

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

\*\*\*\*\* MINUTES \*\*\*\*\*

## REGULAR MEETING – MONDAY, APRIL 24, 2017 - 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 24, 2017 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

### ZBA MEMBERS PRESENT:

Loren Yaros, Chairman  
Dan Durham, Vice Chairman  
Mike Flood, BOT Rep to ZBA

Don Walker, PC Rep to ZBA  
Lucy Koscierynski, Board Member

### ZBA MEMBER ABSENT:

None

### CONSULTANT PRESENT:

Jim Stevens (Township Engineer) of OHM Advisors  
David Goodloe, Township Building Official  
Al Daisley, Ordinance Enforcement

### OTHERS PRESENT:

Richard Koscierynski  
Eugene McNabb  
Dave Emeich  
Michael Shammas

Brett Baker  
Mark Peyerk  
James Shelton  
Pete Granzou

Iven Sharrak  
Allen Chika  
Gene McNabb  
Lynn Harrison

### 1. OPEN MEETING

Chairman Yaros called the meeting to order at 7:00pm.

### 2. ROLL CALL

### 3. MINUTES

#### 04-10-2017, Regular Meeting Minutes

Moved by Board Member Koscierynski, seconded by Vice Chairman Durham, to approve the 04-10-2017 Regular Meeting minutes as presented. **Motion carried.**

### 5. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

### 6. ZBA BUSINESS

#### A. AB-2017-08 Allen Chika/Iven Sharrak, 3865 S. Baldwin Rd., Sidwell #09-29-326-016

Chairman Yaros noted that the case was postponed from the April 10, 2017 meeting.

Chairman Yaros read the request as follows:

The petitioners are requesting two variances from Sign Ordinance No. 138, Section 8, Schedule B, GB-2:

1. A variance to allow five additional wall signs (3 on the fuel pump canopy and 2 on the front of the store), to install a total of six wall signs.
2. A 508.89 sq. ft. variance above the allowed 12 sq. ft. area of a wall sign, to install a total of 520.89 sq. ft. of wall signage.

Mr. Allen Chika, the petitioner, presented.

Chairman Yaros noted that at the April 10, 2017 meeting he had commented that part of the signage that is in question and the reason there is so much of it, is because of the colors on the fuel pump canopy. Those colors are part of the Marathon logo/advertising.

Mr. Chika explained that before this location was a Clark Gas Station. The only thing they did was remodel it to make the building look nicer and got new pumps. He did not understand why the sign requirement should have changed; there were color stripes on the canopy previously. Those colors just changed from the Clark brand to the Marathon brand. He believed it would not be fair to Mr. Sharrak to not allow him to put up the necessary signage to do business such as for Tubby's and for other products carried in the station. Mr. Chika added that not having the signage has affected the business which will also be hindered in the next few months with the re-construction of Baldwin Road. Having signage on the building is very important for Mr. Sharrak and his business. He reiterated he did not believe it would be fair if they were not allowed to have the colored stripes around the canopy, especially when they were there from the previous gas station.

Chairman Yaros said there was probably a change in the Ordinance from when the Clark station was there and why there is a need now for the variances. He also noted they have two very large Marathon signs. Even though those signs are nice looking and don't look out of place, they are part of the sign Ordinance. He then asked Mr. Chika to speak to the signs they want on the building.

It was explained that the size of the Tubby's sign and the WOW with BEER & WINE sign underneath it isn't really that large compared to the size of the building. Mr. Chika said they do not intend to put anything on the building that wouldn't look nice or unprofessional. They want to put those brands out there to let people know they are available in this store.

Chairman Yaros noted the WOW sign is there now but it is smaller. Mr. Chika said it is very small, it is about 28" high x 67" wide and clarified that the BEER & WINE portion is not there yet; it is one of the things they are requesting.

Board Member Koscierynski asked if the stripes on the canopy that go around are part of the scenario? The response was, yes and the petitioner believed that was being confused as signage. He believed those painted stripes are not necessarily a sign.

Chairman Yaros commented that because the stripes are related to the Marathon brand logo, they are considered a sign.

Board Member Koscierynski then asked if the size of these signs are what corporate requires? Mr. Chika responded they are requesting a smaller Tubby's sign than what is required. Board Member Koscierynski then thanked the petitioner for doing business in Lake Orion and that they are not here to give them a hard time but are required by law to make sure they are complying with Ordinance.

Vice Chairman Durham asked what WOW stood for? Mr. Chika responded that WOW is a brand, Mr. Sharrak owns other gas stations and the WOW image is something he wants to franchise. WOW is a brand that indicates this is an over the top station that has beer, wine, liquor and a kitchen.

Mr. Iven Sharrak, the owner, explained that when he came for the site plan approval, he did not incorporate the fuel pump canopy with the site plan; he thought it was "grandfathered" in. The canopy and the "can" signs existed from when it was a Clark station and they didn't change those except to make them represent Marathon. The image is what the company requires; there is requirements they have to abide by from the oil company.

