



MINUTES

Special Meeting of Newaygo Zoning Board of Appeals

April 11, 2019

CALL TO ORDER

Chair Mayor Fedell called the meeting to order at 7:00 PM at City Hall located at 28 N. State Road, Newaygo MI 49337.

The Mayor is Chair of the Zoning Board of Appeals according to the ordinance.

Presiding officer: Chair, Mayor Fedell
Secretary: Clerk, Kim Goodin

Roll Call: Present: Chambers, Fedell, Heartwell, Looman
Absent: Armstrong

Motion by Chambers, second by Heartwell to excuse absent members. AIF/MC unanimously.

Motion by Looman, second by Chambers to approve the agenda as presented. AIF/MC unanimously.

Chairman Fedell asked Cliff Bloom, Newaygo City Attorney, to explain the Zoning Board of Appeals' (ZBA) role in Michigan Agricultural Commodities case tonight. Bloom explained that the ZBA's role is relatively narrow tonight and that the function of ZBA here is to determine if the Zoning Administrator made the correct interpretation of the Zoning Ordinance relating to Section 3.13 Height Exceptions. There is no alternate variance request. Whether or not the proposed expansion is good or bad, will help or hurt the local economy, etc, is all irrelevant to the decision that the ZBA must make tonight. The decision of the ZBA must be based on its interpretation of Section 3.13 of the Newaygo Zoning Ordinance as it relates to the proposed silo/grain bin.

PUBLIC COMMENTS

There were no public comments.

APPROVAL OF MINUTES

Motion by Looman, second by Chambers to approve 05/26/17 meeting minutes. AIF/MC unanimously.

RESERVED TIME

Motion by Heartwell, second by Chambers at 7:05 pm to open public hearing to discuss and take public comment on the Michigan Agricultural Commodities (MAC) appeal of Zoning Administrator's interpretation of the City's Zoning Ordinance at Chapter 3, Section 3.13-Height Exceptions. AIF/MC unanimously. Tom Amon, Attorney for MAC, discussed the details of his letter and information that he had submitted, on behalf of MAC, to the City requesting an interpretation of the City's Zoning Ordinance and appealing the determination made by the Zoning Administration about Section 3.13. Amon stated that the same type of bin with similar setbacks had been approved for MAC in 2013. He discussed *Fremont vs. McGarvie*, which states that should any doubts exist in ordinance interpretation the decision should be in favor of the property owner. Amon stated that the Ordinance is vague and in the past the Ordinance had been interpreted differently and the City should interpret new request the same as in the past. Amon also discussed various other legal arguments which, at times, Bloom, Newaygo City Attorney, rebutted. Bloom agreed with Amon that as a general legal proposition, ambiguities in a municipal zoning ordinance should be construed in favor of the property owner. However, there are exceptions to that general rule. For example, Bloom stated if one meaning stands out or is the only reasonable interpretation, the City should use that meaning. Bloom made various other legal arguments, both for and against the applicant's interpretation. Looman asked what is the purpose of Section 3.13 if we are going to use regular setbacks. Amon

stated he feels the Ordinance is not clear and based on *Fremont vs McGarvie*, the City should side with property owner. Bloom stated that the applicant cited only one past situation and said because the Zoning Administrator may have made a mistake once in the past does not mean he will have to continue to make mistakes. Fedell looked at the minutes and application from 2013 for the earlier silo. He said the application in 2013 did not list the setback requirements or actual setbacks on application. Heartwell discussed Zoning Ordinances in urban areas and discussed impact of oversized structures on peace and enjoyment of neighboring structures, as well as light and shade. Heartwell stated that at some time, the City of Newaygo decided certain heights had to be taken into consideration; otherwise, the Ordinance section would not exist. Chambers asked about details from the 2013 case. Fedell stated that there were no details in the minutes and he has searched other large structures in the City and the few he was able to find had much more distance from the property line. MAC representatives questioned the adoption date of the current Zoning Ordinance and Schneider said the current Ordinance was adopted in 2005. Bloom emphasized that just because a past mistake may have been made in the execution of the Zoning Ordinance does not mean that the City must continue to make the same mistake over and over again. Bloom stated that attorney Amon has a much better argument with regard to ordinance ambiguities being construed against the City than Amon's argument about past practice from one situation. Bloom pointed out that past practice is normally used to protect a municipality's longstanding interpretation, not to challenge a change in that interpretation. Members of the ZBA discussed the various legal arguments and interpretations. Heartwell stated that while the language of the Zoning Ordinance is imprecise, its intent is clear. The disputed language would be superfluous in this section unless it was meant to further restrict setbacks for over-sized structures. Further, without such limitation the quiet enjoyment of adjacent property owners would be compromised. Motion by Heartwell, second by Chambers at 7:39 pm to close the public hearing. AIF/MC unanimously.

NEW BUSINESS

Motion by Heartwell, second by Chambers to deny the applicant's appeal and interpretation of the City's Zoning Ordinance, and thereby uphold the Zoning Administrator's interpretation of Section 3.13 regarding Height Exceptions that the setback must be at least as much as the height of the structure. Roll Call Yeas: Fedell, Heartwell, Looman Absent: Armstrong Nay: Chambers. MOTION CARRIED

PUBLIC COMMENTS

Bloom stated that a proposed zoning amendment to this Section 3.13 is in process to make it more clear and would make possible a reduction in the setback if approved under the special land use procedure.

BOARD COMMENTS

Fedell stated at the last Council meeting, the Zoning Ordinance Amendment for Section 3.13 was removed as it was felt the City needed to wait until ZBA meeting was held.

Heartwell said he would encourage all to look at Master Plan and wording in the plan for adjoining properties.

Looman feels Section 3.13 may be missing some words, but that the Section shows clear intent regarding increased setbacks.

Motion by Chambers, second by Heartwell to adjourn the meeting. AIF/MC unanimously.

Meeting adjourned at 7:44 PM.

ZBA Chair-Mayor Fedell

Clerk – Kim Goodin