

Held March 4, 2013 20

~~The special meeting was called to order at 7:00 PM, held at the Township Hall, by Mr. Benson and was attended by Trustees Randy R. Benson, Benjamin F. DeGroat, Gregory A. Hanahan and Fiscal Officer Robert W. Rohrbach Jr. Also in attendance was Zoning Inspector Laurie Rohrbach.~~

The Germantown Press, Middletown Journal, and the Dayton Daily News were notified of this special meeting. This meeting was digitally recorded and the recording is on file.

**VISITORS** – John & Laura Baker of 14941 SR 725; Cliff Baker of Germantown, Fred Glander of 9200 S. Butter St.; Micah Siejal of 201 E. 6<sup>th</sup> St., Dayton; Michael Engler of 6766 Diamond Mill Rd.; and Ben Mersch representing The Germantown Press.

**PUBLIC HEARING -**

- I. At 7:01 PM, Mr. DeGroat recused himself from the upcoming hearing and left the Board table and took a seat in the audience.
- II. At 7:03 PM, Mr. Hanahan introduced a **MOTION**, seconded by Mr. Benson, to open a Public Hearing regarding the German Township Zoning Commission Case #2012-13ZTC. After discussion, Mr. Benson and Mr. Hanahan voted in favor. MOTION passed.

Mr. Benson announced the purpose of the meeting/public hearing and explained the process for the hearing. He asked that all testimony be focus only on the changes proposed and not about any current complaints. He asked Zoning Inspector Laurie Rohrbach to present the staff report and facts of the Case.

Mrs. Rohrbach was sworn in. She reported that the Zoning Commission was proposing removal of language from Article 38 – Accessory Uses due to usage of the current Nuisance Abatement Resolution; and the addition of language to Article 8, Section 803 in regards to Landscaping Businesses as a Conditional Use (attached). She reported that the Montgomery Co. Planning Commission has reviewed the changes and is recommending approval with recommendations (attached). The German Township Zoning Commission has properly advertised and held a public hearing regarding the proposed changes, and has approved the changes as outlined in Case #2012-13ZTC. The Case now has been properly forwarded to the Board of Trustees for review and action. She also reported that the Public Hearing tonight was properly advertised.

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Mrs. Rohrbach outlined the changes and Zoning Commission's discussions as related to the issues of this public hearing.

Mr. Hanahan asked if there were 300 foot setbacks from the adjacent properties residence included in the proposed changes.

Mrs. Rohrbach replied yes, as with other uses.

Mr. Benson asked if anyone wished to speak in favor of the proposed changes. Hearing none, he asked if anyone wished to speak in opposition of the proposed changes.

Mr. John Baker was recognized and sworn in. A summary of his testimony is listed below:

- The changes were only put forward as an end run to the lawsuit he filed.
- The Zoning Commission was pre-disposed to approve the changes
- There is no proven documentation that a need for these changes exist
- Will not enforce current law if they don't want to or they will change the law
- The Mont. Co. Planning Commission Land Use plan designates German Township as Agriculture only.
- More than one person has spoke out that this case is only due to the lawsuit.
- German Township has an apathetic approach to Zoning Complaint investigation and enforcement.
- Noted a Warren County case

Mr. Benson asked Mr. Baker to keep his testimony focused on the case at hand. He asked if the Warren Co. case comparison had anything to do with this case?

Mr. Baker responded Yes, Warren County did it right. He further stated he expects the Zoning Inspector to do absolutely nothing as they have done in the past , if the changes pass. He further stated that he will exercise his right to go directly to the court and avoid Township apathy for any future complaints. He will also start a petition drive to put a referendum of the changes on the ballot, he will talk to every resident in person, and will take out advertising to promote the referendum.

Mrs. Laura Baker was recognized and sworn in. A summary of her testimony is listed below:

- Her and her husband did request enforcement approx. one year ago.

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- ~~Montgomery Co. Planning Commission~~ stated that these changes could also be used for light industrial
- Mont. Co. Planning Commission also recommended a 50' setback for safety reasons.
- She has had to remove children from portions of her yard for their safety.
- Should be at least a 50' setback – not a farm business
- As part of the Conditional Use – a time limit with a renewal process
- Doesn't want light industry as it would become a safety issue.

Mrs. Rohrbach was recognized. A summary of her testimony is below:

- The proposed changes were not started due to the lawsuit
- When the Baker/Nolen case was explained to and reviewed by Asst. Prosecutor Watson, it was found that Landscape Businesses were not addressed in the Zoning Resolution. Per Prosecutor Watson, the issue needed to be addressed. During the research, it was noted that Washington Township addresses the topic as a Conditional Use. In an Agricultural District.
- Explained the Zoning Commission process. Received suggestions from the public; Zoning provides information to the Mont. Co. Planning Commission for the Land Use guide based on the Zoning Map; most people against the changes during the Zoning Commission process didn't want any changes in the Zoning Resolution.
- Stated that in regards to enforcement – in the Baker/Nolen case, with no regulations concerning Landscape Businesses, there was nothing that could be enforced. However Mr. Nolen did everything recommended by her regarding storage issues; screening and buffering areas and Mr. Nolen advised it was a 5 day per week operation.

