

Fruitland Township Zoning Board of Appeals Minutes of July 8, 2013



Fruitland Township
White River Light Station Museum

CALLED TO ORDER: 6:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman John Warner, Board members Penny Larson, Brian Lernowich, Eileen Stoffan and Alternate Judy Marcinkowski.

NOT PRESENT: Clarence Gaertner; resigned.

ALSO PRESENT: Attorney Kevin Even, Zoning Administrator Sandel, Recording Secretary Sally Dion and 21 interested parties.

AGENDA: Motion by Penny Larson, second from Brian Lernowich, **ADOPTED**, to amend the July 8, 2013 Zoning Board of Appeals agenda by adding the nomination and election of vice chairperson to replace Clarence Gaertner and accept as amended.

5 AYES

MINUTES: Motion by Penny Larson, second from Eileen Stoffan, **ADOPTED**, to accept the April 8, 2013 Zoning Board of Appeals as presented.

5 AYES

NOMINATIONS/ELECTIONS: Motion by Penny Larson, second from Eileen Stoffan, **ADOPTED**, to nominate and elect Brian Lernowich as Vice Chairperson to replace Clarence Gaertner for the Zoning Board of Appeals year ending April 2014.

5 AYES

APPEAL – Michael Brewer, 4483 Park Street – Attorney Even

CLOSED SESSION

Motion by Judy Marcinkowski, second from Penny Larson, **ADOPTED**, to go into closed session at 6:08 p.m.

Roll Call Vote: Eileen Stoffan **AYE**, Brian Lernowich **AYE**, Penny Larson **AYE**, Judy Marcinkowski **AYE**, John Warner **AYE**

OPEN SESSION Back into open session at 6:15 p.m.

Motion by Eileen Stoffan, second from Brian Lernowich, **ADOPTED**, to reconsider the Application for Michael Brewer, 4483 Park Street, Whitehall, Michigan, 61-06-560-000-0019-00, originally heard at the April 8, 2013 meeting at the August 12, 2013 meeting.

5 AYES

Chairman Warner explained the purpose and function of the Zoning Board of Appeals.

Correspondence:

None

Public Hearing opened at 6:17 p.m.

3897 Scenic Drive

61-06-024-400-0014-00

Stephen B. Nagengast, request an appeal of the Zoning Administrator’s decision regarding his complaint received April 19, 2013, in reference to planted hemlock trees acting as a screen, steel T posts located west of the top of the bluff and boat storage on the beach on the above property owned by Roger Sorokin.

Roger Sorokin, request an appeal of the Zoning Administrator’s decision regarding the complaint received April 19, 2013, from Stephen B. Nagengast, in reference to planted hemlock trees acting as a screen.

Both appeals are according to the following article:

Article XIX, Section 19.07 A., which states that Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department or board of the Township, or bureau of the state or local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board. Applications for appeals shall be filed within five (5) days after the date of the decision which is the basis of the appeal. The appellant must file with the Zoning Administrator a notice of appeal specifying the nature and grounds for the appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

Chairperson Warner asks Zoning Administrator Sandel if he has any comment.

Zoning Administrator Sandel references his May 6, 2013 letter (see attached) ruling on the following issues: 1) Hemlock trees acting as a screen, 2) Steel “T” fence posts west of the top of the bluff, and 3) Boat storage on the beach. He explains this contention between neighbors has been ongoing for a couple of years. He has given deposition as there is a court date set for this in August.

Chairperson Warner asks who is here to represent the parties tonight. Mr. Sorokin answers he is. Chairperson Warner asks if anyone is here to represent Mr. Nagengast, no one was. That being the case Chairperson Warner asked Mr. Sorokin to make his presentation. He requested that Mr. Sorokin step up to podium and give his name and address.

Roger Sorokin, 3897 Scenic Drive, he explained that the township approved a snow fence. Mr. Nagengast appealed the snow fence and lost that appeal. Chairperson Warner at that time suggested maybe he only put the post in so he did. The reason for the posts is because the Nagengast steps to the beach come down right at his property, it is to keep them on their own property. The posts were placed prior to any high water ordinance amendment; however, two posts were removed to comply with Zoning Administrator Sandel’s

ruling. Originally all posts were 3 feet; a few were raised to 5 feet for ease of removal during Nagengast negotiations. All posts are currently 3 feet in compliance with Zoning Administrator Sandel's ruling.

