

Approved by: \_\_\_\_\_  
Larry Fillinger, Chairperson

Date: \_\_\_\_\_

**MARION TOWNSHIP  
2877 W. COON LAKE ROAD, HOWELL MI 48843  
ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
December 3, 2018  
7:30 P.M.**

**MEMBERS PRESENT:** LARRY FILLINGER  
LARRY GRUNN  
DANIEL ROSSBACK  
LINDA MANSON-DEMPSEY  
ED GALUBENSKY (Alternate for Dan Lowe)

**MEMBERS ABSENT:** DAN LOWE (Absent due to conflict of interest)

**OTHERS PRESENT:** DAVE HAMANN- ZONING ADMINISTRATOR  
JOHN ENOS- CARLISLE WORTMAN PLANNER  
MICHAEL KEHOE- MICHAEL J. KEHOE ATTORNEY

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**CALL TO ORDER:**

Larry Fillinger called the meeting to order at 7:30 p.m.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA:**

**Regular Meeting Agenda for December 3, 2018**

*Linda Manson motioned to approve the agenda. Larry Grunn seconded. Motion carried*

**INTRODUCTION OF MEMBERS:**

The members of the Zoning Board of Appeals introduced themselves. John Enos from Carlisle Wortman introduced himself. Michael Kehoe (Marion Township's Attorney) introduced himself.

**CALL TO THE PUBLIC:**

NONE

**APPROVAL OF MINUTES:**

**Regular Meeting Minutes for October 1, 2018**

*Linda Manson motioned to approve the agenda. Dan Rossbach seconded. Motion carried*

**NEW BUSINESS:**

***ZBA Case #05-18 AJR Group Inc. and Cornerstone Land LLC***

The ZBA members received correspondence from Thomas R. Meagher, insurance counsel for the Township, regarding a lawsuit pending in Livingston County Circuit Court, Case No. 18-29880-CZ, against the Township filed by the applicants. Mr. Meagher advised that due to the nature of the lawsuit, the ZBA should not hear this matter while the litigation is pending.

*Linda Manson motioned to table ZBA case #05-18 AJR Group and Cornerstone Land LLC while the litigation is pending based upon advice of Township insurance counsel. Dan Rossbach seconded.*

ROLL CALL: Dan Rossback YES, Linda Manson YES, Larry Fillinger YES, Larry Grunn YES, Ed Galubensky YES. ***Motion carried***

**NEW BUSINESS:**

***ZBA Case #06-18 Marion Township's Interpretation of "Howell Landscaping", 8.01B3 Landscape Nursery Operation as a Use by Right and 3.02 Definitions / Address 2961 Pinckney Road, Howell MI 48843; ID# 4710-13-300-044***

John Enos explained that we are here today to interpret a land use as it relates to being permitted or not permitted in this specific rural residential area of the township. Howell Landscaping, formally known as Eddie's Landscaping, is located at 2961 Pinckney Road, Howell MI 48843. The owner of "Eddie's Landscape" sold his business to Rob Rochowiak who renamed the business, "Howell Landscaping". This landscaping operation has been in business for 20+ years. The land use and site plan were granted by the Township, when it was still Eddies Landscaping. The original use was approved by the Township. The current owner, Howell Landscaping, claimed it did everything that a business owner should do. He contacted the Township and chatted with the previous Zoning Administrator at that time. He did his due diligence regarding the use of his site. The objective this evening is to look at our zoning ordinance and the language regarding "permitted use" and determine whether or not this landscaping/contractors yard fits within our language.

Linda Manson asked what the original special use was for.

Dave Hamann stated that there was no special use or conditional use found for this site plan. All Dave could find was a site plan approval that was approved by the Planning Commission, along with a list of conditions for a landscape operation, attached to it.

John Enos stated that the Township approved this use 18-20 years ago as a landscape/nursery operation. Today's objective is to determine whether or not this business is still operating as a landscape/nursery operation. Are the activities/uses taking place on the property meeting the intended use? The ordinance allows landscape nursery operations as a permitted use but the ordinance does not have a definition for landscape nursery operation.

Linda Manson asked if a landscape/nursery operation is allowed to have a fleet of trucks.

John Enos said, that is what needs to be determine during tonight's meeting.

Larry Fillinger asked the public for any comments regarding this topic.

Dan Artaev is an Attorney for a law firm called, "Fausone Bohn LLP" located at 41700 West Six Mile Road, Suite 101 in Northville MI 48168. He is representing, Howell Landscaping regarding this issue. Dan

wanted to highlight a few of the items that were in Carlisle Wortman's assessment letter. First he wanted to point out that, landscape/nursery operations are not defined anywhere in our ordinances. However, a commercial nursery is mentioned along with a definition. Dan also stated that the trucks being used at Howell Landscaping, are part of the operation. These trucks are used to deliver some of the plants and materials stored on site. This is not a storage yard or a freight terminal. This is a retail location. Linda Manson asked Dave Hamann if he was sure there is nothing listed on the previous paperwork regarding how many trucks were allowed on site.