Vice Chairman Durham asked if Mr. Sharrak believed that the BEER & WINE portion is vital to the business? Mr. Sharrak responded, absolutely, this is where business is going. You will no longer see party stores in the future, there will be gas stations like his where businesses are consolidated.

Vice Chairman Durham asked if in the event they are not successful tonight, especially with the canopy, do they have a “Plan B”? Mr. Sharrak responded, that if they have to remove the images from the canopy, he would be in default with the oil company. Mr. Sharrak noted that Mr. Chika visited other gas stations in the Township and they all have a some type of corporate image.

Vice Chairman Durham said the issue is, is they don't know what ordinances were in place when those other stations were built, there are a lot of variables the Board doesn't know about those or what they were granted.

Chairman Yaros reiterated that the reason that the request seems so large is because the painted stripes go around the entire canopy.

Trustee Flood explained that the Tubby's sign is approximately 12 sq. ft., the BEER & WINE sign is approximately 15 sq. ft. and the existing Marathon sign is 18 sq. ft.; all the signs added up equal 81 sq. ft., the rest of the request is made up of the stripes around the fuel pump canopy which is required by ordinance.

Trustee Flood commented that he appreciates Mr. Sharrak updating the 50 year old gas station and it looks great. However he had hoped they would have removed the tall non-conforming (by today's standards) original sign. He would have liked to have seen a nice ground sign. Mr. Sharrak said they could change that and would be willing to go to a monument sign. He would eventually like to have a video board to advertise what's inside the store. He would do that in return if the Board would grant this variance request.

Mr. Sharrak asked the Board why the signage carried over from the Clark station wasn't a “grandfathering” situation. The front portion of the station was never touched, it was never part of the site plan. Chairman Yaros said possibly because it now is under different ownership and was sure the Ordinance had changed.

Chairman Yaros asked if there was anyone who wanted to speak to this matter.

Trustee Flood said the numbers look skewed because of the painted stripes; it seems like a large variance but in essence, they are looking at 81 sq. ft. total actual signage.

Moved by Vice Chairman Durham, seconded by Trustee Flood, that in the matter of ZBA case AB-2017-08, Allen Chika/Iven Sharrak, 3865 S. Baldwin Rd., Sidwell #09-29-326-016, the petitioners are requesting two variances from Sign Ordinance No. 138, Section 8, Schedule B, GB-2: 1. A variance to allow five additional wall signs (3 on the fuel pump canopy and 2 on the front of the store), to install a total of six wall signs; and 2. A 508.89 sq. ft. variance above the allowed 12 sq. ft. area of a wall sign, to install a total of 520.89 sq. ft. of wall signage; the petitioners' request for a non-variance from Sign Ordinance 138 be granted; the petitioners did demonstrate that practical difficulties exist, he has strict requirements by the oil company; compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome; granting the variance request would do substantial justice to the petitioner, it would not affect other property owners in the area, it would make it easier for the traveling traffic on Baldwin Road to get in and out because they would be able to see what the gas station sells; the petitioners' plight is due to the unique circumstances of his situation more than the property, the fact that the Township has to include the wrap that is strictly color on the canopy as part of the signage inflates the square footage they are asking for dramatically; the problem

is not self-created by the petitioner as much as it is by the oil company and the circumstances he has in place.

Roll call vote was as follows: Walker, yes; Koscierzynski, yes; Durham, yes; Flood, yes; Yaros, yes.

**Motion Carried 5-0**

**B. AB-2017-10, David Emeigh/Eugene Rutt, 1066 Leidich St., Sidwell #09-10-127-025**

Chairman Yaros read the request as follows:

The petitioner is requesting a variance from Zoning Ordinance No. 78, Article VI, Section 6.07, R-2, requesting: a 16 ft. variance from the required 35ft. front yard setback to allow a carport to be built 19 ft. from the front property line (west), along Bay Pointe Rd.

Trustee Flood asked to be recused from hearing the case because he is related by family to Mr. Emeigh and felt he would not be un-bias.

Vice Chairman Durham moved, seconded by Board Member Walker, being that Trustee Flood is related to the petitioner and has properly disclosed that to the Board, recuse him for this case only.

Roll call vote was as follows: Koscierzynski, yes; Walker, yes; Durham, yes; Yaros, yes. **Motion Carried 4-0**

Mr. David Emeigh, 1066 Leidich, presented.

Chairman Yaros asked if the carport is going to be attached? Mr. Emeigh said, no, there will be 4 feet between it and the house.

