



ZONING BOARD OF APPEALS
WEDNESDAY, OCTOBER 9, 2019
Maple Room, 2nd Floor – 5:30 P.M.
201 West Ash Street, Mason MI

AGENDA

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENT**
- 4. APPROVAL OF MINUTES**
 - A. Approve Minutes of Zoning Board of Appeals Special Meeting September 9, 2019
- 5. UNFINISHED BUSINESS**
 - A. Correspondence received from Esquire Development and Construction, Inc. regarding the detention pond and communication with Franklin Farms Condominium Co-owners.
- 6. NEW BUSINESS**
- 7. LIASON REPORT**
- 8. ADJOURN**

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

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 not 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

JAMES BONFIGLIO
Attorney at Law
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Okemos, Michigan 48864
(517) 349-8000
Fax (517) 349-0132

September 17, 2019

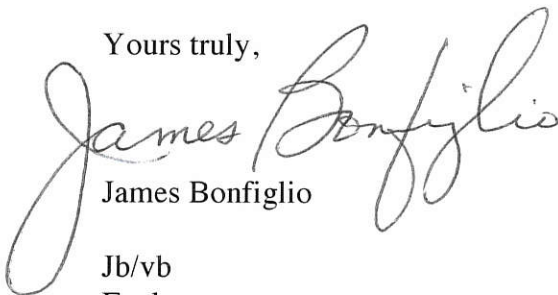
Ms. Deborah Stuart
City Manager
City of Mason
201 W. Ash Street
Mason MI 48854

Re: Franklin Farm Condominium Association
Franklin Farm Detention Pond
Completion of Home Construction at Franklin Farm

Dear Ms. Stuart:

Enclosed please find a copy of the correspondence sent to the homeowners at Franklin Farm Condominium. I have enclosed one complete copy of the letter and attachment and a copy of the front page showing the names and addresses of each of the homeowners that were sent the correspondence. If you would like full copies of each letter, I will provide them to you.

Yours truly,


James Bonfiglio

Jb/vb
Enclosures



ESQUIRE DEVELOPMENT AND CONSTRUCTION, INC.
4127 Okemos Road, Suite 1
Okemos MI 48864
(517) 349-8000
Fax (517) 349-0132

September 17, 2019

Mason MI 48854

Re: Franklin Farm Condominium Association
Franklin Farm Detention Pond
Completion of Home Construction at Franklin Farm

Dear Mr. :

We write to you in follow-up to our correspondence of August 21, 2018, the meeting of homeowners requested by us and held September 12, 2018, and the meeting called by the City of Mason and held December 10, 2018. We also write to request your help in resolving an issue involving the detention pond in Franklin Farm.

You may recall the correspondence was sent and meetings were called in an attempt to reactivate Franklin Farm Condominium Association to carry out its responsibilities under the Master Deed and Bylaws, including addressing the issue of maintenance of the detention pond serving Franklin Farm.

The records of the Association filed with the state indicate that the Association was formed in 2001 and was active through approximately 2007 or 2008, as annual reports were filed through 2007.

At the September and December 2018 meetings discussions took place regarding the Franklin Farm Condominium Association and the detention pond that serves it. Some homeowners were aware that the Franklin Farm Condominium Association had been formed and was designed to manage the affairs of the development. Other homeowners were unaware a condominium association existed.

The duties of the Association under the Franklin Farm Master Deed and Condominium Bylaws include, among other things, maintaining common elements and enforcing the requirements of the condominium documents. Common elements include property owned by all co-owners such as the detention pond and drainage easements serving the development. Among the requirements of the condominium documents are requirements related to owner activities and uses of their property including not obstructing drainage and other easements in the development.

At the September and December 2018 meetings, while some home owners were willing to

reactivate the Association, an insufficient number of homeowners were interested in reestablishing the Franklin Farm Condominium Association and carrying out the responsibilities of the Association.

Since that time, Esquire Development and Construction, Inc. ("Esquire") had discussions with the City of Mason and the Ingham County Drain Commission to resolve this issue and others in order to complete the construction of homes at Franklin Farm.

Esquire recently applied for building permits in order to construct homes in Franklin Farm. Initially the City of Mason has refused to issue those permits. Currently, the remaining impediment to issuance of building permits is the concern that the detention pond is not functioning as it was intended to function and that no one is maintaining the detention pond as required by the condominium documents.

As a consequence of the City's refusal to issue the requested building permits, Esquire appealed the decision of the City denying the permits to the Zoning Board of Appeals ("ZBA"). The ZBA approved the building permits subject to the satisfaction of certain conditions. The conditions imposed require that a construction contract be entered as approved by the Ingham County Drain Commissioner for the restoration of the detention pond to meet original design and volume flow standards for the detention pond. That Resolution provides, in relevant part, as follows:

THIS BOARD ORDERS that the Application for Building Permits for 934 and 965 Franklin Farm Drive shall be and are hereby:

Granted with the following conditions:

Upon execution of a construction contract to make the required improvements to the storm water detention basin to meet the original design and volume and flow standards, either pursuant to a Chapter 8 Petition, or a Section 433 Agreement, as outlined in the attached memorandum.