Zoning Administrator Sandel approved the boat storage, his opinion is the storage is not subject to section 6.05a (3) (c). Mr. Sorokin does find it interesting that the Nagengast's did not complain about boat storage of their neighbors directly to the north. The Nagengast's also store picnic tables and beach chairs in the same area.

He feels the township ordinance is unclear with no guidelines or advance approvals on what is a screen. He explains the trees were a totally separate project done in November 2012; he did not over expand his approval for the snow fence. He believes township ordinance section 6.04a (7) is unclear, with no guidelines or advance approval. 1) The ordinance conflicts with Michigan court cases decided and appealed that neighbors have no right to a view. 2) Once a fence is established are internal plantings a screen? 3) What is a screen? Is it once of a fence, wall, hedge, berm or combination of more than one? 4) How far off the fence line do internal plantings have to be, 5, 10 or 15 feet to not be considered a screen? 5) How far from the bank do trees have to be to not be considered a screen? 6) Should a tree blocking prying eyes of a view of your neighbor's yard be considered a screen? 7) Are neighbors entitled to a view of Lake Michigan through a neighbor's yard or only their frontage? 8) How tall do trees have to be to be considered a screen? When a tree is 8 feet tall and the neighbor's windows and deck are 20 feet high is it a screen? 9) How many trees have to be planted in a 75 foot fence line to not be considered a screen? 10) How far do trees have to be staggered to not be considered a screen? 11) Should future growth be considered when you do not know the homeowners plans for trimming and controlling growth? Also most homeowners will not own the property when trees mature. 12) Is it fair to have to tell homeowners go plant your trees and we will come out if there is a complaint and rule if it is a screen? 13) Advance guidance and approval of whether trees are screens would eliminate considerable planting and removal expense; avoid disputers, complaints, appeals and lawsuits. Said he tried to get approval for the plantings from the Township in advance. He had Zoning Administrator Sandel come out on May 12, 2013, and at that time gave a verbal opinion that 9 staggered pine trees in the 75 foot fence section would not be considered a screen. He also mentioned he had approved large pine trees on a Lake Michigan bank which were not considered a screen. On May 16, 2012 a plan was submitted to Zoning Administrator Sandel for 8 pine trees (Exhibit A). A call was placed after not receiving feedback and was told by Zoning Administrator Sandel that his superior, Sam St. Amours decision was that the township had spent too much time on the he said/she said feud with Nagengast's. The Sorokin's should proceed with their landscape plan and the outcome would have to be decided in court. On June 5, 2012 a letter was sent to Attorney Even, Sam St. Amour and Don Sandel providing documentation not he said/she said regarding my landscape plan stating we desire privacy from the Nagengast's. No response was received, so my attorney was contacted. His advice was the township had no ordinance on internal plantings and Michigan court cases have decided neighbors have no right to a view, so go ahead and plant. Based on the above information a conservative planting of 6 staggered pine trees 8-10 feet tall were planted in an established 75 foot fence section. Justification pine trees are not a screen, 1) the first pine tree is 16 feet from the bank providing Nagengast's a clear view of Lake Michigan (Exhibit A). The first pine tree is also behind a much larger Nagengast tree at the fence line. The Nagengast tree provides the screen not my tree. 2) The second pine tree is 25 feet from the bank, 9 feet from the first tree and 5 feet from the property line. The tree is also behind the Nagengast screen tree. It does not block their view from the windows, deck or patio doors (Exhibits B & C). 3) The third pine tree is 9 feet from the second tree, is 5 ½ feet from the fence line. It is on the side of the Nagengast house and does not block their view (Exhibit B). 4) The fourth pine tree is 9 feet from the third tree, is 5 ½ feet from the fence line. It is on the side of the Nagengast house and does not block their view (Exhibit B). 5) The Nagengast front view of Lake Michigan includes 18 floor to vaulted ceiling panels of glass and 2 windows on the main floor, 7 windows and a glass door on the walkout level, and 4 windows on a third story addition, none of which are affected by my landscaping (Exhibit D). 6) The Nagengast side view facing me includes 3 windows and a deck with a glass patio door on the main level, 6 windows on the walkout level and 4 windows on a third story addition. Some of the side view over my property may be affected; however, the Nagengast's have no right to view Lake Michigan across my property (Exhibit E). Response to complaint trees and shrubs are dense with immense growth potential. 1)