Mr. Emeigh explained that there is some erosion issues and he cares for two handicapped adults that he needs to get in and out of the house. When the house was built, there are two steps up to the front door and two steps down to the garage and only one viable emergency exit. He has to take them down a ramp that turns. He originally wanted to build a garage but the ground is not stable there, so he is proposing a carport instead where he can park his truck. That would allow him to clear some room in the garage and put a door from the family room into the garage where he could easily put in a small ramp. Because his lot has two fronts, he has to request the 16ft variance from the required 35 ft. front side yard setback. He added that he doesn't believe the structures across the street on his neighbor's property meet the 35 ft. set back.

Chairman Yaros said he sees that the carport will be 32 ft. from the edge of the road.

Board Member Koscierzynski noted that she visited the property today and can see the petitioners' need. She was told of an incident where someone tipped over.

Vice Chairman Durham asked if both the men Mr. Emeigh spoke off live with him? Mr. Emeigh said, yes.

Chairman Yaros asked if there was anyone who wanted to speak to this matter.

Moved by Board Member Koscierzynski, seconded by Chairman Yaros, that in the matter of ZBA case AB-2017-10, David Emeigh/Eugene Rutt, 1066 Leidich St., Sidwell #09-10-127-025, that the petitioners' request for a non-use variance from Zoning Ordinance No. 78, Article VI, Section 6.07, R-2, requesting: a 16 ft. variance from the required 35ft. front yard setback to allow a carport to be built 19 ft. from the front property line (west), along Bay Pointe Road, be granted because the petitioner has demonstrated that practical difficulties exist in the case in that they set forth facts which show that in this case; being in compliance with the strict letter of the ordinance would unreasonably prevent the

petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome, based on the following: there are two people living there that are disabled and are in wheelchairs, it was her observation that it is a little steep there and accidents could happen with the two people in the wheelchairs; granting the variance request would do substantial justice to the petitioner as well as to other property owners in the area and there is not a lesser relaxation than that relief applied for that would give substantial relief to the property involved and be more consistent with justice to other property owners, based on the following findings of fact: that there is a steep hill there and there is a safety issue; the petitioner's plight is due to the unique circumstances of the property based on the following: the property is a corner house and has a steep hill; the problem is not self-created based on the following findings: there are two people who live there that are disabled.

Board Member Koscierzynski amended the motion, Chairman Yaros re-supported, to add that the proposed edge of the carport will still be 32 ft. from the edge of the road and that the lot has two fronts, if it did not have two fronts, the setback would only need to be 10 ft..

Roll call vote was as follows: Durham, yes; Koscierzynski, yes; Walker, yes; Yaros, yes. **Motion Carried 4-0**

**C. AB-99-01-2017, Bob Warren Trucking, Inc., lot 28 of Highland Farms (parcel number 09-32-400-024), lot 29 of Highland Farms (parcel number 09-32-400-022), & lot 30 of Highland Farms (parcel number 09-32-400-021), and a 7.5 acre parcel (parcel number 09-32-400-058)**

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

Pete Granzou, 327 Brown Road, represented the petitioner.

Chairman Yaros asked Engineer Stevens to go through the engineering review dated April 11, 2017.

Engineer Stevens noted the site visits were done and this site is similar to previous years. Some of the items he noted were the additional debris on the site that was possibly from the Pontiac Sand & Gravel site. That should be removed and properly disposed of off-site. Regarding matching and coordinating grades with Pontiac Sand and Gravel to the east - past comments apply now because a site plan has been approved for Menards. In the future, once the Menards site is finalized, there may need to be some adjustments to the final grades on the Bob Warren site. He wanted make sure that is recognized so that those grades line up on the east side. Regarding the water level in the pond, the petitioner needs to monitor that and doesn't cause any issues. Then he had the typical comments with regards to monitoring dust throughout the permit year, making sure the petitioner notes any fill material brought in and that there is a log and pictures available that the Township can request, and that any stock piling of fill material has to be graded out within 7 days.

Chairman Yaros commented that he saw a note that the north end of the site which is Dan's Excavating, has been recently graded to improve the slope down to the flat area. He saw that during the site walk and it looked good.

Chairman Yaros asked Mr. Granzou if he knew if Mr. Warren was planning on doing any mining this year? Mr. Granzou responded, he believes he wants it open for it, but Mr. Warren hadn't mentioned any plans to do so.

Trustee Flood noted the letter in the packet from Mr. Warren that was date stamped received February 15, 2017 about his mining intent and should be mentioned in the motion.

Trustee Flood asked about the hours of operation. Mr. Granzou said he believed Mr. Warren is requesting they be 7:00am to 7:00pm. Engineer Stevens did note however that the ordinance states only to 5:00pm. In the past petitioners have asked for a variance from that for emergency situations. It was noted, too, that the property is not in a residential area. Board members discussed the hours of operation. Because of the location and it had been granted in the past, they were ok with allowing the hours to go to 7:00pm.

Chairman Yaros asked if there was anyone who wanted to speak to this matter.

