

MINUTES
Planning and Zoning Commission & Architectural Board of Review
City of Willoughby Hills, Ohio

June 2, 2016

CALL TO ORDER 7:00 P.M

PRESENT: Christopher Smith, Vice Chairman John Lillich, Mayor Robert Weger,
Christopher Hallum, Jonathan Irvine and Michael Tyler

ALSO PRESENT: Building Commissioner Fred Wyss, BZA Rep Frank Cihula
and Clerk Katherine Lloyd

Correspondence:

- Memo dated 5/27/16 from Gloria Majeski RE: City Hall Roster - updated 5/27/16 with attachment.
- Letter dated 5/26/16 from BZA RE: Case 2016-02 at 2990 Erich Drive

Disposition of Minutes

Minutes of May 5, 2016

- Mr. Lillich noted that an important question and answer were left out of the minutes. Before the Protect Area motion, Mr. Lillich asked Mt. Babuder if he was in agreement with conditions discussed. Mr. Babuder nodded in the affirmative.
- Review of the Minutes of May 5, 2016 was postponed pending correction.

Minutes of May 19, 2016

MOTION: John Lillich moved to approve the May 19, 2016 as presented.
Seconded by Mayor Weger
Roll call: 5 Ayes and 1 Abstention (Smith)
Motion passes

ARCHITECTURAL BOARD OF REVIEW

Public Portion opened at 7:02 P.M.

No Public Input

Public Portion closed at 7:02 P.M.

1.) Miroslav Gajdos

37469 Rogers Rd. – Attached Garage – PPN: 31-A-001-E-00-010-0

Plans stamped received in Building Department 5/23/16

Plans reviewed by Building Department 5/27/16

Present: Miroslav Gajdos

Owner/Representative Comments:

I plan to build a 24x24 foot attached garage with a finished attic space. It will have a concrete slab floor, 2-3 courses of cinder block and a 2x4 structure. We will use a concrete board that looks like cedar (Hardy board) to try to match the cedar siding on the existing house. We will also try to match

the shingles. Photos of the existing house showed the proposed addition put outlined on the ground with white tape.

City Engineer's Comments (DiFranco):

None

Board Comments

(Smith) Do you plan to stain the Hardy plank to match the deep cedar color? *The cedar color is prefinished to be maintenance free.* Is it vertical? *Yes.*

(Tyler) The second floor plan shows a bathroom. *The existing bathroom will be expanded.* There is a note on the plans about the alignment for the staircase and the wall beside the stairs. *It is showing how get to the finished attic above the garage from the house which is an A-frame construction with dead space along the sides.*

(Smith) It is very difficult to match aged cedar. The Hardy plank will be an upgrade. At some time, Hardy may be used to replace the cedar on the house.

(Lillich) It looks like new gable extends past the ridgeline of the existing house. How will that be finished off? *The architect proposes to have the ridgeline higher than the existing house. We may make it the same level as the existing house.*

(Smith) The pitch is pretty tall. It is almost like an A-frame.

(Lillich) The back pitch could be continued all the way up and shingle it down in the back so it is almost flat.

(Smith) It looks like the architect is trying to match the existing pitch.

(Wyss) It appears that the main front door of the house will be enclosed in the garage. *One of the photos shows the old main door and wood staircase. They have been removed. There will be a door leading from the garage to the main house.* Is there another main door? *Yes, there is an existing double sliding door on the north side*

(Smith) The garage is going on the side of the house. *Yes, it will be on the west side.*

MOTION: John Lillich moved to approve the Attached Garage at 37469 Rogers Rd.
with the applicant having the option to adjust the roofline
Seconded by Michael Tyler
Voice Vote: Ayes Unanimous
Motion Passes: 6/0

2.) Michael E. Sowul

2990 Erich Dr. – Garage and Porch add on – PPN: 31-A-005-F 00-028-0
Plans received in Building Department 3/24/16
Plans reviewed by Building Department 3/24/16

Present: Michael Sowul

Owner/Representative Comments:

The project is a 6-foot garage bump out to the front of the property. The existing porch deck will be lowered. The concrete porch floor will be replaced with new concrete. The overhang of the porch will come out equal to the deck of the porch. Once that is completed, we will put a new roof on the house and put new siding on the whole house. The two garage doors will be replaced with one 16 foot garage door. No photographs were provided.

City Engineer's Comments (DiFranco):

None

Board Comments

(Smith) Will you match the siding? I am replacing the old Masonite siding on the house with the same clay color vinyl siding on the addition.

(Lillich) I do not have any problems with what I see but there is a lot that I do not see on the drawings. I object to 'right side similar'. It is not delineated on the plans. It does not show whether there are windows on the side of the garage. *The existing windows will be taken out. There will be a man-door on the left side.*

(Tyler) It is difficult for us to see the pre-existing house you are starting with and where your project is ending without seeing photographs.

(Hallum) Is there any indication how much space from the garage to the side? Is there enough room?