The township approved all fencing with a permit May 11, 2011. The 6 pine trees were a separate project over 2 ½ years later. They were planted in late November 2012. A separate request was made for these trees in 2012. 2) The 2 hemlocks by the drive entrance are far away from the houses and face empty lots that cannot be built on. The one tree replaced a dead beech tree that was 100 feet tall in the same location in the same time frame. Zoning Administrator Sandel would not even consider them in the complaint. 3) The 2 hemlocks have been discussed in the justification the pine trees are not a screen (Exhibit A). 4) The 2 rose of Sharon's were planted in 1996 and are mature. The 3 lilac bushes were planted in 1996 and are a mature double variety that does not have a large growth pattern. All trees were planted prior to the township ordinance change and are grandfathered. These shrubs were also there prior to the Nagengast's purchasing their home in 2001 (Exhibit A). 5) There are no other plants over the 3 foot fence (Exhibit A). 6) Currently none of my landscaping crosses the property line. The Nagengast's, however, have 4 large linden and maple trees 80 foot or taller that cross my property line (Exhibit B). Both parties legally can trim trees when they cross the fence line. 7) Legal cases cannot be decided on some future event, 5, 10 or 15 years from now nor should township ordinances. The screen decision should be based on what are there now not unknown projected growths and what the homeowner's future maintenance will be. 8) I have no intention of letting the pine trees destroy their other fence landscaping. They will be trimmed and removed when their use full time is over. We have removed 12 overgrown cedar trees from the fence line in the past as well as numerous other overgrown trees and shrubs all over our property.

Briefly talks about list of Nagengast grievances that constitute nuisance, spite and harassment (Exhibit A).

His willingness to negotiate township ruling if the board members support Zoning Administrator Sandel's ruling would suggest the following compromise: 1) Remove one pine tree from the grouping of four. Move the tree to the top of the bank, by the landing, 15 feet from the property line. The trees cannot be refunded. Each tree planted costs \$275.00. Moving the trees with dirt and bark would cost at least \$100.00 per tree. The cost of removal of 2 trees would be \$750.00 and there is no place for them in the landscaping other than on top of the bank where they would provide shade to the deck seating. He asked that the ordinance regarding fences be reviewed by the Planning Commission, the way it is now depending on where your house sits neighbors could have 6' fences where others cannot.

Public Comment:

1. Jane Gardner, 5625 Murray Road, agrees with Mr. Sorokin that the ordinance regarding fences, walls, hedges, berms and screens as well as definitions for each need to be reviewed. The way it is written now makes no sense. Depending on where the houses are located the height for fences, etc. could be different for neighbors. States the intent of the ordinance is to promote harmony, please consider this when making decisions.

Chairperson Warner asked if there was any other comment, hearing none the public hearing was closed.

Public Hearing closed at 6:45 p.m.

Board Comments:

Chairperson Warner asks Zoning Administrator Sandel what section talks about screening, etc. fall under. Zoning Administrator Sandel states Section 6.04a (7).

Board Member Stoffan states to Attorney Even that it was her understanding they are here to decide whether to grant an appeal of the ruling. Attorney Even advises they need to either affirm or reverse Zoning Administrator Sandel's ruling.

Zoning Administrator Sandel refers to the existing definitions for Hedge (A close-set row of bushes, shrubs or small trees, usually with their branches intermingled, forming a barrier contiguous to a boundary line.) and

although vague, Screen (A structure providing enclosure, such as a fence, and a visual barrier between the area enclosed and the adjacent property. A screen may also be a non-structure, consisting of shrubs or other growing materials.). He would most definitely not consider a hedge, does not intertwine, however, believes that screen would apply.

~~John~~ **Chairperson** Warner feels the ordinance is fairly vague on the description of what constitutes a screen and how close plantings can be. It does make the remark that generally the branches are intertwined to be considered a hedge or screen. He does not believe they are intertwined at this time, even though they probably will be someday because that is the nature of conifers and the way they grow, however, he does not believe they are here to debate what will be there in the future it is on what is there at this moment.

Board Member Stoffan states that on May 6, 2013 Zoning Administrator Sandel made a ruling on 3 items. His ruling is kayak storage on the beach was not an issue. The post issue has been taken care of. She visited the property and supports Zoning Administrator Sandel's ruling on the trees.

