

**LIVONIA JOINT ZONING BOARD OF APPEALS  
Meeting Minutes - April 15, 2013**

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**PRESENT:** Chair. Peter Nilsson, Mike Sharman, Bill Weber, Gwen Cole, Chris Rider, Kevin P. Masterson - Code Enforcement Officer & Tammie Schwerzler - Recording Secretary

**EXCUSED:** Jim Campbell - Town Attorney

**OTHERS PRESENT:** Attorney Gregory Nearpass of Nixon Peabody, Attorney Steven Sessler, Attorney Reuben Ortenberg of Fix Spindelman Brovitz & several residents

- AGENDA:**
- Ian & Cassandra Coyle
    - 6534 Florence Lane
    - Area Variance
    - Pool & deck
  
  - Dave Headly (Leisure's Restaurant)
    - 6001 Big Tree Road
    - Area Variance
    - Outdoor refrigeration freezer
  
  - Notice of Appeal from Beth Graf/Attorney Steve Sessler
    - Finger Lakes Timber Co., Inc.

Chair. P. Nilsson opened the meeting at 7:02 p.m. He asked the board members to review the April 1, 2013 meeting minutes before them. Hearing no comments, he asked for a motion to adopt.

M/2/C (M. Sharman/C. Rider) to accept the April 1, 2013 Livonia Joint Zoning Board of Appeals meeting minutes as submitted.

Motion carried 5-0.

Recording Secretary read aloud the first Legal Notice:

**RE:** Application of **Ian & Cassandra Coyle** for a public hearing for an Area Variance to construct an above ground swimming pool and a 349.5 sq. ft. deck which will violate the rear setback requirement according to Section 150-31 G (3) of the Town of Livonia Zoning Code. The property in question is located at 6534 Florence Lane, Livonia, New York and is zoned Neighborhood Residential (NR) District.

Chair P. Nilsson polled the board members for site visit:

Chair. P. Nilsson	-	yes
M. Sharman	-	yes
G. Cole	-	yes
B. Weber	-	no
C. Rider	-	yes

Chair. Nilsson explained that most of the board members visited the site. He asked Mr. Coyle to explain his request.

Ian explained that he had a letter from the Kurtz family whom he shares a property line with. William and Barbara Kurtz of 95 Main Street, agree, without protest, to Ian and Cassie Coyle building a pool/deck that is approximately 12-15 feet from the property line.

They would like to put the pool up by the third week in May.  
There is an open farm field behind the property in question where hay and corn are grown.

M. Sharman asked Mr. Coyle if he had attempted purchasing a parcel of land from the Kurtz family so that a variance request would not be necessary.

Ian said yes, but they did not want to sell property to him, they want to farm it.

Chair. Nilsson asked for further questions or comments from the board.  
There were none.

Chair. asked for questions or comments from the public.  
There were none.

Chair. P. Nilsson then asked the Board to review the **Area Variance** legal criteria:

- (6) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance?  
- no
- (2) Can the benefit sought by the applicant be achieved by some feasible method other than a variance?  
- it could be placed elsewhere but their request is not unreasonable
- (3) Is the request substantial?  
- yes

- (4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood district?  
- no
- (5) Is the alleged difficulty self created?  
- yes

This action has been determined to be a Type II action under SEQRA and is exempt from Review under Part 617.5 (12) and (13) of the State Environmental Quality Review.

M/2/C ( C. Rider/B.Weber) to grant the Area Variance as requested.  
Motion carried 5-0.

Recording Secretary read aloud the second Legal Notice:

RE: Application of **Matt & Beth Graf** for a public hearing. The appeal involves a determination by the Code Enforcement Officer regarding the use of property owned by Finger Lakes Timber Co., Inc. Located at 6273 Decker Road, Livonia, New York, zoned Agricultural Residential Conservation (ARC-3) Zoning District, and having Tax ID. No. 92.-1-13.1.

Acting Attorney Greg Nearpass informed the board that he had been contacted by Ron Munson's Attorney, Reuben Ortenberg, regarding board member Bill Weber. Bill had applied for a job with Mr. Munson at a previous date, was offered the job, but ultimately turned it down. Atty. Nearpass asked Mr. Weber if he felt it would a conflict to vote on this application.