The memorandum referenced in the ZBA Resolution (copy attached) makes clear the law does not permit Esquire Development itself to file a Chapter 8 Petition or enter a Section 433 Agreement for Franklin Farm. All property owners who own property affected by a 433 agreement must join in a 433 Agreement. Five freeholders (property owners) who would be subject to assessment for construction and maintenance of a drain are required to file a Chapter 8 petition with the Drain Commission to have property included in a drainage district and have the drain system maintained by the Drain Commissioner.

Esquire writes to request that homeowners help find a resolution to the detention pond issue so that the development may be completed and your property's drainage system will be maintained. There are two ways for the property owners to solve the problem under the terms of the ZBA decision.

Property owners could obtain the consent of all Franklin Farm property owners and enter a 433 Agreement with the Drain Commission to improve and maintain the drain system, or,

Five homeowners could petition the Drain Commissioner pursuant to Chapter 8 of the Drain Code to take over the drain system in the condominium and maintain the system,

Each of the solutions will have consequences for you as homeowners as does a decision to do nothing. A summary of these two options is contained in the accompanying memorandum that was prepared by counsel for the Ingham County Drain Commissioner. A brief summary of these two options follows.

The 433 Agreement option would require property owners and/or the reconstituted condominium association to agree with the Drain Commissioner on the work that must be done on the detention pond for the Drain Commissioner to agree to maintain the detention pond. The work would then have to be done by a private contractor and paid for by the property owners.

If the Association is not reconstituted or otherwise is unable to make an agreement with the Drain Commissioner, all property owners would be required to come to an agreement with the Drain Commissioner and consent to the 433 Agreement. Homeowners would have to contract for and pay for the agreed upon work.

In either case, if the work was done to the Drain Commissioner's satisfaction and a deposit of five percent (5%) of the cost of the pond is deposited with the Drain Commissioner, the Drain Commissioner would then be able to service the drain.

The Chapter 8 Petition option would require five property owners to file a petition with the Drain Commissioner. The Drain Commissioner would then appoint a three-member board to hear testimony and consider evidence at a public meeting in which all properties within the Drainage District are notified. The board would decide whether a project is necessary. The determination of necessity is subject to a 10-day appeal period. If necessity is found and no appeals are filed, or any appeals are resolved, the Drain Commissioner then designs the project, acquires easements and obtains any necessary permits needed to construct the project. Prior to the construction of the drain project, the Drain Commissioner holds a day of review of apportionments to allow property owners and public corporations an opportunity to review the computation of costs for the project and their tentative apportionments. It is only at this time that the actual cost of the project is known. Apportionments, or the percentage of cost assigned to each property or public corporation at-large, are based on benefits derived and are subject to a 10-day appeal period following the day of review. The total cost of the drain project, including all engineering, legal, administrative, inspection and construction costs, is then levied through special assessments on benefiting properties and public corporations for a number of years, determined by the Drain Commissioner. The number of years cannot exceed 20.

Under each of the preceding options homeowners will pay the cost for the maintenance of the detention pond and drain system.

The first option could be the most cost effective because the homeowners maintain some control of the contract process but will require an immediate assessment for the reconstitution of the association and/or the consent of every co-owner. This option may be very difficult to accomplish because it requires the reconstitution of the association and/or the consent of all property owners, and because it requires property owners to contract for and supervise the work to be performed.

The Chapter 8 Petition option might cost the greatest amount of money to implement because all work is done by the Drain Commissioner and under his supervision. However, this option does not appear to require the association to reconstitute itself, enter into contracts, supervise any construction or assess any homeowners. Rather the Drain Commissioner's office would be responsible for both the improvement and maintenance of the drain system. Moreover, the cost would be bonded and paid along with property taxes over the term of the bond. It would also have the advantage of only requiring 5 property owners to institute.

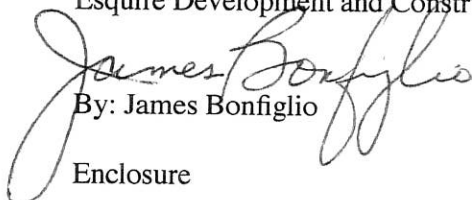
Neither of these options would prevent homeowners should they chose to do so, from reestablishing the condominium association. This means that homeowners, should they choose to do so, could reconstitute the association and manage and maintain the detention pond. This may be the least expensive option but would require that the association be reconstituted and work performed that would meet the original design and volume and flow standards of the detention pond.