Eugene McNabb, 2981 Judah, asked about the southwest corner of his property - is that grade going to be taken care of? Chairman Yaros replied that Mr. McNabb would need to ask that question when the Board discusses the renewal of Pontiac Crushed Cement's permit.

Vice Chairman Durham said it appears the information from the Hanover Insurance Group expired on July 22, 2016. The petitioner needs to get that updated and that should be included in a motion.

Moved by Trustee Flood, seconded by Chairman Yaros, that in the matter of ZBA case AB-99-01-2017, Bob Warren Trucking, Inc., lot 28 of Highland Farms (parcel number 09-32-400-024), lot 29 of Highland Farms (parcel number (09-32-400-022), & lot 30 of Highland Farms (parcel number 09-32-400-021) and a 7.5 acre parcel (parcel number 09-32-400-058); the petitioner's request for the renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing be granted because the petitioner has demonstrated that he has been renewing this for several years and is still in need of the renewal to perform the business; with the following conditions:

1. Hours of operation to be Monday through Saturday from 7:00am to 7:00pm because it is in a commercial area and not in a residential area.
2. Per the letter from Jack Warren date stamped received by the Township February 15, 2017 that he may be doing some mining, possibly 30,000 to 40,000 cubic feet, and may have approximately 6 to 12 trucks per day. There may also be some top soil operation.
3. Address the letter from OHM dated April 11, 2017, the 6 conditions listed on page 4:
  1. Being that Menards Corporation is moving forward with their store on the former Pontiac Sand and Gravel site; their Final Revised Grading plan, which is consistent with their approved site plan, has proposed grades matching existing grades along their common property line between Bob Warren Trucking and Pontiac Sand and Gravel. Final grades for the Bob Warren Trucking site may need to be adjusted from what is currently proposed.
  2. Miscellaneous debris should be properly disposed off-site.
  3. The water level in the pond should be monitored throughout the year. Cleanout of accumulated sediment may need to occur to promote infiltration.
  4. Per Section 6 of Ordinance 99, the petitioner shall address the bond/guarantee and insurance information with the Township; that they are up to date and those documents presented to the Building Department.
  5. Per Section 7, Item L, the petitioner shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year.
  6. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the petitioner to document all fill is "suitable fill material" as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill

material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.

Roll call vote was as follows: Walker, yes; Durham, yes; Flood, yes; Koscierzynski, yes; Walker, Yaros, yes. **Motion Carried 5-0**

**D. AB-99-04-2017, Pontiac Crushed Cement, lot 30, excluding the south 400 feet, of Highland Farms (parcel number 09-32-400-021), lot 29, excluding the south 400 feet, of Highland Farms (parcel number 09-32-400-022), and a 7.5 acre parcel (parcel number 09-32-400-058)**

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

Pete Granzou, 327 Brown Road, represented the petitioner.

Chairman Yaros asked Engineer Stevens to go through the engineering review dated April 11, 2017

Engineer Stevens commented the operation is similar to previous years, however this year there wasn't as much stock pile material nor a big stock pile of processed material. The "northern bank" of the site looked to be recently re-graded lessening the slope. He noted the final grade plans do show that slope being graded all the way out from the "top" down to the site (along the whole back of the property). He added that during the site walk he noted quite a bit of reinforcing steel that was removed from concrete laying around. He asked that they make sure that is routinely picked up and disposed of properly. Finally, they need to monitor the pond, provide dust control throughout the year, make sure the bond/guarantee and insurance is up to date and any fill material brought in has to meet ordinance in terms of documentation.

Chairman Yaros asked if there was anyone who wanted to speak to this matter. He noted that he believed that Mr. McNabb's concern's above were addressed in that the petitioner would be grading down along the whole back of the property.

Eugene McNabb, 2981 Judah, commented that a good share of the property in question - the crusher is sitting on Dan's Excavating property. That Warren's don't own that part of the property; where the grade is at, it belongs to Dan's Excavating. If they want to put a grade in, it would have to be with the cooperation of Dan's. This leaves his property on the southeast corner, which has also been mined, with a steep grade. He commented that can only be taken care of if the Warrens and Dan get together to come up with a solution.

There was discussion whether or not Warren's property came close to Mr. McNabb's. Engineer Stevens commented there is a small amount of separation; it's Dan's property that actually touches Mr. McNabb's. Engineer Stevens concurred with Mr. McNabb and added that on the proposed grading plan for Warren's, they have proposed grades from the top of the pipeline down to their site; that is technically Dan's property and believes there is an agreement in place.

Mr. McNabb explained the situation with the pipeline, the excavating and the sale of some of Warren's property on Judah Road - on the other side of the pipeline. It was his opinion that because both Warren and Dan is still under contract with the Township, they could be made to take care of his concerns now.

