhausen seconded. Roll call vote: Lowe, Bockhausen, Grunn, Fillinger, Root-all yes.

**Motion carried.**

#### **UNFINISHED BUSINESS:**

Chairman Larry Fillinger asked if the Board wanted to put restrictions on the amount of time that members of the audience can speak, maybe limit it to 3, 4 or 5 minutes?

Jean Root said that we should be consistent, Diane Bockhausen said that it's not really significant as the Board only meets 2 to 3 times a year, Larry Grunn thinks they should be limited to 3 minutes.

Chairman Larry Fillinger asked if the Board wanted to leave the meeting start time at 7p.m. or change it to 7:30 p.m. Or even 6:30 p.m.? He would prefer to decide when the regular Board members are all there.

Zoning Administrator Dave Hamann asked the Attorney if the Board should meet soon to approve these minutes? Attorney John Gormley said yes, even if there is not a case scheduled the Board should meet to approve these minutes. It was decided to have the Zoning Board of Appeals next meeting be Monday, August 29, 2022 at 7:00 p.m.

#### **Call to the Public**

Les Andersen reported that the MTA has an article on how to run an efficient meeting by having a speaking time limit, which you can't give your time to someone else. Supervisor is in charge of the meeting and no debates between residents or Board members. He will be bringing a draft policy to the Regular Board meeting on Thursday night.

Diane Bockhausen made a motion at 8:45 p.m. to adjourn the meeting, seconded by Dan Lowe. **Motion carried.**