(Wyss) The variance was given for the front setback. Nothing will change on the side.

MOTION: John Lillich moved to approve the plans for the Garage Porch add on at 2990 Erich Dr. with the condition that the architect provides a complete set of architectural drawing of all three elevations of the garage. He can submit those directly to the Building Commissioner, rather than returning to the Architectural Board of Review.
Seconded by Michael Tyler
Voice Vote: Ayes Unanimous
Motion Passes: 5/0

PLANNING COMMISSION

Public Portion opened at 7:17 P.M.

Pat Grebenc, 2265 River Rd.

You heard from me about a month ago. I want to take this opportunity to say how disappointed I am that the end result issue of the Protected Area Ordinance violation at 2275 River Rd. is still ongoing. This started back in February. It is now June.

It does state within in the Ordinance that "the owner or owners of land, or part thereof, were anything in violation of this Chapter shall be placed or shall exist and any developer, architect, builder, contractor, occupant, persons or corporations violates any of the provisions of the Chapter or fail to comply here within, who build or otherwise develop in violation of the provisions of this Chapter for each and every violation or noncompliance can be fined not more than \$250.00 for the first offence and not more than \$500.00 for each subsequent offence. A separate offence shall be deemed each day during or on which a violation occurs or continues." Many things have come forward. I ask that you consider the entire Ordinance in the hopes that we can quickly do the right thing for the Chagrin River, our neighboring cities because this is setting a precedent for us and Willoughby Hills.

I am disappointed in Zoning, the City Engineer and the Law Director for not taking swift action on this.

Public Portion closed at 7:19 P.M.

UNFINISHED BUSINESS

1.) August & Loretta Babuder- Trustees

2275 River Rd. – Protected Area Permit: Review of Conditions – PPN: 31-A-016-C-00-009-0

Present: August Babuder, _____ Farm, 2275 River Rd.

Owner/Representative Comments:

First comment I would like to make is related to the closing of the meeting on May 5th. I made no such comment, Mr. Lillich. Instead I asked three questions to which this Board gave me one answer. The questions were as follows:

- When do I get a permit?
- Does the logger need the same kind of permit that you are trying to tell me that I need?
- Did you read the report of the Soil and Water Conservation, Chad Edgar as well as the report of the Ohio Department of Natural Resources and Forest Management, Ranger Aaron Nash?

I got the answer to the first question. ‘You will get the permit tomorrow’, which would have been on Friday. I am not complaining but Friday came and there was no permit because people were on vacation or whatever. They said the office would call me and I would get the permit on Tuesday. They called me on Thursday, May 12th. The permit was ready. It had the conditions as agreed upon by you on May 5th. These conditions, I think I have here some place. You know what the conditions were. Those are my primary reasons for being here, discussion those conditions.

Prior to that, firstly, I would like to know- when will the logs be removed from my property? The logger has a permit to remove the logs. If they are not removed, I think I will have to find a way to remove them. Where am I going to put them? [Gestures] The parking lot pretty big. I have to do that. That is not a threat but I don’t know where else to put them. They are not my logs. They are paid for. I don’t want them there. I have to straighten out the place.

Secondly, as part of Silviculture, which this was done on the rules of Silviculture, I probably do not need any kind of permit. I am a farm. This was my harvest. Logging is harvesting to me. He paid me. The logging was done, and I will read you how it was done, as reported by the ranger of the Department of Natural Resources. He says as follows,

“Based on my observations, I have very little to critique. Best Management Practices were excellently implemented by the logging crew. It was obvious that great care for Mr. Babuder’s property and meticulous efforts were constantly at work. The only evidence that the harvest took place were residual tree stumps, harvested tree tops and logs being currently stored at the landing. Any professional in this field will tell you that this is a superb result of a timber harvest.

It is hard to assess the silviculture of the harvest as I had never viewed the forest before the harvest and the topic of proper silviculture isn’t a concern of the City of Willoughby Hills, Lake County Soil and Water Department or State of Ohio, ODNR Service Forestry. But overall, I felt that the harvest description was fairly well done. It appears that the majority of the material removed was cottonwood, sycamore and pine, which are historically lower value species. Often such species will hinder growing conditions of higher value species when present.”

That was what was reported by people who know what harvesting is and who know timber management better than most of us here, maybe better than all of us here. That’s what I have to say.

Further, silviculture, the type of silviculture where this was done was the variable retention type silviculture which is as follows,

“A harvesting and regeneration method which is relatively new silviculture system that retains forest structural elements, stumps, logs, snags, trees, understory species and undisturbed layers of forest floor for at least one rotation in order to preserve environmental value associated with structuring complex forests.” So we know what silviculture is as applied to here.