Chairman Yaros said, however, if they were made to do it now and being the Crusher is leasing that property, they wouldn't have any place to stock pile material.

Mr. McNabb commented that it has to be taken care of someday and there should be some paperwork. Chairman Yaros replied that it will be taken care of once “it is all done” - then the grade will have to match. Mr. McNabb then asked, what do we call “done”?

Gene McNabb, Orion Township, commented the easiest way to sum this up is: for several years they (he and his dad) have been coming to these hearings to get the Kosiba property balanced off per the mining ordinance but that isn't happening now because it's gone. They are going to balance that property off on a 3:1 slope instead of to what the mining ordinance requires, a 4:1 slope. It was his opinion for the Board to say “it is going to be taken care of” – none of it is going to be taken care of; per Ordinance 99. There will be a 3:1 slope at the back of his dad's property which will make it a lot less marketable.

Trustee Flood commented that this is out of their hands, it is now the responsibility of Menards and their site plan; Kosiba's permit has been closed. When the other properties stop mining, that is when the slopes will be addressed.

Trustee Flood asked Mr. Granzou how long they have been operating and what their hours of operation were? Mr. Granzou responded, they have been there about 14/15 years and their normal hours of operation are 7:00am to 5:00pm but he would like to have it 7 to 7 in case something runs late.

Moved by Board Member Walker, seconded by Chairman Yaros, that in the matter of ZBA case #AB-99-04-2017 Pontiac Crushed Cement, lot 30, excluding the south 400 feet, of Highland Farms (parcel number 09-32-400-021), lot 29, excluding the south 400 feet, of Highland Farms (parcel number 09-32-400-022), and a 7.5 acre parcel (parcel number 09-32-400-058); the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing be granted with the following conditions:

1. As noted in the OHM report dated April 11, 2017, the current application materials, as submitted, are in substantial compliance with Township Ordinance 99, and the Township's engineering standards. However the following items on pages 3 & 4 need to be addressed:
  1. Reinforcing steel removed from the concrete during crushing operations shall be routinely collected and contained within the scrap iron dumpsters onsite.
  2. The water level in the pond should be monitored throughout the year. Cleanout of accumulated sediment may need to occur to promote infiltration.
  3. Per Section 6 of Ordinance 99, the applicant shall address the bond/guarantee and insurance information with the Township; those documents were attached to the petitioner's application.
  4. Per Section 7, Item L, the petitioner shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year.
  5. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the petitioner to document all fill is “suitable fill material” as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.
2. In addition, the hours of operation will be from 7:00am to 7:00pm.

Board Member Walker amended the motion, Chairman Yaros re-supported, to include that the petitioner makes sure that the Township has current and up to date bond/guarantee and insurance information on file.

Roll call vote was as follows: Durham, yes; Flood, yes; Kosciuszynski, yes; Walker, Yaros, yes.

**Motion Carried 5-0**

**E. AB-99-02-2017, Dan's Excavating, Inc., 2985 Judah Road, the north 535 feet of lot 11 of Mt. Judah Farms (parcel number 09-32-400-056), lot 11, except the north 535 feet, of Mt. Judah Farms, (parcel number 09-32-400-057), lot 12, and the southerly 588 feet of lots 13 & 14 of Mt. Judah Farms (parcel number 09-32-400-055) and 3011 Judah Road, lots 13 & 14, excluding the southerly 588 feet, of Mt. Judah Farms (parcel number 09-32-400-063)**

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing with the hours of operation 7:00am – 7:00pm and fencing of working areas.

Chairman Yaros asked Engineer Stevens to go over the OHM review dated April 11, 2017.

Engineer Stevens commented the filling of the pit continues to occur - pushing material into the south side of the "pit area". In the conclusion on pages 4 & 5 – he noted that the proposed final grades need to be assured, that from the pipeline, or the "high point", are shown on the plan down to the "finish grade" area of 10:60. They recommend a 1:4 slope from that point down. That was on previous plans but they don't show that sloping proposed. He knows they are continuing to fill but that information should be provided and shown on the plan. Also as part of the conclusion: they make sure that miscellaneous debris is disposed of off-site. Regarding the grades for the ditch on the east side – they should be adjusted to prevent standing water. He noted pictures presented tonight show there may be a potential problem there and that should not be any standing water on adjacent properties to the west. The haul route needs to be renewed and if there is any time of intense activity on the site with regards to filling operations, that the Township be notified. Then the other typical concerns relative to dust control, Ordinance requirements for logging of the material with documentation and photos and the petitioner has requested a variance for the hours of operation to 7:00am to 7:00pm.

Chairman Yaros asked about showing the elevation on their plan of sloping down to 10:60 as mentioned by Engineer Stevens, is the petitioner willing to provide that to the Township?

