

**CITY OF MASON
ZONING BOARD OF APPEALS SPECIAL MEETING
MINUTES OF SEPTMEBER 9, 2019**

Sabbadin called the meeting to order at 5:33 p.m. in the Sycamore Room at 201 W. Ash Street, Mason, Michigan.

Present: Crips, Harris, Madden, McCormick, Sabbadin

Absent: Fisher, Wilson

Also present: Elizabeth A. Hude, AICP, Community Development Director; Thomas M. Hitch, Esq., City Attorney

PUBLIC COMMENT

None.

APPROVAL OF MINUTES

MOTION by Crips second by McCormick, to approve the Zoning Board of Appeals minutes from the August 14, 2019 regular meeting.

YES (5) Crips, Harris, Madden, McCormick, Sabbadin

NO (0)

ABSENT (2) Fisher, Wilson

MOTION APPROVED

UNFINISHED BUSINESS

A. Appeal of Administrative Decision to deny building permits for properties located at 934 and 965 Franklin Farm Drive in Mason, MI, received from James Bonfiglio, Attorney at Law. ***Continued from August 14, 2019.***

Sabbadin acknowledged Mr. James Bonfiglio as present.

James Bonfiglio, 4127 Okemos Road, Suite 1, in Okemos, handed out a document, to put in the record that included historical correspondence with the City and easement records.

Mr. Bonfiglio noted a few items he wanted to clarify and comment on. He included a letter from Mr. James Howard which provided additional history about the design and redesign of the site. Mr. Bonfiglio then moved to his next point dealing with the impact of development in regards to increased runoff from Franklin Farms due to the diminished capacity to detain storm water. Mr. Bonfiglio believes there is no evidence that the system can't handle the load and he maintains that the additional load will have little or no impact on the detention pond.

Mr. Bonfiglio provided copies of the site plan of Franklin Farm Drive which shows the home sites where he wants to build do not drain into the detention pond but drain into the City's sewer system.

Mr. Bonfiglio stated his belief that the dispute is between the City and the homeowners regarding the maintenance of the detention pond. There are no agreements stating how the system should be maintained and Esquire has no responsibility in the matter. The City has an easement which covers the entire detention pond and that easement includes not only maintenance, but inspection, improvement and or extension of the system.

Mr. Bonfiglio clarified that there was more than one reason for the building permits to be denied outside of the lack of compliance regarding the detention pond. He added that the City contended that the development was in violation of the ordinance relating to emergency access. Esquire satisfied the requirement by developing the site with two access points: via Northbrook Street and Lavonne Street. The other reason for denial is that the City is demanding that Esquire provide acknowledgement and consent to extend Franklin Farms Drive to Kipp Road. Esquire has conveyed property to the City for this extension and has done all necessary to facilitate the extension.

In conclusion, Mr. Bonfiglio stated that there is no basis to deny Esquire the building permits; they have done everything they can legally do. The City determined, with the approval of the site plan, that Esquire did what was necessary and they are not responsible for properly administering the detention pond. Any action should be taken against the homeowners association.

Sabbadin asked for questions or comments.

Mr. Hitch stated that Mr. Bonfiglio laid out three main points that he would like to address. The first was the issue of where the water flows or doesn't flow. Mr. Hitch noted it could have been brought up at the Public Hearing but it was not presented as evidence and is not part of the public record. The City Engineer went out and looked over the site and made recommendations. Those recommendations may or may not be used in the Zoning Board's decision but the water flow issue has no bearing.

Mr. Hitch stated that with regards to the levels of maintenance there is no legitimate dispute. The whole point of maintenance on the drainage system is to continue to meet the initial design specifications which will handle the flow and discharge at a certain rate without interference from weeds, cattails, debris, sheds, or anything else in the easements. Mr. Hitch said it was clear that when the obligation was established and acknowledged in the Easement that gave the Condominium Association the responsibility to maintain the drainage so that it would function as it was intended.

Mr. Hitch responded to Mr. Bonfiglio's last point regarding the July 2 letters' findings except for the permits being denied due to lack of compliance, there is no basis for consideration as there is nothing in the record for the two issues raised.

Sabbadin asked for any further questions or comments.

Sabbadin directed a question to Mr. Bonfiglio. Mr. Sabbadin recently purchased a condominium in another part of town and they have a very active Condo Association. When he signed the purchase agreement he was given the by-laws, minutes, rules and regulations for that condo association. He stated that it was very clear what responsibilities were his and what the condo associations responsibilities were. When he closed

on the property, in the deed, there was a signed agreement stating what the dues were and where to send the check. Sabbadin asked Mr. Bonfiglio who he would direct the new homeowners to send their payments to when there is no operating condo association as required in the deed. The current homeowners have not come to the Planning Commission to dissolve the association as required so there should be an active association operating.

Mr. Bonfiglio replied that his obligation is to disclose the status of the Condo Association as it is functioning or not functioning. He has had experience with this problem in other Condominium Associations where they choose not to continue. The guarantors, Fannie Mae and Freddie Mac, ask if the Condo Association is functioning and if it is not, they will still proceed with the closing. When he sold a home site, he required the builder to sign a purchase agreement acknowledging the existence of a Condo Association and the obligation to participate in it. Mr. Bonfiglio acknowledges that he doesn't know how you make people do what they don't want to do so really can't answer that question.