Dave Hamann said that he spent significant hours searching for any documents involving this case. There were no documents or sign of communication any time after the first year since the site plan approval was given.

Susan Schooly resides at 459 E. Davis Road. Susan had previously provided the ZBA with a letter specifically addressing her concerns regarding Howell Landscaping. Susan discussed her concerns about the future consequences by allowing Howell Landscaping to continue their operation. If the Township allows them to have multiple semi-trucks, then does that mean anyone in Marion Township can start a trucking operation? A landscape/nursery operation is about what you grow on site and sell to a consumer. Howell Landscaping is a trucking company, not an Ag operation. They have five gravel trains coming and going each day, along with other commercial trucks.

Sally Witt is the mother of former owner Eddie Witt. Sally said that her son Eddie Witt started Eddie's Landscaping back in 1982. They never had any issues with anyone involving their landscaping business, until Mr. Timothy Ryan and his wife purchased their home back in 2013. They soon began harassing Eddie and have been criticizing their landscaping business ever since. Tim Ryan even started a petition to try and shut down their landscaping operation.

Dan Rossbach asked if the trucking portion has increased since becoming Howell Landscaping.

Timothy Ryan resides at 459 E. Davis Road. Tim wanted to start by complimenting Rob Rochowiak, the current owner of Howell Landscaping, on his new business. He can tell that Rob has worked hard to ensure that his business is successful. However, Eddie's operation was very quiet and much smaller than Rob's. Rob's semi-trucks are very loud throughout the day and he seems to be operating on a much bigger scale compared to Eddie's.

Linda Manson asked how many trucks does Rob Rochowiak (Current Owner of Howell Landscaping) own and have on site.

Rob Rochowiak resides at 113 E. Davis Road. Rob responded and said that he has four large trucks. Linda asked how many trucks did Eddie's had. Sally Witt responded with three to four trucks.

Rob continued explaining that his trucks leave around 7am and pick up material from another location that then gets delivered to various places throughout the day.

Linda stated that this is a rural residential area. If the trucks are delivering to other trucking yards, that is not the same as picking up material for your landscaping/nursery.

Larry Grunn stated that Eddie's landscaping also had various trucks that came in and out all day long.

Rob stated that he discussed the operation of his business with Annette McNamara and Charlie Decator in February of 2017. He eventually wants to have greenhouses, build another building and grow his own plants but has been waiting since April of 2018 for the Township to make a final decision before he moves forward with his plans.

Linda commented on the difference between Eddie's and Rob's landscaping/nurseries.

Kathy Ball resides at 2853 Pinckney Road. Kathy has lived at her house since 2000, which is right next to Eddie's Landscaping/Howell Landscaping, formally known as Eddie's Landscaping. Once Eddie's Landscaping became Howell Landscaping, Steve Ball (Kathy's husband) went next door to speak with Rob regarding his landscape operation. Kathy said her husband (Steve Ball) told her that Rob was very accommodating and pleasant to deal with. Rob gave Steve his personal cell phone number, so if there were ever any issues or concerns, they could reach out to Rob directly.

Jim Witkowski resides at 3111 Pinckney Road. Jim stated that his daughter lives across the street from Howell Landscaping and says that she doesn't have any complaints or concerns about the noise level or activity. Jim's daughter told him that she hardly hears anything from her house. Jim said that it is very concerning to him that Marion Township has the authority to run local businesses out of town.

Steve Ball resides at 2853 Pinckney Road. Steve mentioned that Eddie's had a sifting machine that ran all day long. Rob doesn't use a sifting machine and instead he purchases his own dirt. Rob may have a few more trucks than what Eddie had but Eddie's had more equipment. Rob has put in brush, berms and trees throughout the property to help with screening. He has also removed the alarms off the trucks so they do not beep when the trucks are in reverse. He is doing basically the same things that Eddie was doing.

John Enos reminded everyone that we need to discuss whether or not the intended use meets the description of a landscape/nursery operation. Although the issues and opinions being conveyed tonight by the neighbors are important, we need to focus on the current use of the site and determine if the intended use is still the same as it was when this was originally approved?

Rob wanted to clarify that he owns two super-trucks for larger driveways and delivering to other gravel pits and also two smaller trucks for smaller-average sized driveways.

Larry Grunn asked what name was on the side of his trucks. Rob said that the name on the side of his trucks, is the name from his previous business, which was a trucking company. He clarified that his landscaping/nursery business is his only business at this time. The trucking business was established prior to moving to Marion Township.

Larry Fillinger stated that he believes a greenhouse/landscaping/nursery is something that would sell shrubs, flats, plants, mulch, rock, etc. These materials would be available for pick-up or delivery.

Ed Galubensky agreed with Larry and stated that this would be ok in rural areas. Would like to see some of the items be grown on site.

Larry Grunn said that a landscape/nursery would be allowed to purchase other material for resale/retail.