Brett Baker, Dan's Excavating, presented and commented he wasn't aware that was left off the plan; he believed that it was revised last year. Engineer Stevens said they had, but they still need to see some type of sloping from the pipeline down, to show how they are going to do that; he recommends a 1:4 slope. Mr. Baker said he would get that revised.

Vice Chairman Durham asked about their estimate that they will have 100 trucks a day? Mr. Baker replied that he doesn't believe there will ever be that many trucks but is something they ask for every year in case there is ever the need.

Vice Chairman Durham asked Mr. Baker what is the end result he is looking for with this property? Mr. Baker responded, he doesn't anticipate a lot of mining going on, they are more in the filling mode; they have been for a number of years.

Vice Chairman Durham mentioned the above ground diesel tank. Mr. Baker said they fill their on-site equipment with it.

Board Member Koscierzynski commented as to the hours of operation they are requesting. Being this property is on a residential street, the hours should be limited to 5:00pm. She noted it was that way a couple years ago but the variance was granted last year to 7:00pm.

Mr. Baker asked if there had been any complaints about trucks between the hours of 5:00pm and 7:00pm? Building Official Goodloe said that he wasn't aware of any.

Chairman Yaros asked Mr. Baker if he knew how many trucks went in and out last year. Mr. Baker said he didn't know, most of them come from close by. He explained what happens, though, is they have trucks stationed in Pontiac and would like to have the later hours to accommodate last trips of the day.

Trustee Flood said he understood that per the Ordinance, they are supposed keep a log of each load that comes in so he then should know how many loads were brought in. Building Official Goodloe said in January they had 1,040 yards and in March there was 2,5084; he has been starting to get a log. Mark (Peyerk) showed the Board the log for 2017 they have been keeping. Building Official Goodloe noted that Code Enforcement Officer Daisley is out there several times a week and looks at the dirt and is keeping tabs of it.

Code Enforcement Officer Daisley commented that if he were to see something that might be a bad load, he would take a picture of it. He also takes pictures periodically and it was his opinion that all the fill that is in there has been clean. If there is anything bad in the fill they bring in, it is pulled out and set aside. They have had no complaints.

Trustee Flood confirmed they have a mud mat and concrete going from dirt to dirt. Mr. Baker indicated yes.

Chairman Yaros asked if they have a lot of problem with four-wheelers going up and down the property. Mr. Baker said, yes, and that they have installed a guard rail up there; something a little more permanent and harder to take down. It was his opinion that people driving their off-road vehicles on his property are the ones taking down the fence.

Chairman Yaros referred to a picture he was given where the trucks look pretty dusty, he asked if they water the area? Mr. Baker said, yes. Building Official Goodloe commented that is also something Code Enforcement Officer Daisley looks at.

Chairman Yaros then asked about the drainage and that they keep that drain open to make sure the water doesn't stand. Mr. Baker said that if there is any water standing there, it is because of a minor dip in the ditch - it is open and clear. Engineer Stevens replied the picture of the ponding was from January and there may have been some frozen ground conditions and rain at the time. Mr. Baker said he is positive there is plenty of slope on it and it is doing what it is intended to do.

Vice Chairman Durham asked Building Official Goodloe how many citizen complaints has he had about dust in the past permit year? Building Official Goodloe said, one.

Chairman Yaros asked if there was anyone who wanted to speak to this matter.

Gene McNabb, Orion Township, had a copy of Ordinance 99 with the revision date of April 23, 2015. He said it had been officially adopted and is the "bible". That Ordinance specifically says "logs and photographs" - this cannot administratively be changed. He noted that in every one of OHM's reports, it say log book and photographs. Last year he FOIA requested a copy of the logbook and copy of all photographs. He did get a stack of paperwork where Code Enforcement Officer Daisley had been on

site but there was no logbook or photographs. And what do we do with the dirt that was brought in last year, where did it come from, what was in it? It was his opinion there should be some type of testing of it; the rules that apply today also applied to last year. On the northeast corner there has been a large pile of dirt there for about a year; the Ordinance says no piles will sit longer than 7 days. Regarding the hours of operation – it is easy for a business owner who doesn't live in the area to say he would like his trucks to be able to off load after 5:00pm; they could off load in the morning. Years ago this was deemed a filling operation only, there was to be no mining taking place and referred to the minutes which also included what type of equipment can be on site. He then asked what type of equipment is allowed to be on site? Mr. McNabb said the only thing that is supposed to be on the site is a dozer to push the piles; there is not supposed to be any excavators or loaders because it was deemed a fill site only. Regarding the oil tank for filling – he believed that it has to have a capturing device around it or a double wall; if you look at the pictures of it, oil is running down the sides and quite possibly getting on the ground. The dust - they didn't haul a tremendous amount last year and the drivers are courteous and go slow. The road was decent but 100 trucks a day when the road is dry...he hasn't seen a water truck of any kind. Also, he did not believe that people would continuously call and complain and why the Township only had one complaint. The Ordinances are here to enforce, they are supposed to be taking photos and keeping logs – that is what the Township should be enforcing.