Silviculture is part of the Ordinance 1167 paragraph 14 is allowed. I don't know that that needs a permit or not. I believe it doesn't, but maybe Mr. Wyss can explain to us and yay or nay whether it is needed or not. If it does not, you have made an inspection of this project by City Engineer which I paid for and I believe that was not justified. The inspection was an amateuristic, schoolbook exercise. The inspector or the engineer never stepped on the property. They reviewed some pictures and cartoons from the internet and that is not an inspection. The inspection was done by the Ohio Department of Natural Resources with all of you, or most of you present. That was an inspection. You have not made a report on that issue. The ODNR has and I read you part of it. Okay.

As far as the removal of logs, the logger has a permit for tree removal in the City of Willoughby Hills. May I submit it? I don't know who signed it, Fred Wyss, maybe. He has a permit. I don't see why the logs are not removed. Of course, maybe because on the 22nd of February, Mr. Wyss, in accompaniment of a police SWAT team, three cops, armed, one with a gun pointed...I don't know if it was pointed at me or not, my camera could not quite tell...came, early in the morning.. I think about 8:30 and submitted this Stop Order to stop all work at 2257 River Rd. You are in violation of Ordinance 1373. I don't know what this all means. Here it is -- stop all work. When am I going to start work? When the logs going to be removed? I don't know.

Now, regarding your decision of May 5th on the items that you insisted I do, I agree with most of the items in way, except that according to the type variable retention of silviculture I don't need to do anything. According to the report of the ODNR nothing is needed to be done because the way the logging was done in a superb way. A viable retention silviculture is as follows:

"a harvesting and regeneration method which is relatively new silviculture system that retains forest structural elements, stumps, logs, snags, trees, understory species and undisturbed layers of forest floor." All that has been done in this particular case. Nothing has been disturbed.

Now, as you have indicated in the so-called good housekeeping, that's fine. I don't disagree with that. Good Housekeeping should be in order and I will continue cleaning up branches and building things back as they were, more or less. Replanting some trees -- very few trees will be replanted. It is too late to plant trees. It will be done next fall. And I will do it. This is the first year that I have never bought any seedlings for my tree farm. I bought several thousand seedlings over 40 years. I maintained that forest in a nice way. It was done professionally, in a cultured way as silviculture says.

Now, I don't know what else should be said, other than the fact that there will be no visits by anyone on my property other than one in the next 10 years. The only people that will be allowed to visit will be the Ohio Department of Natural Resources ranger or forest manager whoever that may be. I will allow one City person. I would recommend perhaps the Building Inspector, Mr. Fred Wyss in this case, to come with the ODNR person. Not alone. That's what I have to say. Once in 10 years. The ODNR typically comes once every 5 years. They have been here recently. You have been here on my property recently. Enough for this year. Unless the ODNR decides they need to come sooner, and they may. I will ask the Building Inspector to come along if they ask me. If they ask you, please let me know when and how.

The sign for No Trespassing is in place and trespassers will be prosecuted. In addition to that, I have a German shepherd and I just ordered another dog, which will not be as friendly as my German Shepherd. Beware of that. If somebody gets hurt, it'll not be my fault. It will be your fault with your statements here. Thank you, gentleman and lady. That is all I have to say.

(Smith) We have already heard this case and we have already set the conditions. The reason that Mr. Babuder is back here in front of us is because he is asking us to reconsider the conditions. We have two choices. A) We can go through the conditions, debate each one and discuss whether we would consider alterations to those. Or, B) we can stick with our ruling and send it to the BZA.

(Babuder) I would appreciate you would change your ruling and you would I don't hear very well, so I may shout a little bit too much. But in any event, I would appreciate your understanding. There is nothing wrong with my property. There is nothing to inspect. The people that were here from ODNR have said that, in writing.

(Smith) The reason that Mr. Babuder came before us in the first place is that he harvested lumber in a protected area without a permit. I recommend that we hear each one of these conditions one more time and ask if you [Babuder] agree with each of them one at a time. *(Babuder) Do you want me to wait then?* Hold on. *(Babuder) I'm just asking. Sit. (Babuder) Thank you.*

(Smith) I would make a suggestion. If we are willing as a Board to reconsider these items, that we will go through them one at a time and allow Mr. Babuder say, verbally, whether he agrees with those conditions or not. Then we make a final judgment at the end whether we do.

Board Comments

(Lillich) My thoughts run just a little different. We've been through this. I don't think any of the conditions we imposed or asked for are any kind of an imposition. He said it was not a threat but he has verbally threatened me tonight. As far as I am concerned, I would just as soon turn the whole mess over to the Law Department and let them handle it from here on out.

(Babuder) I'm sorry but I don't understand how I threaten you personally.

(Lillich) By telling me if I come anywhere near you are going to turn dogs loose on me, etc.

(Babuder) Oh no, no, no. I am saying there is a trespassing sign. And more will be put.

(Lillich) That's all you had to say. You didn't have to say anything about dogs or anything else. I feel personally threatened. I wasn't coming there any how but...