These are not the only two or three options or potential consequences. The City itself could petition the Drain Commissioner to add the detention and storm system to the Willow Creek Drain by filing a Chapter 8 Petition (See attached memorandum). Anyone adversely affected by the failure of the condominium association to conform to its master deed could bring a lawsuit to enforce its requirements under MCL 559.215. For example, a property owner that suffers damage because the detention pond is not properly maintained or suffers other losses as a consequence of the failure to carry out responsibilities might bring a lawsuit as a result of losses suffered.

In summary, Esquire is asking for your help in resolving this problem. Given the input received from homeowners and the reluctance of homeowners to reconstitute the condominium association, the most effective option appears to be to file a petition with the Ingham County Drain Commission to add the storm system to the Willow Creek Drain. Therefore Esquire asks that all property owners who are willing to join Esquire in filing a petition with the Ingham County Drain Commission to contact us. You may contact us by telephone at either 517-349-8000 or 517-282-9669, email at esquireddevelopment@acd.net or in writing at the address on this letter.

If you have any questions do not hesitate to contact us.

Yours truly,
Esquire Development and Construction, Inc.


By: James Bonfiglio

Enclosure

Cc: Deborah Stuart

CLARK HILL

MEMORANDUM

TO: Paul Pratt, Ingham County Deputy Drain Commissioner

FROM: Clark Hill PLC

DATE: August 13, 2019

SUBJECT: Procedures under the Michigan Drain Code to Establish Franklin Farms Storm Infrastructure as part of the Willow Creek Drain

You have requested an outline of the procedures available under the Michigan Drain Code, Public Act 40 of 1956, as amended, MCL 280.1 *et seq.* ("Drain Code"), to improve and establish the private drainage infrastructure within Phase II of the Franklin Farms Site Condominium, located in the City of Mason, as part of the Willow Creek Drain, an existing county drain under the jurisdiction of the Ingham County Drain Commissioner ("Drain Commissioner"). The following outlines petitioned (Chapter 8) and non-petitioned (Section 433) alternatives to improving and establishing the private drainage infrastructure under the Drain Code.

Chapter 8 Petition

Chapter 8 of the Drain Code (MCL 280.191-280.201) governs the process for cleaning out and improving existing county and intercounty drains. Absent a petition, a Drain Commissioner is limited to performing only maintenance and repair of existing county drains up to a certain annual monetary limit. When a petition is filed, an existing drain may be cleaned out, improved, extended, and have branches added, among other activities, with the benefitting properties and public corporation liable for the cost. The following is a basic step-by-step process for a Chapter 8 petition:

- A petition must be filed with the Drain Commissioner signed by either at least 5 freeholders liable to an assessment or a municipality located within the Drainage District.
- After a petition is filed, the Drain Commissioner appoints a three-member board of determination to hear testimony and consider evidence at a public meeting in which all properties within the Drainage District are notified and decide whether a project is necessary. The determination of necessity is subject to a 10-day appeal period.
- If necessity is found and no appeals are filed, or any appeals are resolved, the Drain Commissioner designs the project, acquires easements and obtains any necessary permits in order to construct the project.

- Prior to the construction of the drain project, the Drain Commissioner holds a day of review of apportionments to allow property owners and public corporations an opportunity to review the computation of cost for the project and their tentative apportionments. It is only at this time that the actual cost of the project is known.
- Apportionments, or the percentage of cost assigned to each property or public corporation at-large, are based on benefits derived and are subject to a 10-day appeal period following the day of review.
- The total cost of the drain project, including all engineering, legal, administrative, inspection and construction costs, is then levied through special assessments on benefitting properties and public corporations for a number of years, determined by the Drain Commissioner. The number of years cannot exceed 20.

433 Agreement

Section 433 of the Drain Code (MCL 280.433) provides an alternative non-petitioned method to extend or add a branch to an existing drain to provide additional drainage service to lands within an existing drainage district.

A "433 Agreement":

- must be signed by the drain commissioner and the developer of lands, or if any lands have been sold, the developer and the landowners;
- obligates the developer to construct adequate drainage facilities according to the plans and specifications approved by the Drain Commissioner at his or her sole cost, including construction, easement acquisition, engineering, inspection, administration and legal expenses. If already constructed, the Drain Commissioner may accept the drainage facilities conditioned on the improvement of the existing drainage facilities to meet the Drain Commissioner's standards;
- requires the developer to deposit 5% of the cost of the drain, but not more than \$2,500 for purposes of future maintenance;
- requires the developer dedicate the drainage facilities to public use and convey necessary easements to the drainage district;

Should you have any questions regarding the above, please do not hesitate to contact Lauren K. Burton at (248) 988-5854 or LBurton@clarkhill.com.