Eugene McNabb, 2981 Judah, showed Chairman Yaros an application and asked him if it means anything? He said for 18 years the Board has asked and requested what will be done with that property when it is finished; it has never been put on the application. The document he had says it has to be on the application - they have to say what the property will be for. Again, regarding the application – Lot 10 which he (Mr. McNabb) owns was part of the Ordinance 99 permit. The court system says it is, the map in the Building Department says it is, (Attorney) Kelly says it is and Chris (Barnett) says it is. Chairman Yaros commented that it is not part of this application. Mr. McNabb then noted that Dan is operating off of Bob Warren's permit. He again said that his property is on that permit. The court system says that he (Dan) has to balance his property off when the pit is done. Mr. Kelly and the Township should know that; Mr. Kelly was at the court meeting. Chairman Yaros reiterated that it is not included on this permit. Mr. McNabb then read a statement from the application that if not all the facts are in, the application is no good.

Vice Chairman Durham said he remembered when Mr. McNabb had a date - at some point Lot 10 was part of the permit and then was dropped and disappeared. Mr. McNabb said this Board took it off. Vice Chairman Durham asked when was that? Mr. McNabb replied, in "08"; the Zoning Board took it off. He went on to say the Zoning Board cannot change anything on a permit. He believed the reason it was taken off was because Mathew Gibb had taken over the ZBA meeting and then later he (Mr. McNabb) was told by two members of the Board that they had to go that way. Mr. McNabb commented that at that meeting Matt Gibb said he could give a legal opinion because he was a lawyer. Mr. McNabb said the only person who can give a legal opinion for the Township is Kelly. He believed the permit was changed and dropped and he has been fighting it ever since. Lot 10 is still on that permit, the court said it was. This pit is almost filled, if Lot 10 was leveled off and they took the berm on the north side which is not legally part of the pit but was used as such. According to the court, anytime the Township wants to make his property balanced off, they can say so, it is being held up by the Township not to balance it off.

Chairman Yaros said he has never seen anything from the court.

Mr. McNabb said Chairman Yaros would have to talk to Kelly. When it comes to the level of the pit, it is 10:60, the limit is 10:60. By the time you take Lot 10 and level it off to 10:60 and put all that material in the pit area, it would be filled right up.

Mr. McNabb then explained the pictures and the list of each one he provided to the Board\*.

Mr. McNabb then commented that when they fill the pit up, it won't handle the dirt at 10:60; there will then be a problem. The Township will have the problem because they are the ones that let them do it; the court says it can't be filled over 10:60. It was his opinion this decision should be postponed until someone talks to the attorney.

Trustee Flood asked if the Board determines there is grievance violation here, they would still have authority to take action? It was indicated, yes. If the Board renews the permit and something down the road happens, the operation can be shut down. Building Official Goodloe said a Stop Work Order could be issued.

Board Member Koscierynski reiterated that her concern was that this operation was because on a residential street and the hour of operation going until 7:00pm.

Mark Pereyt, with Dan's Transport, commented that he understands what the Board is saying about the hours of operation however he is very strong with his drivers about going into this pit. He tells them 10mph. He reiterated what the McNabb's have said, that the trucks have been great about going slow down the road, they have kept the noise down, there are berms around it to also try and contain the noise and the dust and they will be chloriding as they normally do.

Chairman Yaros commented however it is a residential neighborhood and there could be as many as 100 trucks. He believed 5:00pm should also be sufficient and if they have an emergency they could call the Building Department and get permission to stay open until 7:00pm. Building Official Goodloe said they could do that but permission would have to come from the Township Board.

Board Member Koscierynski asked if Dan Kelly comes back with something, could the ZBA halt things? Chairman Yaros said it would be the Building Department that would do that.

Eugene McNabb commented that the roads have been in terrible shape however Dan's trucks and their drivers have been really efficient – going slow and not crowding people; he cannot complain about them. He has seen, though, some trucks come in who were not Dan's drivers that did not cover the load. It is the road and not Dan's drivers that is the problem.

Vice Chairman Durham asked if it reasonable to expect that Mr. McNabb's Lot 10 issue will ultimately be decided in court? Chairman Yaros said he believed that it already has been yet has seen no documentation of that.

Vice Chairman Durham also had concerns about the fence that keeps coming down allowing off-road vehicles to use the site; that should be monitored weekly. Code Enforcement Officer Daisley said he also tries to look at that when he is out there but can't be there after hours. Regarding the dust issues, he anticipates that the operators will address the dust as they see it.

Chairman Yaros asked about the gate as shown in some of the pictures as being open, they don't leave that open all the time, they lock it up? Mr. Baker said it is supposed to be. Chairman Yaros asked that they keep an eye on that.