Board Member Marcinkowski asked about the fence and if it was approved as seasonal or year round. She would think a snow fence would be seasonal. Chairperson Warner states the approval was for year round.

Motion by Eileen Stoffan, second from Penny Larson, **ADOPTED**, to uphold Zoning Administrator Sandel's ruling for 3897 Scenic Drive, 61-06-024-400-0014-00 as written in the May 6, 2013 letter.

Roll Call: Stoffan AYE, Lernowich AYE, Larson AYE, Marcinkowski NAY, and Warner AYE.

Chairman Warner informed the applicant that the kayaks can remain on the beach, the fence posts have been taken care of so the only issue that needs to be taken care of is the trees.

Mr. Sorokin stated the landscaper will not take the trees back. He would like to relocate them 15 feet off the property line. Asks if this would be ok?

Chairperson Warner advised at this point they are not in the position to make recommendations on that. He told him to go to office and discuss with Zoning Administrator Sandel.

Chairperson Warner advised he has up to 30 days to appeal in Circuit Court.

Chairperson Warner states with that he considers this item closed.

Mr. and Mrs. Nagengast attorney asked if his clients were going to be able to make comments. Chairperson Warner advised no because he opened it up for public comment during the public hearing and all those that raised hand were allowed to speak. He asked what time did that happen. Chairperson advised the public hearing opened at 6:17 p.m. and that we always accept public comments from audience in any public hearing that is the purpose of them.

2293 Scenic Drive

61-06-160-000-0004-00

Aurora Loan Services LLC, Owner, David L. Bossenbroek, Attorney, on behalf of Robert Hoogstra, Purchaser under Purchase Agreement dated 4/3/13 request an appeal for the non-conformity caused by foreclosure from the following article:

Article VIa Lake Michigan Shoreline District, Section 6.04a Site Development Standards for Minimum Lot Width and Side Yard Setback.

Public Hearing opened at 7:01 p.m.

Zoning Administrator Sandel explains lot 4 of the C & K Subdivision was previously owned by Mr. Halland. He wanted to split this parcel into 2 buildable parcels, however, to do that he would have to purchase 10' from lot 3 to meet lot width requirements. Because it was a recorded subdivision to do a lot split it has to be approved by the Township Board, which it was. A recorded survey was required; it was recorded with the Muskegon County Register of Deeds, showing where the house was. Then Mr. Halland moved the house from where it was and located it 10 feet from the North line of the North parcel. Then he sold the south parcel. The problem was the bank had a mortgage on the original lot 4, he believes there was release given from the bank for the south parcel to be sold but somehow the other 10' was never added to it. When the bank foreclosed it foreclosed on the original mortgage which included the piece they released plus the other piece but not the 10' because it was never in the mortgage. It took 11 months for the south parcel owner to get it cleared up. Because of this we have 3 parcels, the south parcel which meets zoning requirements, the north parcel that is 10' from meeting requirements and Mr. Halland owning a 10' parcel. The new owners of the north parcel want clarification that this is a legal non-conforming lot and it can be occupied.

Chairperson Warner asks for clarification that there is a house on this lot and does it abut right up to lot line? Zoning Administrator Sandel answers yes.

Attorney Even explains the lot is to small now and that the township agrees this is a legal non-conforming use.

David Bossenbroek, applicant on behalf of Robert Hoogstra, 900 3rd Street, Muskegon, MI advised that since application the Hoogstra's have now purchased this lot and the deed has been recorded. They are asking for a 1' variance from the minimum lot width and a 10' variance for the side yard setback. This should not be a big issue because in sense there will always be a 10' setback there because that 10' parcel can never be built on. He went through the requirements of the ordinance that need to be met before the Zoning Board of Appeals approve/grant a variance. He would propose that granting the variances would be within the spirit of the ordinance. He indicates that granting the variances are not going to affect any of the neighboring properties it is only going to continue as it has been for a number of years. This is a unique problem; he cannot imagine this happening anywhere else in the township. There is no way to carry out the letter of the ordinance with this existing house. Believes this would be in everyone's best interest for the variances to be granted to continue the good use of this property, this house has sat empty for years. The applicants did not create this problem; it was caused by the previous owner and the bank. He referenced Mr. Halland's Affidavit that was filed May 10, 2013, indicating that granting these variances would prohibit his ability to file lawsuits against either the Hoogstra's or the township in the future.