(Babuder) As I was advised by law, whose law, Ohio law, of course, to put a sign 'Dogs', and I have a sign 'Dog on Property'. There will be a sign 'Dogs'. That's the only thing I would say. That's what I was referring to as the 'No Trespassing' sign and there is a dog. My dog, right now I have one, is always tied outside on the deck or on the line. She cannot go more than 50 feet away from the house, on the line. I am sorry if you interpreted that as a personal threat. It is not a personal threat on anyone.

(Weger) We have heard 'dumping of logs' into the parking lot of City Hall

(Lillich) We have struggled with this. I have tried very hard. I took Mr. Babuder at his word that he was unaware. Tonight he told me, when I corrected the minutes, that he never said anything like that and I didn't say anything like that. That's not true. I am at the point now where I don't think anything we are going to do is going to satisfy Mr. Babuder, even if we agree with everything he said. So that's why I am suggesting we let our Law Department handle this and come to a decision. If it comes back to us after everything else, then so be it. But I feel like I'm spitting into the wind.

(Babuder) Mr. Lillich, there are no minutes of the meeting of the 5th of May. I looked in the computer. I still didn't see it.

(Smith) We haven't formally adopted them quite yet.

(Babuder) I'm sorry. I didn't see it. I asked you three questions and you answered one; the permit will be given tomorrow. I have not said any other thing because I believe in the old saying, Slovenian proverb it is, 'Think three times and then talk'. I believe in the Chinese proverb, 'Think three times and then don't talk at all'.

(Lillich) I can tell you, Mr. Babuder that I would never have made the motion to approve, which I did, without your approval of what the conditions we put on it. If you hadn't nodded your head and said that you agreed, I would never have made the motion.

(Babuder) I didn't say nothing about your seven point whatever. I said nothing. Maybe my silence meant approval. I don't know. Maybe.

(Lillich) Anyway, that's the way I feel.

(Smith) Let's hear from other members of the Board. Alternatively, you can make a motion to that.

(Tyler) I think we have been very fair. I think we have heard every condition. I think we have made decisions that we thought would be right for Mr. Babuder as well as the City of Willoughby Hills. I think we have been more than fair post-permit, Discount on the permit price - we did give him that latitude. We did give a lot of latitude. I think we have been more than fair. But that's my personal opinion. I could be wrong.

(Lillich) We also waived two of the conditions that were recommended to us

(Tyler) John, I'm with you. I am just saying that I believe we have been very fair.

(Babuder) What do you think of the ODNR report?

(Hallum) Does it consider being in a Protected Area at all?

(Smith) The problem with doing this without a permit did not give any pre-condition inspections. So ODNR and nobody saw the condition of the site to be able to judge it. That's why the conditions are put because there is nothing to compare it to. We had a guy show up after the fact and say it looks like it was probably done right. It looks like it was done very well. But we don't know for sure the pre-existing conditions by which to judge. That's why we have permits.

(Babuder) There was no damage done to the ground. That was agreed by the Soil and Water man. The rest of the conditions – if you see a tree stump- Isn't that a sign that there was a tree there? What else do you need to know? That the sky was blue that day? Pardon me, oversimplifying things. There's hardly any need to know anything else. The roads were there; they are still there. They never had grass on and they never will because there is too much shade. That's why planting more trees may not necessarily smart in all areas, That is according to the Silviculture rules

(Smith) But by that logic, we would not have permits to begin with and we wouldn't have Stormwater Management.

(Babuder) No one told me that a permit was necessary. As soon as I learned on the 18th of February together with Mr. Mayor and Diana, I immediately asked for the permit and paid for it

(Hallum) We are rehashing. I have one basic question. I haven't heard anything from you that indicates you have any issue with the re-vegetation? I think that makes sense to you. Even when we were out there, I think a lot of it has already re-vegetated itself. I think you are in agreement that it makes sense to protect the new saplings from deer and other creatures that might destroy the new saplings.

(Babuder) It makes sense, except my opinion of what protection from deer. I grow trees, Christmas trees, hundreds of them. Maybe a thousand or more, I don't know, and deer destroy them. The deer destroy trees that are this thick and 20-30 feet high. So, yes, I can make an effort, I made an effort and I will continue making an effort. My basic answer is why don't you give me a hunting permit and I can at least shoot a couple of bucks so that I don't have to hunt in Ashtabula County for my meat. I will protect the new seedlings and I can show you that I already planted some last year, before the harvest.

(Hallum) So there is no issue with that. I heard you say tonight you didn't have an issue with good housekeeping of the debris. *(Babuder) No, that is normal.*

(Hallum) That you will clean up the area and mulch as necessary? *(Babuder) No mulching.*

General area cleaned up or mulch? *(Babuder) Yes, sir.*

(Hallum) So the only one I hear that you have concern about to me, your biggest heartache, is the condition for a yearly inspection for 10 years? Would that be accurate to say? *(Babuder) Yes.*

(Hallum) I don't think that anyone here is going to agree that one every 10 years is going to work for us and you don't agree that one every year for the next 10 years is happy for you. Is there a happy medium that you realize that we have one every year for the next three years and then we spread every other year after that? Would that be more palatable to you than every year?