Vice Chairman Durham asked when the current permit expires? It was noted it expires 6/1/2017.

Mr. Baker commented that he believed Attorney Kelly was at this hearing last year and if he had seen a problem then, he would not have let the permit be renewed; he believed it should be renewed again this year - he does not want to have to come back.

Moved by Trustee Flood, seconded by Chairman Yaros, that in the matter of ZBA case AB-99-02-2017 Dan's Excavating, Inc., 2985 Judah Road, the north 535 feet of lot 11 of Mt. Judah Farms (parcel number 09-32-400-056), lot 11, except the north 535 feet, of Mt. Judah Farms, (parcel number 09-32-400-057), lot 12, and the southerly 588 feet of lots 13 & 14 of Mt. Judah Farms (parcel number 09-32-400-055) and 3011 Judah Road, lots 13 & 14, excluding the southerly 588 feet, of Mt. Judah Farms (parcel number 09-32-400-063) that the petitioner's request for the renewal of the Ordinance 99 Permit for Sand and Gravel Mining, Earth Excavation, and/or Filling and Earth Balancing be granted with the following conditions:

1. The hours of operation will be 7:00am to 5:00pm.
2. The petitioner has indicated up to a 100 vehicles per day.
3. To take care of the dust problems.
4. To make sure that the bond/guarantee and insurance information is up to date and that when it is up to date, to make sure that the Building Department is provided a copy.
5. To address the concerns of the Township Engineer in their memo dated April 11, 2017:
  1. Proposed final grades for the entire site need to be shown on the survey. In particular, the steep slope that exists to the north of the pipeline down to the current water surface should be shown to be regraded to a recommended 1:4 slope.
  2. Miscellaneous debris properly disposed of offsite.
  3. The grades for the ditch on the east side of the site be adjusted to prevent standing water.
  4. The petitioner to furnish the Township a copy of the haul route permit renewal with the Road Commission for Oakland County for Judah Road. The current permit is set to expire on 6/1/2017.
  5. The approximate start date and end date of any intense activity, if applicable, occurring on the site for the year should be included in the application and/or notice given to the Township prior to high periods of activity.
  6. Per section 6 of Ordinance 99, the applicant addresses the bond/guarantee and insurance information with the Township.
  7. Per Section 7, Item L of Ordinance 99, the petitioner note the tracking of material and dust control issues and will be monitored and improvements may be required throughout the permit year.
  8. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the petitioner to document all fill is "suitable fill material" as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.

Trustee Flood amended the motion, Chairman Yaros re-supported, to add that Dan's Excavating will provide the new plan for the 10:60 sloping that was requested by the Engineer and to provide a new hauler agreement from the Road Commission.

Roll call vote was as follows: Flood, yes; Koscierzynski, yes; Walker, yes; Durham, yes; Yaros, yes.

**Motion Carried 5-0**

Vice Chairman Durham said that Attorney Kelly needs to weigh in on this, Lot 10 needs be addressed. He asked if this should be part of this motion? Chairman Yaros suggested a separate motion be made.

### **7. PUBLIC COMMENTS**

Gene McNabb, Orion Township, suggested that whenever Code Enforcement Officer Daisley goes to the site, to look up to see if the fence is in place.

Eugene McNabb, 2981 Judah, commented that he understands it is difficult to keep the off-road vehicles off the site and the fence up but could not understand how this Board could take anything off the permit; they cannot change a permit in anyway. This Board is only supposed to make sure the Ordinance is followed. If Lot 10 was taken off, then it is up to the Building Department to make sure that piece of property is maintained according to the Ordinance which means it should be leveled off at 10:60. It will come to head when that pit is overfilled and the court says it can't be and Dan's will walk.

### **8. COMMUNICATIONS**

Chairman Yaros asked that the pictures and log Mr. McNabb submitted be added to Dan's file.

### **9. COMMITTEE REPORTS**

None

### **10. MEMBERS' COMMENTS**

Moved by Vice Chairman Durham, seconded by Board Member Koscierynski, to request the Township Attorney research/review and provide the Zoning Board of Appeals Board with direction or a recommendation regarding Lot 10 of Mt. Judah Farms.

Roll call vote was as follows: Durham, yes; Walker, yes; Koscierynski, yes; Flood, yes; Yaros, yes.

**Motion Carried 5-0**

Trustee Flood commented that Supervisor Barnett is trying to set up the annual joint Board of Trustee, Planning Commission and ZBA meeting for some time in May.

### **11. ADJOURNMENT**

Moved by Trustee Flood, seconded by Chairman Yaros, to adjourn the meeting at 8:49pm. **Motion carried unanimously.**

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

May 8, 2017  
\_\_\_\_\_  
Zoning Board of Appeals Approval

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\* Pictures and log provided from Mr. Eugene McNabb to be added to Dan's Excavating file