Chairperson Warner asked Mr. Bossenbroek if he had a copy of the deed for the 10'. Zoning Administrator Sandel stated that he did on his desk. Chairman Warner asked what the deed says, Attorney Even stated that it says from Mr. Rottschafer to Mr. Halland. Chairman Warner states he wants to be sure it did not give access rights/easement for people to get to the beach. Attorney Even states that it does not, the 10' was strictly supposed to be added to Lot 4 before it was split so 2 legal parcels could be created. Unfortunately this 10' got left in no man's land.

1. Owen Rottschafer, 15820 S. Prospect Drive, Spring Lake, MI, owns lots north of the parcel being discussed. He sold the 10' to Mr. Halland for the specific reason of splitting lot 4 and gave him a very good price. He asked if when the house was moved did the survey show that additional 10'. Zoning Administrator Sandel stated yes it did. **Supports variance.**
2. Pat Donahue, 2255 Scenic Drive, Muskegon, MI, closest neighbors until the house that broke ground today is completed. **Strongly supports variance.**
3. Dan DeVol, 2173 Scenic Drive, Muskegon, MI, on behalf of his step son Joe VandenBosch, 2275 Scenic Drive, Muskegon, MI, who is building the new home right next to this lot. **Strongly supports variance.**

4. Scott Timmer, Attorney, 250 Monroe NW, Grand Rapids, MI, on behalf of previous owner Mr. Halland. He stated he sent a letter by email and fax this a.m. and wanted to confirm receipt. Chairman Warner advised, yes. He explains that originally Mr. Halland wanted to do a site condo and was denied so he decided to request approval from the Township Board to split lot 4 of the C & K subdivision, however, to do this he was going to need to purchase 10' from the owner of lot 3 to create 2 buildable parcels. He did purchase the 10' from Owen Rottschafer for \$75,000 and approval was given by the township. House was moved to 10' from the lot line which is now a problem because the bank mortgage did not include the 10' and it was foreclosed on, that 10' definitely goes with the house purchased by the Hoogstra's, it includes portions of the sidewalk and asphalt, and a basketball pole, that were installed when the residence was constructed on the subject parcel. Mr. Timmer stated he wanted to correct Mr. Bossenbroek, Mr. Halland did offer mortgage to lender when he sold the south lot. The bank told him not to worry about it. Mr. Timmer stated that Mr. Halland will sell the 10' strip for \$75,000. He believes the variance needs to be denied. He stated he believes the application for variance has procedural defects for the following reasons:
 - (a) The application submitted for the variance request from the Township's width requirements for Lake Michigan lots has been submitted on behalf of Robert Hoogstra, identified as the purchaser under a purchase agreement between Aurora and him. Variance requests should be submitted in the name of, and signed by, the current owner. Mr. Hoogstra doesn't, as yet, have any interest in the subject property, and therefore should not be the applicant. The notice sent to Mr. Halland, and to other property owners, references Aurora as an applicant, which simply isn't confirmed by the application.
 - (b) The notice sent to property owners, including Mr. Halland, doesn't state that the applicants are seeking a variance. Instead, it states that they "request an appeal for the non-conformity caused by foreclosure". This summary of the application is both incomplete and misleading.
 - (c) Section 19.05 of the Township Ordinance requires that the application include a scale drawing with sufficient detail to indicate the nature and necessity of the request. The drawing provided isn't a scale drawing.
 - (d) The notice references Section 6.04a of the Township Ordinances – "Site Development Standards for Minimum Lot Area and Side Yard Setback". It should also reference Section 6.05a, subsection 3(e)(i) on waterfront access standards, which includes the minimum width requirement. Section 6.05(3)(e) is the requirement for at least 105 feet of Lake Michigan frontage for a Lake Michigan parcel in the area of the subject property.
5. Owen Rottschafer, 15820 S. Prospect Drive, Spring Lake, MI, stated he suggested to Mr. Halland that the proper thing to do would be to quit claim the 10' to the Hoogstra's.
6. David Bossenbroek, 900 3rd Street, Muskegon, MI, stated the Hoogstra's now own this 104' lot, the question is does the township want to make this a legal lot or not, it is unfortunate this has happened. Chairperson Warner asked if he represents the Hoogstra's, he answers, yes. He asked if they got title insurance. Mr. Bossenbroek answers; no it is a covenant deed from the bank. Chairperson Warner asked if the Hoogstra's will be removing what is on the 10' that Mr. Halland owns at their expense, he answers, yes.
7. Gerald Buchanan, 2081 Scenic Drive, Muskegon, MI, does not want empty house in the neighborhood. **Strongly supports variance.**
8. Ann Martin, 2711 Scenic Drive, Muskegon, MI, strongly supports variance, this was a beautiful lot before equipment went up and down the dunes to create volleyball court, etc., believes picnic tables and jet ski's need to be removed from the 10' because it is not a legal parcel.
9. Roger Missimer, 2721 Scenic Drive, Muskegon, MI, only 1 thing worse than an empty house on the beach is Mr. Halland having the other 10'.