Mr. Hanahan asked what the Washington Twp. regulations stated/

Mrs. Rohrbach responded that only two regulations existed specific to Landscape Businesses – Only in Agricultural district with a 70 foot right of way – and must be located 100 feet or more from adjacent property.

Mr. John Baker asked to be recognized again. His testimony is summarized below:

- Found the investigation of his complaint troubling
- Zoning Inspector has never been out to the Baker property

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- ~~Week end activities were so bad he couldn't use the back 4 acres of his land.~~
- Nolen's willfully and actively ignored the Zoning Inspectors recommendations.
- The Zoning Inspector only took the word of the Nolen's
- The Zoning Inspector should consider talking to the complainant, not only to the violator.

Mrs. Rohrbach asked to be recognized. Her testimony is summarized below:

- She did not talk in person to the Bakers – she assumed Mr. Baker was telling the truth about the situation with his e-mails.
- She visited the area, parking across the street at the church, several times and did not observe anything as described by Mr. Baker.

Mr. Mike Engler asked to be recognized. He was sworn and his testimony is summarized below:

- Doesn't believe government should be able to do what this wants to restrict on private property
- If an Agriculture District should become residential then it should be rezoned to residential. 3 or 4 acre lots should be zoned as residential as Agriculture District should not apply to small acre areas.
- What about other companies - this change only regulates one type of business – the changes need to be broader.
- Keep acreage large for Agriculture zoning.

Mr. John Baker asked to be recognized again. His testimony is summarized below:

- There is a serious problem with Zoning – with only 10 hours per week available
- The Zoning Inspector works for the Trustees, so the Trustees can increase funding to support more hours.
- This is an issue with small lots.

Mrs. Baker asked to be recognized. Her testimony is summarized below:

- She discussed the Washington Township versus German Township handling of Landscaping Business with Mr. Hanahan.
- Buffering was added in due to small lots.

At 7:52 PM, Mr. Benson introduced a **MOTION**, seconded by Mr. Hanahan to

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close the public hearing. After discussion, Mr. Benson and Mr. Hanahan voted in favor, MOTION passed.

Mr. Hanahan commented as summarized below:

- In regards to Article 8, Sec. 803-R – Enforcement can only be initiated if standards are in place.
- The Zoning Commission is appointed by the Board of Trustees and tasked with keeping the Zoning Resolution up to date.
- The only consideration of the information provided tonight is if it is applicable to the Case before the Board; information related to the Baker/Nolen issue will not be considered.
- We currently do not have standards
- He asked Mrs. Rohrbach for clarification the 25 foot in item 2 and the 50 foot in item 4. She explained both.

**RESOLUTION 2013-10**, A Resolution amending the German Township Zoning Resolution as recommended by the German Township Rural Zoning Commission in Case #2012-13ZTC was presented by Mr. Gregory A. Hanahan, seconded by Mr. Randy Benson, during the special meeting of the German Township Board of Trustees held on March 4, 2013 at the Township Hall. NOTE: Mr. Benjamin DeGroat recused himself from all discussion, the public hearing, the drafting of the resolution, and the vote.

**WHEREAS**, the German Township Rural Zoning Commission has developed and held public hearings on the proposed amendments to the Township Zoning Resolution, in the form of Rural Zoning Commission Case #2012-13 ZTC, and presented the proposed amendments to the German Township Board of Trustees for action; and

**WHEREAS**, the Montgomery County Planning Commission has reviewed said case and recommends approval as outlined in the case; and

**WHEREAS**, the German Township Board of Trustees have reviewed, advertises as required, and held a public hearing on the proposed amendments to the German Township Zoning Resolution, as presented in Zoning Commission Case #2012-13 ZTC.

**NOW, THEREFORE, BE IT RESOLVED BY THE GERMAN TOWNSHIP BOARD OF TRUSTEES THAT;**

**SECTION 1**, that the German Township Zoning Resolution be amended as recommended by the German Township Rural Zoning Commission in Case #2012-13 ZTC (attached), effective the earliest date allowed by ORC.

The adoption vote was as follows: Gregory A. Hanahan – Yes, Randy R. Benson – Yes, Benjamin F. DeGroat – Recused; RESOLUTION 2013-010 passed

**EXECUTIVE SESSION :**

At 8:00 PM, Mr. Hanahan introduced a **MOTION**, seconded by Mr. Benson, to adjourn into executive session to discuss personnel issue related to the vacant police chief position. After discussion, all present voted in favor, MOTION passed.

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At 8:20 PM, Mr. DeGroat introduced a **MOTION**, seconded by Mr. Hanahan, to reconvene the special meeting.

**OLD BUSINESS** –

- I. Mr. Glander asked to be recognized. He thanked the Board for passing the Zoning Resolution amendment and supporting the Rural Zoning Commission.

With no further business, the meeting was adjourned at 8:22 PM.

Signed: Randy R. Benson

Attest: 