(Babuder) That is not negotiable but it is debatable. Ohio Department of Natural Resources inspects every five years. I just had my inspection done in Ashtabula County as well as here as part of this issue. ODNR will inspect my property again shortly. You can join them if you wish. I can let you know when, if I know when they are coming, etc. But to stick my widow, most likely, for 10 years with some

person of this group or this group alike, for 10 years tramps on my beautiful property which I own, with a mortgage, by the way, and pay taxes on. I even own the bottom of the river, just in case you don't know. I do.

(Hallum) I am trying to work with you. What can we do?

(Babuder) I appreciate it. I really do. I may be talking too much but I think if you have inspected this by one person, not 10 people...

(Hallum) I think that was a one-time thing just so we could have a sense of what we are talking about.

(Babuder) ...together with the Department of Resources, I would say, within the next five years, if you want to come a couple times, I don't see any problem.

(Wyss) For the Board's understanding, I would like to ask you a question. *(Babuder) Yes, sir. Are you now under Forestry Management at 2275 River Rd.? (Babuder) No, sir. Then why would ODNR come to inspect? (Babuder) Because they teach me what to do. So they come voluntarily when you ask them? (Babuder) No, they are busy but they have given me advice on the property in Ashtabula County. They have been there several times and have told what to do and have made suggestions. I try to follow their instructions including the types of trees to plant.*

(Wyss) There are two other gentlemen in the City of Willoughby Hills whose property is under Forestry Management. Would you be willing to go under Forestry Management? *(Babuder) What are their names? From Dodd Rd? (Wyss) Mr. Klements and Mr. Williams. They both are under Forestry Management*

(Babuder) Mr. Klements would be more that welcome to come.

(Wyss) You are under Forestry Management for your Ashtabula property. Would you be willing to go under Forestry Management? *(Babuder) Yeah.*

(Wyss) So you would be under a regular inspection? *(Babuder) Every five years.*

For the Board's benefit, would you be willing to do the same thing on this property? *(Babuder) As I do in Ashtabula County, yes. But I would appreciate if Mr. Klements; he was here once. He knows timber management very well, better than I do, probably. I don't know who the other person is.*

(Wyss) I cannot suggest to the Board what they do or do not do regarding this permit. Right now, we have an impasse. You won't sign the permit. As a matter of the law, the permit is not intact. That's what is preventing the logger from coming onto the property to take out the logs. *(Babuder) Mr. Wyss...*

(Wyss) Just listen. I am trying to be reasonable. *(Babuder) You are.*

(Wyss) Would you be willing to have a change in the conditions whereby you enroll in the Forestry Management program, in lieu of the inspection by the City? *(Babuder) I already applied and it's in process. (Wyss) That's good to know. (Babuder) The application is in the hands of Mr. Kash, three weeks ago.*

(Smith) What option could be to amend Condition #4?

(Babuder) That is the only option that is debatable, negotiate-able to some extent but as Mr. Wyss has indicated I think it is a good suggestion. And Mr. Hallum's, likewise. I want to be agreeable and I don't want to be accused of not cooperating by anyone. That's a mistake, please.

We could re-enact all the conditions but amending #4, provided that he enrolls in the Forestry Management program.

(Hallum) And he provides such documentation

(Smith) Prior to obtaining the permit. The Board can make a motion either way.

(Babuder) Can I comment on something? As part of the Forestry Management, I have to mark the property every 66 feet in red paint or white paint. I have started that. It has to be marked. Just so you know. I am in the process of doing that. When I finish that in a week or two depending on the weather and my walking conditions aren't that great. So that will be done in no time flat, I mean. They have the application. If you wish I can give you a copy of it.

(Lillich) Gus, do you have any idea how long it will take them?

(Babuder) I would say two weeks to six weeks. It's a guess. I don't know. I have to put in the report that I marked the property. I did not do that yet because I did not mark it yet sufficiently. As a say, I am a little slow

(Lillich) I've ridden with you.

(Babuder) It's me and my dog. She sits tied up in my side-by-side car. She is tied for the deer.

(Lillich) I think this is a viable solution. If he is willing to go along with it, I have no problem. The problem before was that it hadn't been registered as such. Now he is making an attempt to enroll in the State's program which I think is great.

MOTION: Christopher Hallum moved that we amend #4 of our conditions for the Protected Area Permit at 2275 River Rd. to change it to say that he will enroll in the Forestry Management Program and provide that proof to the Building Department to obtain the permit.

Seconded by John Lillich

Discussion:

(Weger) If he enrolls in it, Condition #1 says he's going to remove all the tree tops and branches over six inches from the Flood Plain and river. How would we know that it happened?

(Babuder) Mr. Mayor, that is not necessary according to the Silviculture rules – and the inspection of ODNR.

(Weger) It is a Flood Plain regulation.