10. Scott Timmer, Attorney, 250 Monroe NW, Grand Rapids, MI, states the Hoogstra's must have bought the house for a bargain price, especially if they purchased it with a covenant deed. Said he believes they purchased it for \$515,000 so if they wanted to they could sell it to Mr. Halland for \$600,000 which is what he offered the bank and make \$85,000 and the problem would be cured.
11. Owen Rottschafer, 15820 S. Prospect Drive, Spring Lake, MI, stated this can either be cured by \$75,000 or by giving it to them via a quit claim deed.
12. David Bossenbroek, 900 3rd Street, Muskegon, MI, stated that the purchase price Mr. Timmer referenced \$515,000 is incorrect. They wanted the record corrected. Chairperson Warner stated the cost doesn't matter because it does not bear on their decision.
13. Dan DeVol, 2173 Scenic Drive, Muskegon, MI, stated everyone needs to remember the reason we are here is because Mr. Halland quit paying, thus the foreclosure.

Public Hearing Closed at 7:56 p.m.

Attorney Even states the various positions have been well stated and that they have a handle on both sides of the equation. Zoning Administrator Sandel states he believes both attorneys did a good job of representing their clients.

Board Member Lernowich questions if the variance is denied can they still live in the house but it would be non-conforming structure. Attorney Even states yes that is his opinion. Approving the variances would perpetuate for future variances for any improvement if requested, because this would be a non-conforming lot of record.

Board Member Marcinkowski asks was this ever a conforming lot? Was it ever one legal description? Zoning Administrator Sandel explains yes it was, you cannot sell to yourself so he has his piece and the other 10' so his title is a conforming lot but it is in 2 separate deeds, one which was mortgaged and one that was not. The bank could only foreclose on their piece not the 10'.

Attorney Even advises there is one thing they might want to consider and that is Mr. Timmer raises a number of procedural issues and if he was the Chairperson he would ask Mr. Timmer if that is something he wants to waive or re-notice this for another month to come back if the petition is amended. If he wants to do that it would be fine. If he wants to rely on that technical issue it is probably something that will get in the way.

Chairperson Warner asks Mr. Timmer if he was willing to waive this or reschedule next month. He stated Mr. Halland does not want to waive the procedural issues. Attorney states his advice is to table this until next month giving Mr. Bossenbroek time to correct his petition.

Mr. Timmer states it was not the application it was the notice that was published. He then reiterated the procedural issues noted previously.

Attorney Even agrees the notice should have stated the applicants were seeking a variance. This is a technical difficulty; he does not believe it goes to the merit of this at all but they should proceed cautiously in any decision that is made therefore they may want to cure that seeing they are not willing to waive the objections.

Chairperson Warner agrees. He suggests that a motion is made to table this until next month to cure the procedural issues.

Motion by Eileen Stoffan, second from Judy Marcinkowski, ***ADOPTED***, to table until the August 12, 2013 meeting.

Roll Call Vote: Stoffan AYE, Lernowich AYE, Larson AYE, Marcinkowski AYE, Warner AYE.

ADJOURNMENT

Motion by Penny Larson, second from Brian Lernowich, ***ADOPTED*** to adjourn the July 8, 2013 Zoning Board of Appeals meeting at 8:05 p.m.

