

PRESENT: Chair. P. Nilsson, B. Weber, C. Rider, G. Cole, Kevin P. Masterson - Code Enforcement Officer & Tammie Schwerzler - Recording Secretary

EXCUSED: M. Sharman & J. Campbell - Town Attorney

OTHERS PRESENT: Attorney Gregory Nearpass of Nixon Peabody, Attorney Steven Sessler, Attorney Reuben Ortenberg of Fix Spindelman Brovitz & Goldman, Rick Bennett, Robbyn Haak, Chuck Casaceli, Don Richards and several residents

AGENDA: - Ronald Munson (Finger Lakes Timber Co., Inc.
- 6273 Decker Road
- Continuation of a previously held public hearing of January 21, 2013

Chair. P. Nilsson opened the meeting at 7:00 p.m. and asked the board to review the February 4, 2013 meeting minutes before them.

M/2/C (G. Cole/B. Weber) to accept the February 4, 2013 Livonia Joint Zoning Board of Appeals meeting minutes as submitted.
Motion carried 4-0.

Code Enforcement Officer, Kevin Masterson, read aloud the first Legal Notice:

RE: Application of **Ronald Munson** for the continuation of a previously held public hearing (January 21, 2013) for a previously issued Conditional Use Permit pursuant to Section 150-17B of the Zoning Ordinance of the Town of Livonia. This public hearing continuation is the result of a new site plan application currently before the Town of Livonia Planning Board. The applicant purposes to add additional saw milling equipment to be placed within a new building and new building location on the property that was not part of the previously issued Conditional Use Permit terms. This operation was previously considered an Intensive Agricultural Operation under the previously adopted Town of Livonia Zoning code and required the issuance of a Conditional Use Permit. The interpretation request before the board is whether this proposal is within the original intent of the Conditional Use permit. The property in question is located at 6273 Decker Road, Livonia, NY and is zoned Agricultural Residential Conservation (ARC-3) Zoning District.

Chair. P. Nilsson stated that he and the other board members have visited the site

Chair. P. Nilsson informed the public that this was a continuation of the public hearing from January 21, 2013 in which time this application was tabled.

Chair. Nilsson opened the public hearing portion of the meeting at 7:04 p.m. He announced that if anyone chose to speak they should state their name and address for the record.

Attorney Reuben Ortenberg of Fix Spindelman Brovitz & Goldman, P.C. - Attorneys at Law stated that he was here to represent Ronald Munson. It is his understanding that Mr. Munson received a Conditional Use Permit (CUP) in 2006 for the operation of a Timber Business on Decker Road and that it is still going on. In June of 2011 Mr. Munson submitted an application to the Livonia Joint Planning Board requesting to use additional saw mill equipment on the property and to construct a building. He was given approval for both. Mr. Munson applied for additional saw mill equipment and the relocation of the accessory building. The Planning Board referred Mr. Munson to the Livonia Joint Zoning Board of Appeals (ZBA) for their interpretation of whether or not this current proposal is within the original intent of the CUP. The Planning Board also asked three (3) questions of the ZBA.

1. Does enclosing the previously approved portable saw mill and attaching it to an exhaust system make it a permanent installation and violate the intent of the previously issued Conditional Use permit?

No. The Conditional Use Permit issued by the ZBA on November 20, 2006 contemplated the use of a portable saw mill. At the public hearing, the Applicant acknowledged that it has used a portable saw mill, outdoors, on the Property, and with his new application, seeks to enclose a saw mill within a building. Enclosing a saw mill in a building does not make it a permanent installation or violate the intent of the Conditional Use Permit.

2. Does adding the two (2) additional pieces of saw mill equipment with additional staff to run the equipment constitute an expansion of the operation and violate the intent of the previously issued Conditional Use Permit?

No. Adding two additional pieces of equipment to the saw mill and adding additional staff does not constitute an expansion of the operation nor does it violate the intent of the Conditional Use Permit. Expansion of a use occurs when a party acquires additional property or substantially increases the size and scope of its operations. None of that is occurring here.

The Applicant is not acquiring any additional property. It is the same property that was the subject of the 2006 Conditional Use permit. Additionally, the Applicant is not substantially increasing the size and scope of its business operations. At the public hearing, the Applicant stated that it intends to add two small pieces of equipment to the saw mill; an edger and a re saw. This equipment is customary

and incidental to the operation of a saw mill. Also, the Applicant noted that they intend to hire approximately four (4) employees. It is customary for any business to hire employees, and four (4) employees is not a substantial increase.

3. Is this new application proposal within the original intent of the Conditional Use Permit?

Yes. The Applicant stated at the public hearing that it will continue to use the Property in the same manner. The Applicant is approved to use a portable saw mill, and has used a portable saw mill outdoors on the Property.