(Hallum) That area does need to. I'm sure that do not want to cause downstream issue to your neighbors.

(Babuder) No, no-no, To nobody

(Hallum) I think it is a reasonable request just to move that stuff back.

(Babuder) That is being done. We started until we got the 'no work' issue.

(Hallum) Let me ask you this, once we get your Forestry Management done and you get your permit, how long would you expect it would take you to clear that area? How many feet is that?

(Wyss) It is from the lower log road to the river.

(Hallum) How long would you think it would take to clear that debris out of the way? In your estimation?

(Babuder) It is not debris, pardon me. Part of it is soil protection and wildlife protection. The branches...

(Hallum) The branches that are small enough that they could be carried down, should there be a flood. Those are what we are talking about. Should there be a flood, we don't them washing downstream.

(Babuder) Should there be a flood, maybe I should start building Noah's Ark? But you know...

(Hallum) I am trying to...

(Babuder) Sir, I am trying to create a language that is agreeable to everybody.

(Smith) Hold up a second. The original proposal I was making was 'Let's go through these one at a time'. I will read the condition and you state whether you will comply or not.

- 1) Remove the slash tree tops, all brush and all debris completely from the logging road to the river but leaving the stumps. When we get back to where the Riparian corridor goes further back than that, anything over 6 inches shall be removed from that area.

(Smith) Do you agree to that condition?

(Babuder) No. You say all of the branches? Can you read that again? No, that is protection of the ground as well as wildlife protection just like it was before the harvesting. Now, over 6 inches, yes. But, pardon me; there are some logs that are two feet in diameter which are junk wood which

is hollow center. You need a 100 horsepower crane to live those and I do not have one and I do not intent to buy one.

(Hallum) We're not talking about removing those anyway, right?

(Tyler) Regardless, he said 'No' on Condition #1.

(Babuder) Let's make it clear.

(Hallum) Read it again to make sure he understands it.

[Condition #2 was read again by Mr. Smith]

(Babuder) Wood and all debris? First of all, there is no debris. That is part of timbering. The ODNR tells you what it is. Actually you do not have to remove anything except for maybe some of those over 6 inches. You leave 6 inches and under.

(Smith) You have to remember, these were recommended in the conditions made to us from the experts that were here. So, this is the condition.

(Babuder) There were no experts here other than the Soil and Water man and the ODNR. The Engineer that is not an expert. That was a Junior Achievement schoolbook practice

(Weger) Quit calling names.

(Smith) You are not helping yourself. We are trying to help you.

(Babuder) I have to speak the truth. They were laughing at me. 'Who did that' they said. 'I don't know'.

(Hallum) Who is they?

(Babuder) The ODNR guys. They were there. By the way, all of you left there, they were there another hour and a half, walking, counting tree stumps and I don't know what else they were doing.

(Tyler) When you say, 'all of you', I wasn't there. So please, forgive me. I was not there, so I can't be included, can I?

(Babuder) Excuse me, I meant the Board. I don't know the names.

(Lillich) Let me ask a question, Gus. You are the expert. You had Silviculture experts from ODNR there? *(Babuder) Yes*

(Lillich) Was he a Flood Plain expert? *(Babuder) I don't know.*

(Tyler) We have been very fair with you. I feel we have been very fair with you. I feel that you have insulted a lot of people here, a lot of times coming before us. I feel, in all honesty, all we have done was try to bend over backwards to help you. That's not coming through on your part at all. So, I am sorry, I do not think that I could vote for anything for you right now. I voted 'No' before. I am still a 'No'.

(Babuder) Mr. Tyler, I am sorry if I insulted anyone...

(Tyler) I just brought it up to you when it happens, so you understood when it happens.

(Babuder) I am speaking my mind as I saw things happen. I am reading the books of rules and regulations. I was never told I needed a permit. As soon as I was told I needed a permit, I applied for it, and paid for it, right now.

(Tyler) It was post – after

(Babuder) Why wasn't I told that I needed it sooner?

(Tyler) Negligence of the law does make you above the law.

(Babuder) It is not my negligence, sir.

Not knowing the law?

(Babuder) It was negligence on the part of somebody but not mine. I was here when I sold the logs in early February, 2015.

(Tyler) I don't think this is helping.

(Lillich) Gus, let me say, none of us want to be here having this discussion. I am very uncomfortable having to do this and I am sure all my colleagues here are very uncomfortable. The reason we're here is because of you.

(Tyler) We want to try to help you.

(Lillich) You claim to be a professional in growing trees and everything else. I would like to believe you that you didn't know. It's hard for me to understand how a professional didn't know. But I am going to take you at your word that you didn't know. But, please believe me, I am very uncomfortable sitting here listening to all of this. We have tried to help you and I think we have been very reasonable. You have some problem with people on your property. I can understand that. An option was given tonight that would greatly diminish the presence of other people inspecting your property. You said that that was the only issue. We started going through those things and all of a sudden you have an issue with everything else. I don't know what to do. I would like to turn it over to the Law Department because I don't think you and this group can resolve this.