Crips referenced comments made from the last meeting about whether there was an attempt to go to the homeowners and get them to agree to reinstate the association. He asked if a meeting had taken place.

Mr. Bonfiglio replied that up to this point they have not. On September 12, 2018, he sent a letter to every home owner on Franklin Farms Drive and Northbrook Street requesting attendance at a meeting that was held in the Sycamore Room at City Hall, to discuss reforming the Condo Association. The responses received were not in favor of reactivating and of those who did favor it, there were not enough for a quorum. Mr. Bonfiglio has not had a meeting since and referenced the meeting held in December of 2018 with Director Hude and Ms. Stuart. Mr. Bonfiglio thought they made it very clear the City's desire that the Association reorganize and fulfill its obligations. There was again, no positive response to implement reactivating the Association. Mr. Bonfiglio decided he would wait for the Zoning Board of Appeals decision to determine how to proceed.

Crips questioned the lack of urgency from Mr. Bonfiglio to try to organize since the last meeting even though it would help his cause if he tried to get things restarted.

Mr. Bonfiglio answered that he didn't know what to tell the homeowners. He will follow through on the meeting if it is a condition of him being granted the building permits but he doesn't think it is proper. He said it would have been difficult to schedule a meeting that quickly with end of summer vacations, school starting and the need for ten days notice to hold a hearing.

Sabbadin read to the board the three options given in the resolution to deny, grant without conditions or grant with two conditions. First condition requires a contract to make the required improvements to the storm water detention basin by restoring the Condo Association.

Mr. Hitch clarified that the option requires a Chapter 8 petition or Section 433 Agreement which are both through the Ingham County Drain Commission. The Resolution conditions have nothing to do with the Condo Association reforming.

Mr. Hitch also clarified that now was the time for board members to discuss any of the findings and conclusions.

Sabbadin asked if a Chapter 8 Petition is filed with the Ingham County Drain Commission would the cost be spread out to all the homeowners.

Mr. Hitch answered yes, all homeowners in the affected area.

Sabbadin referenced the second condition listed under granted with the following conditions, and asked who bears the costs initially to make the improvements so the storm water detention pond meets the original design volume and flow standards.

Mr. Hitch responded that the purpose of the two options proposed allows the permits to be granted before completion or substantial completion which means it is completed to the full intent of the construction documents, there may be a punch list of items to finish but termination of the project is close.

Sabbadin restated the three options the board has and with regards to granting with conditions, asked if both conditions would be selected.

Mr. Hitch stated that only one condition can be selected not both.

Sabbadin clarified that the first condition would have the Drain Commission take over the detention pond, maintain it, and bring it back to original design standards and the fees would be passed along to the homeowners via an assessment. The second condition would stop the builder from moving forward until the detention pond was fixed and everything was in compliance before the permit would be granted.

Sabbadin asked if the board understood the conditions.

Crips asked for clarification on option one. Would the permits be granted and the builder be able to begin if the Drain Commission is petitioned to fix the drain or does the work on the detention pond have to be completed before the work can begin.

Mr. Hitch answered that work needs to be completed. The Drain Commission is petitioned and they start the process of engineering and fixing the problem or the Association enters into an agreement.

Sabbadin asked for a motion to consider the Resolution read.

MOTION

MOTION by Crips, second by McCormick, to consider the Resolution read.

DISCUSSION W/AMENDMENT TO MOTION

Sabbadin stated that now the board needs to decide what option to go with.

Crips responded that without putting some kind of condition on the only option is to deny. So he feels that the condition will move the situation forward so the drain will get put back to how it should be functioning. Whether the homeowners agree or not, they bought into the neighborhood where there was an

Association. Crips would go with number three to grant with the first condition: petitioning the drain commission to make the improvements.

MOTION from Crips, second by Harris that the Application for Building Permits for 934 and 965 Franklin Farms Drive shall be and are hereby granted with the following condition: Upon execution of a construction contract to make the required improvements to the storm water detention basin to meet the original design volume and flow standards, either pursuant to a Chapter 8 Petition, or a Section 433 Agreement, as outlined in the attached memorandum.

VOTE

YES (5) Crips, Harris, Madden, McCormick, Sabbadin

NO (0)

ABSENT (2) Fisher, Wilson

MOTION PASSED

Sabbadin asked if the board understands they are adopting the findings and conclusions in the Resolution.

The board understood.

NEW BUSINESS

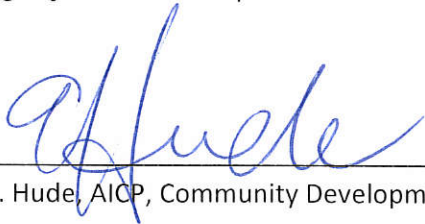
None

LIAISON REPORT

Madden reported that City Council is discussing potential improvements to Rayner Park.

ADJOURN

The meeting adjourned at 6:15p.m.



Elizabeth A. Hude, AICP, Community Development Director