Larry Fillinger agrees and likes the idea of things being grown on site. However he is concerned that Howell Landscaping might be outgrowing its current location. Larry asked Mike Kehoe and John Enos if

they could use some of the language that they just discussed, as part of their definition for landscape/contractors operation.

Mike Kehoe states that once the definition is established then an interpretation needs to be made determining whether or not Howell Landscaping fits with our definition.

John Enos said that the Planning Commission just drafted a more clear definition of landscape/contractors operation.

Larry Fillingger read the current draft for the landscape/contractors operation along with the changes suggested by the members.

Mike Kehoe also recommended that they mention case #06-18 Howell Landscaping along with section 8.01 B 3.

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**PROPOSED DEFINITION:**

***Landscape Nursery Operations:*** *A parcel, area, space, building or structure, or combination thereof, used chiefly for the storage, wholesale sale, or retail sale, of live trees, shrubs and plants primarily but not exclusively grown onsite. Incidental or secondary items directly related to a nursery or greenhouse may also be sold, including but not limited to pots, decorations, mulch, stone, rocks, pavers, edging materials, etc. The area and amount of such structures, equipment, vehicle storage and other areas dedicated to the use shall be consistent with the residential character of the area and shall not adversely impact neighboring properties.*

*Using the term "operations" as part of the permitted use we would conclude are secondary and incidental uses associated with the nursery. This could include equipment used to dig up or plant trees and shrubs, mulch and soil to assist in planting and selling stones and mulch for larger landscape projects and other related uses associated with the primary use which is a nursery.*

**REFERENCING:**

*Pertaining to ZBA case #06-18 Howell Landscaping, materials do not have to be grown on site.*

**8.01 B 3**

**ARTICLE VIII: RESIDENTIAL DISTRICTS**

**Section 8.01**

**RR: Rural Residential District**

A. ***Intent:*** *It is the intent of the Rural Residential District (RR) to provide for a variety of comparatively low density residential lifestyles in a manner which preserves the important open spaces and natural resources of the Township and the Township's rural character. The expanses of open spaces and natural resources, including woodlands, wetlands, hillsides, and fields, comprise the fundamental rural character of the Township which residents of the Township wish to protect and enhance for future generations. Permitted land uses within this District are established based on the limited availability of public services. Where higher density is allowed, certain facilities are required to accommodate the increased public needs. The Rural Residential District includes a considerable number of existing farms and recognizes this land use for its important contribution to the local economic base, to the provision of food and fiber for the State's citizens, and for the historical character and open spaces it provides. It is not the intent of this District to encourage the conversion of agricultural lands to more intensive uses, but to provide opportunities for residential development in a manner compatible with the continuation of agricultural activities. However, neither is it the intent of this District to encourage the establishment of more intensive agricultural uses, such as confined livestock operations, which are incompatible with residential use of adjoining lands.*

**B. Uses Permitted By Right:**

1. *Single-family dwellings.*
2. *Agricultural buildings and agricultural operations involving no more than two hundred (200) animal units at a density not to exceed 1.4 animal units per acre.*
3. *Landscape nursery operations, including retail sales of nursery stock grown on the premises.*

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John Enos said if the Board of Trustees likes this definition, then they may send it back to the ZBA for an interpretation on whether or not Howell Landscaping's operation fits this definition.

Tim Ryan asked if this new definition is adopted, does that apply to Howells Landscaping.

Mike Kehoe said that from a legal stand point, there would be a lot of facts involved.

Tim Ryan said that he is not trying to run a man out of business but these issues are important. He wants to come up with a good solution for everyone.

Kathy Ball stated that she does not like this definition. Other nurseries that she has been to, do not grow most of their own products. It takes many years to grow that much product. That's why most of them buy wholesale and resale/retail. She just doesn't like the words "primarily grown on site."

Susan Schooly said that we should not create language that would allow someone to open a Bordine's Nursery. A wholesale/resale operation should not be in a rural residential area.

Larry Fillinger asked Mike Kehoe if the definition had to be exact before sent to the Board.

Mike Kehoe said that we can fine-tune this down the line and compare it to the other ordinances.

*Dan Rossback made a motion to use this definition for "landscaping/nursery operation" and send it to the Board of Trustees for modification and/or approval. Linda Manson seconded.*

ROLL CALL: Dan Rossback YES, Linda Manson YES, Larry Fillinger YES, Larry Grunn YES, Ed Galubensky YES. **Motion carried**

John Enos said that everyone did a good job with the definition. He reminded everyone that this is a living document, so in six months, the language can be changed if need be. It is not written in stone. However, you can have language all day long but if you do not have the enforcement to back it up, then the language doesn't mean anything. Any future uses will still have to go through a review process.

Dan Artaev (Howell Landscaping's Attorney) thanked everyone for their time, thought process and consideration involved throughout this process.

**CALL TO THE PUBLIC:**

NONE

**ADJOURNMENT:**

*Linda Manson motioned to adjourn the meeting at 9:15pm. Dan Rossbach seconded. **Motion carried***