(Babuder) I believe I have not insulted anyone. If I have, I apologize. I spoke my mind. I was perhaps ignorant. Why was I ignorant? I sell Christmas trees. I sell seedlings, I mean, transplants. I have no permit. I'm a farmer. I see no reason why I need a permit. I believe that I don't need a permit. Do I need one? I don't know. Now, with all these requests about permits, I don't know anymore.

(Lillich) The only issue was in the Flood Way.

(Babuder) Everything I grow is in the Flood Plain. It always was. The nursery was there. It has never changed. Everything I grow is in the Flood Plain.

(Lillich) I think we have a problem with definitions here.

(Babuder) Okay, but I appreciate your comments. I don't think that we need to go any further. As Mr. Hallum has suggested, I think we can agree that it will be inspected in some reasonable way by the correct people. I have no problem with that. That is the only issue that I have problem on these six points.

(Tyler) You just stated a few minutes ago that you had a problem with #1 so I don't which way to go.

(Hallum) Should we give it one more shot?

(Weger) Let me ask Mr. Babuder one thing more. You say you are a tree farm, and you sell the trees. *(Babuder) Yes.*

Do you collect sales tax? Do you remit it to the State? *(Babuder) No.*

Why not? *(Babuder) No need to, I am a farm. I file tax with IRS.*

But sales tax is a State tax. *(Babuder) I don't charge sales tax, I do not report it. I don't file a tax return. I have no employees. I do not file return tax with RITA. I file tax return only with the IRS. According to my tax man, that is what I need to do. I don't do it myself. I have a tax man. Maybe I don't have the correct answer for you but I'm telling you what I do or I don't.*

(Smith) We have a motion on the table. In an effort to clarify that motion, we were going through each of the items. In an effort to clarify that motion, I would like to go through those without commentary, just a simple 'yes' or 'no'. *(Babuder) Okay. Do you agree to:*

#1 Remove the slash treetops, all brush, wood and debris completely from the logging road to the river but leaving the stumps. When we get back to where the Riparian Setback Corridor goes further back than that, anything over 6 inches should be removed from that area.

The applicant answered 'yes'.

#2 Any disturbed areas and particularly the area where the logs are being stored and picked up must be seeded, mulched and restored. That includes any areas along the operation that appears to be devoid of any new plant growth.

(Wyss) Mulching in this case would be laying down straw. If you lay down straw, you are 40% seeded.

The applicant answered 'yes'.

#3 Follow the Good Housekeeping Best Practices for Restoration of Logged Out Areas discussed by the Chagrin Valley Rivershed Partners. A copy of those practices shall be attached as part of this motion. Tubing and protection of new trees is part of the Best Practices.

The applicant answered 'yes'.

Item # 4 is being amended, We will skip to #5 first.

#5 As exemplified in the Best Housekeeping Practices, be certain that the restored areas are being protected from deer browse and all invasive species in example is garlic mustard, barberry, multiflora rose, privet and honeysuckle be included with the Good Housekeeping Best Practices.

The applicant answered 'yes'.

#6 There should be minimal use of mechanized machinery. Hand operated tools such as chainsaws and muscle power should be used. No tractors, bulldozers or large machinery should be used to haul away the debris.

(Wyss) He has a tractor to cut the grass. That condition is two staged. 'Minimize' is in the first sentence. 'Tractor is prohibited' is in the second sentence. It is a small farm tractor.

The applicant answered 'yes'.

(Smith) The motion is to accept those six conditions and amend #4 to enroll in the Forestry Management Program prior to being granted the permit.

(Hallum)...and also that the Building Commissioner will be allowed to do one inspection following the completion of the permit.

(Smith) In addition, there will be one inspection by the Building Commissioner to make sure the work was done in compliance.

(Hallum) From there on, it will be covered by the Forestry Department. *The Building Commissioner together with the forester, please. That is not going to be right away. On the other hand, you say the issue of logs is subject to issuing of permit.*

(Smith) The inspection happens after. *It is going to be Christmas if you don't let the loggers remove the logs.*

(Hallum) If you agree with this amendment that we are getting ready to put in here, you'll get your permit. *I want to have all this in writing. You will have it tomorrow, assuming that everyone is here that needs to be here. I will sign the permit and then the logger can take the logs away.*

(Hallum) So that is my amended motion.

(Smith) Did you get the amended motion enough or do we have to restate it? *(Clerk) Yes.*

MOTION: Christopher Hallum moved to accept those six conditions and amend condition #4 to enroll in the Forestry Management Program prior to being granted the permit and also that the Building Commissioner will be allowed to do one inspection following the completion of the permit to make sure the work was done in compliance for the Protected Area Permit at 2275 River Rd. From there on, it will be covered by the Forestry Department
Seconded by John Lillich

Discussion:

(Wyss) It is paramount to get the logs out of there as soon as possible. If I have evidence that he has applied for the Forestry Management Program and confirm with Aaron Kash that there is a high likelihood that he (Babuder) will be enrolled in the program for this property, I would like to release the collection of the logs by the logger. I need clarification from the Board.