Bill said, "Not at all."

Atty. Nearpass advised the board members to proceed with the hearing.

Chair. P. Nilsson explained to the public that this hearing was not going to be the same as our usual public hearings.

Atty. Sessler, representing Matt & Beth Graf, stated that neither he nor the Grafts are the applicants. They are here to appeal a previous decision made by Code Enforcement Officer, Kevin Masterson, regarding the Timber Lakes Timber Co., Inc.

Sessler proceeded to hand out material he prepared (see attached) to the board members, Atty. Greg Nearpass, Atty. Reuben Ortenberg and to Kevin Masterson.

Pages 1-5 of the document was a copy of Kevin Masterson's determination. The next nine pages is the notice of appeal. The remainder of the document are copies of zoning codes, Livonia ZBA & Planning Board records.

Sessler felt the first issue to address is the nature in the use of the saw mill. The property in question is zoned Agricultural Residential Conservation (ARC-3). He pointed out the size of the parcels.

Sessler read aloud pertinent sections of the document in which he highlighted, including but not limited to definitions used by the Town of Livonia, permitted uses and agricultural farming operation in an ARC-3 zoning district. He stated that a saw mill does not fall under permitted uses with a Conditional Use Permit (CUP).

Sessler displayed photographs of the Munson property that were taken in the last few weeks. He explained the photos as follows:

Upper right hand photo	- staged logging area, so we have a log yard
Upper left hand photo	- shows the mill under a tent, the logs are imported, not raised
Lower right hand photo	- shows the end product of the boards, what is left over after milling
Lower left hand photo	- shows all the logs that were imported, no trees are growing on the parcel, this parcel is not being used to raise product

Atty. Sessler stated, "Manufacturing is not permissible in an ARC-3 zoning district, raw materials are being changed, we can even say there's packaging with pallets and steel bands."

He and Matt & Beth Graf challenge Mr. Masterson's determination and wish to have it overturned. Sessler discussed matters that showed the history of this site (see attached).

Sessler again stated, "This has come full circle and Mr. Masterson is wrong in his determination. It is not an agricultural operation, it is an unequivocally manufacturing operation, and I have proven it. I do not give up my argument in this nine (9) page appeal."

Sessler stated that for the record, this handout is the appellant's exhibit number one (#1).

Chair. P. Nilsson asked for further questions or comments from the board. There were none.

Chair. Nilsson stated that it was his intention to open the public hearing portion of the meeting to allow questions and comments from the gallery. He further explained the rules of public speaking.

Mr. Munson's counsel, Reuben Ortenburg, stated he was a little confused because what he heard was exactly what we heard in February 2013. Mr. Sessler made the same argument. He said to the board, "You already wrote a letter to advised the Planning Board of your

determination, I don't know how you can come to a different conclusion two (2) months later. A decision was made in 2006 as well, that's seven (7) years ago, if there was an appeal seven (7) years ago then maybe he'd understand."

Ortenburg stated that Sessler only highlighted what he wanted the board to hear, he did not highlight that the use is agricultural. It has been determined by this board that it is an agricultural farming operation. The State of New York agrees that this use is considered farming.

He would like to submit legal cases to the board and asked Chair. Nilsson if he could have time to submit some to the board.

Nilsson said yes, he could.

Sessler read aloud the definition of agricultural. And stated that it's not uncommon for a word to have more than one (1) definition.

Sessler talked about time periods and that the site plan expired by operation of law, which is Mr. Munson's inaction to receive a building permit.

He said that finally, in February 2013, an advisory letter from this board addressed to the Livonia Joint Planning Board is incorrect.

Atty. Ortenberg said that only one (1) person has the authority to interpret the Livonia zoning law and that is Kevin Masterson, Code Enforcement Official.

He felt that the Grafts and Atty. Sessler have no standing. If these things were so wrong, they should have been appealed years ago.

Atty. Sessler stated that he would like to submit cases regarding standing.

Atty. Ortenberg will be happy to forward Sessler any cases he submits to the board.