5 AYES

Respectfully Submitted,

Sally Dion
Recording Secretary



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May 6, 2013

RE: Zoning Complaint
By Steve and Mary Nagengast
Against Roger and Barbara Sorokin
3897 Scenic Drive Parcel # 61-06-024-400-0014-00

On April 19, 2013 I received a 5 page complaint with 18 pages of exhibits from Steve and Mary Nagengast to file a complaint against their neighbors to the south of the Nagengast Lake Michigan parcel. After examining the complaint, the complaint exhibits and the Fruitland Township Zoning Ordinance I visited the site with Sally Dion. During my site inspection, which was on April 29, 2013, I reviewed the complaint items and made measurements that I felt were necessary to render a decision on the complaint.

My ruling on the recently planted Hemlock trees acting as a screen is as follows:

I am calling for the removal of two of the trees, the most westerly tree and the third most westerly tree. It is my opinion that with the removal of these two trees the remaining trees will not constitute a screen according to the zoning ordinance. I do realize that the remaining trees may block some view of Lake Michigan; however at some point a tree is just a tree and not necessarily a screen intended to block your view.

My ruling of the steel "T" fence posts west of the top of the bluff is as follows:

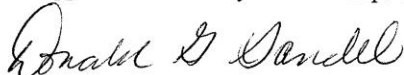
1. The two fence posts between the ordinary high water and the waters of Lake Michigan need to be removed.
2. The remaining fence post shall be driven down to a height of 3 feet or eight will be removed as follows: the first will be kept and two removed the next will be permitted and the next two will be removed following this sequence until five posts remain.

My ruling on the boat storage on the beach is as follows:

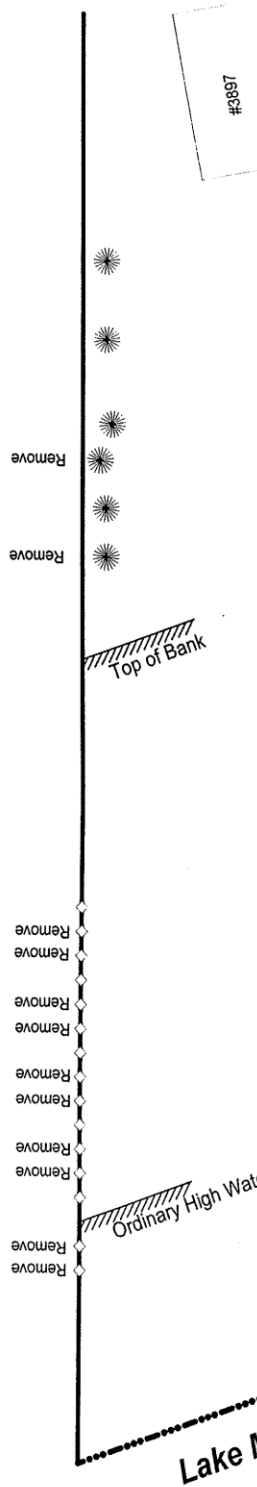
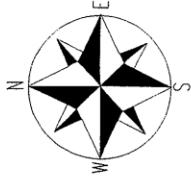
Roger and Barbara Sorokin may continue to have their kayaks between the dune and the ordinary high water mark. After further review of Section 6.05a WATERFRONT ACCESS, USE, AND RELATED MATTERS, it is my opinion that subsection 3 is referring to shared or common lakefront areas. Therefore subsection 3 c of SECTION 6.05a, which states as follows: *No boat or watercraft shall be kept, moored or stored on, along, or at the shoreline or lakefront (i.e. between the lake waters and the base of the dune) or on any lot or parcel which is a common area, private park, easement or other joint use property. No facilities for launching watercraft from the common waterfront site or waterfront access property shall be permitted.* The Sorokin parcel is a separate and distinct parcel and not subject to joint use and therefore in my opinion not subject to SECTION 6.05a 3 c of the Fruitland Township Zoning Ordinance.

In regards to the purported approximately 8 foot high orange pole this was not approved as part of the Sorokin fence approval and as stated this pole appears to have been removed.

Attached to this letter is a sketch which depicts the trees and fence posts that are to be removed. This concludes my review. My decision may be appealed to the Zoning Board of Appeals within 5 day of the receipt of this letter.



Donald G. Sandel
Fruitland Township Zoning Administrator



- ◇ = 2" Hemlock 8-12 feet high
- ◇ = Steel Fence Post