(Babuder) I can give you a copy of the application

Voice Vote: 5 Ayes and 1 Nay (Tyler)
Motion Passes

(Babuder) Thank you to the Board and lady. I appreciate your comments. Please forgive me if I have insulted anyone or hurt their feelings.

(Hallum) In response to Mrs. Grebenc's comments, this Board has no capability to levy penalties or fines. I would suggest that you follow up with the Law Director, if you so desire.

(Lillich) I think your comments are more properly addressed to City Council

(Grebenc) Thank you, I will address them. I would assume that a surveyor would be marking the property line to determine exactly where the property line is. This is not the first time this has happened.

(Wyss) There was evidence of marking on your property during the winter. The property line is clearly marked.

(Grebenc) We cannot confirm that those stakes have not been moved.

(Smith) Under the Forestry Management program, that is where you are required to mark off your property?

(Wyss) I will have to find out.

(Smith) I'm pretty sure it is. If it is, I'm sure there are means and methods by which they have to mark off their property. It's not simply guessing.

(Babuder) The means and methods are the owner has to mark the property. The surveying was done by owner and the buyer of the northern line property...

(Smith) Okay, you are all finished now and you got your permit.

(Babuder) ...and the present owners of the northern line property still owe me \$500 they didn't pay for surveying of property. Maybe that will shut them up.

(Smith) That is not part of this.

NEW BUSINESS

None

MAYOR'S REPORT

None

COUNCIL REPRESENTATIVE'S REPORT (Hallum)

Because this Board has been busier than we expected, we have not been able to cover some of the things that I wanted to cover with this group. I will call a meeting of the Council Planning and Zoning Committee. I invite you all to come to that separate of this. We need to get moving on that. I have to give a seven day notice so it will probably be the following week.

BUILDING COMMISSIONER'S REPORT

I plead with the Board that we revisit this Ordinance. One sentence in the chapter that talks about silviculture is totally inadequate for what we have just gone through. Proper forestry management is silviculture. Silviculture is proper forestry management.

It states in the Ordinance that Silviculture is not prohibited. That means you can timber harvest in a Protected Area. We were here to make sure it was done properly. Other people in the City are under Forestry Management. The other gentlemen are doing it in Protected Areas. But they were doing it under Forestry Management prior to this Ordinance being passed. Under Zoning, they are 'grandfathered' in. They are already doing it properly. It didn't apply.

In this case, he started out in the wrong, marking trees on somebody else's property. A year later, he is starting to tear them down. Obviously, the Grebencs were concerned and they brought it to my attention. There's no Protected Area permit. The question is whether Gus remembers it or not. O

obviously we have seen enough discrepancies in what he remembers. In the Ordinance itself it says, "However, such activity silviculture shall be carried out in conformance with the standards of vegetation and re-vegetation in this chapter. So if he's already under Forestry Management, he's going to be doing that.

That bring us back to why he needed a permit and other people don't. His reluctance to be cooperative – I stand by my sentence in the last letter I wrote to him to remind him that he needs to sign the permit. I think we have arrived at a good compromise here because I don't think that this Board wants to revisit timber harvesting on Mr. Babuder's property for a long time. If he is under Forestry Management, that's not going to be necessary. We really should review this Ordinance and get some specific things in it.

(Smith) Could you review some like-minded ordinances and make some suggestions to the Board?

(Wyss) Waite Hill has a Timber Harvesting Ordinance. Gates Mills has one. It could be handled by his having to be in the Timber Management program and/or get Soil and Water's direction.

(Lillich) We still may need to have some say-so if we can in Protected Areas.

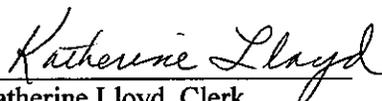
(Wyss) Condition # 1 was an example. Speaking as your Flood Plain manager, we anchor everything that is possibly going to flood and he's objecting to removing logs in that closest area to the river. That in itself is a reason why there should be some management. Properties down river are the ones that would be a risk.

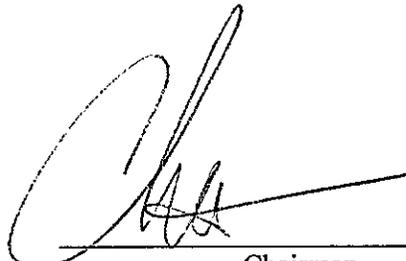
CHAIRMAN'S REPORT

None

MOTION: John Lillich moved to adjourn
Seconded by Michael Tyler
Voice Vote: Ayes Unanimous
Motion Passes 5/0

Meeting Adjourned at 8:16 P.M.


Katherine Lloyd, Clerk


Chairman

Date Approved 7-7-2016