Ron Munson stated that as far as the boards in general, my understanding is not simply to receive approvals but to guide them as they go through a process. They have done that every time he has come before any of the boards and they always ask what they can do to comply with Livonia's Town Code.

Aaron Munson spoke about them being there for thirteen (13) years, they were there long before the Grafts or others lived there. He has two (2) children that go to school in Livonia, their customers overseas spend money here. This is all we have as a family and for someone to ruin our livelihood is very disconcerting.

Ron Craver of 5536 Clark Road, Conesus, was here in support of the Munsons. "I'm in support of small businesses, that's what the Fingler Lakes Timber Co., Inc. is. This makes common sense."

Ralph Allison of 3650 Livonia Center Road stated that he is a forty-year local business owner. He does a lot of work for a lot of folks in the area. He has had a relationship with the Munsons for eight years. The Munsons support local businesses and he appreciates that. "I'm hearing they have had changes, they're doing rough cut lumber. I'm here in spirit to support the Munsons and their business plan that's changed."

Rick Bennett of 1987 D'Angelo Drive, who is also the Chairman of the Livonia Joint Planning Board stated that he was present to represent the Planning Board. He has likewise made the determination that the Finger Lakes Timber Co., Inc. is an agricultural farming business. In addition, Agricultural & Markets states that timber harvesting is an agricultural business.

Atty. Greg Nearpass asked Rick Bennett if he was on the Planning Board in 2006.

Rick said yes.

Nearpass asked if Rick could recall whether or not a site plan was approved in 2006.

Rick couldn't remember.

Nearpass stated that there is a reference to one in the 2006 minutes.

Atty. Ortenburg said, "Yes, a site plan was issued for an intensive agricultural operation."

Andrew Manzano of 121 Kensington Court said that he was there in support of the Munsons. He agreed that the Munsons should be allowed an agricultural business.

Heather Manzano of 121 Kensington Court supports the agricultural business and pled with the board to take into consideration of one business that could ruin many lives if they did not approve the agricultural business for the Munsons. She asked that they make the approval.

Rick Bennett, addressing the board, said that he'd heard they were going to take this under advisement of Atty. Greg Nearpass.

Answer was yes.

Atty. Nearpass stated that the board could close the public hearing but allow written comments. Chair. Nilsson, with the advise of the remaining members decided to close the public hearing but to allow written comments for thirty (30) days. The deadline for submission will be May 16, 2013.

Tim Watson of 28 Old Meadow Court explained that he has a couple issues, he feels there are time statutes that should be considered. "If this board has already made a decision and the Munsons are doing their due diligent then the board should uphold their position."

Bonnie Coon of 118 Kensington Court was in full support of the Munson's request for their small business to continue.

Shawn Heights of 76 Big Tree Street stated that he has lived there for one year and feels this board has spent a lot of time building up this community. He asked that the members please be in support of the Munsons.

Ed Harrington of 6400 Coe Road was here to be supportive to the Munsons and asked the board to move forward with their application.

Victoria Knight of 76 Big Tree Street stated that a lot of people have been bless by the Munsons and would like to see the board grant final approval for site plan as requested.

Matt Graf stated that he moved to his Decker Road property five (5) years ago, he has lived in Livonia for twenty-one years, his family has been here a very long time, going back to his great great grandfather.

After hearing no more comments from the gallery, Chair. Nilsson closed the public hearing at 8:45 p.m., stating that the board will accept written comment, questions and opinions until May 16<sup>th</sup>.

Atty. Nearpass asked Atty. Sessler for a copy of the transcript from this evenings meeting as well as the previous transcript in which he brought a transcriber with him.

Chair. Asked Kevin Masterson of the status of the Headly application.

Kevin Masterson stated that Dave Headly is withdrawing his area variance application. There is no action this board need take.

This board will convene after the May 20, 2013 meeting to discuss the Munson application and request.

M/2/C (B. Weber/M. Sharman) to adjourn the meeting at 9:00 p.m.  
Motion carried 5-0.

Respectfully submitted,

Tammie Schwerzler  
Recording Secretary

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