Enclosing a portable saw mill in a building, adding two pieces of customary and incidental equipment to the saw mill, hiring four (4) additional employees, and relocating the building from where it was previously approved is all within the original intent of the Conditional Use Permit previously granted by the ZBA.

Attorney Steve Sessler of 20 Branch Street asked to speak on behalf of Matt & Beth Graf who live on Decker Road, adjacent to the parcel in questions. He has reviewed the meeting minutes of the Planning Board and the ZBA going back to 2005.

The CUP was granted but with contingencies. Under the law, if a CUP is not executed, it becomes null & void. Referring to a correspondence written to the ZBA, dated November 27, 2006 and signed by Kevin Masterson, Steve read aloud:

“This board did grant you a CUP contingent upon the following:

- A “NO WORK” zone of 30' x 150' be imposed along the new eastern property line.*
- That the front areas be used for only single stack timber, larger log piles must be to the rear.*
- Driveway construction to be approved by the Livonia Joint Planning Board.*
- The previous conditions of Oct. 1, 2006 to be in effect.”*

Atty. Sessler made further reference to the December 11, 2006 ZBA minutes stating that if the site plan was granted, it was to coincide with the user not the property.

Atty. Sessler stated that there was no site plan submitted and no site plan approved. The difficulty here is that the site plan was not executed within one year.

Atty. Sessler then read aloud correspondence written by Kevin Masterson and Rick Bennett, Chairman of the Planning Board, dated June 14, 2011.

He stated that most recently, this matter considered by the Planning Board has become null & void as a result of the building permit not being issued for the accessory building.. Therefore there is no site plan because a building permit was not issued within one year. Now we're back to no CUP because a site plan was not approved within one year.

Atty. Sessler referred to Livonia Town Code, Sections 150-32 & 150-5, reading them both aloud. He feels there is nothing being raised or harvested on the property. Logs are brought in and they will be manufactured.

He read aloud the definition of manufacture.

He feels that timber harvesting in this manner is not a permitted use under ARC-3.

Atty. Sessler feels that under Section 150-54 of the Livonia Town Code states that outdoor storage of materials is restricted in the ARC-3 Zoning District.

Again he stated that the overall process of what is being brought on to the property (logs), moved to another location and sawed is a manufacturing process.

He feels the board should take a step back and look at the interpretation they are asked to make by the Planning Board.

Chair. P. Nilsson asked if anyone else from the gallery wished to speak.

Attorney Reuben Ortenberg asked to make a rebuttal.

He explained that the 2006 Livonia Town Code definition for *Intensive Agricultural* was changed to *Agricultural* in 2010. He told the board that they are limited to answering the three (3) questions from the Planning Board and that this is not about lot size. The request for the "use" is not changing, it will be in harmony with what the Munson's have been doing all along.

Joyce Andrewlavage asked to speak as a property owner across from the Munson property. She stated that she received information from Code Enforcement Officer, Kevin Masterson, that Mr. Sharp said there was a lawn mowing business at the Munson property. That is a lie and this board was misled at that time. In addition, she said that no one wants to be by this logging business. It should not be allowed there.

Chair. P. Nilsson asked for further questions or comments. There were none.
M/2/C (C. Rider/G. Cole) to close the public hearing portion of the meeting).
Motion carried 4-0.

Chair. P. Nilsson stated that there will be no deliberation at tonight's meeting. The Planning Board has asked them to answer three (3) questions and that will be all they'll do. He referred back to the answers the board gave earlier.

He then asked the board members for their input.

B. Weber felt that Atty. Sessler brought up some good points, however they go beyond what was asked of them.

G. Cole agreed with Bill and stated that they are in an advisory capacity only.

Chair. P. Nilsson read aloud his correspondence addressed to the Planning Board (please see attached).

M/2/C (Chair. P. Nilsson/C. Rider) to approve the correspondence addressed to the Planning Board from the ZBA, dated February 11, 2013.

Motion carried 4-0.

Atty. Steve Sessler addressed Acting Town Attorney Greg Nearpass if there is an opinion made by him regarding the three (3) questions. Has he advised the ZBA? Is it in writing?

Nearpass stated that he has advised the ZBA but he has not signed anything in writing.

Sessler stated that he was asked to provide a legal opinion.

Nearpass explained that he gave them his opinion but it is not in writing.

Sessler asked, "you were paid by the Town of Livonia to give your legal opinion. Did you issue something?"

Nearpass stated that he concurred with the interpretation of the Code Enforcement Officer.

Joyce Andrewlavage said it sounds like he is passing the buck.

Sessler - "So what you're saying is an opinion was written February 5, 2013, before tonight's meeting?"

Chair. P. Nilsson said "yes. Mr. Masterson's opinion is relevant."

M/2/C (C. Rider/B. Weber) to adjourn the meeting at 8:30 p.m.

Motion carried 4-0.

Respectfully submitted,

Tammie Schwerzler
Recording Secretary