

**CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING MICHIGAN 48433
ZONING BOARD OF APPEALS**

DATE: DECEMBER 7, 1999 **TIME: 7:30 P.M.**
PHONE: 810-659-0800 **FAX: 810-659-4212**
WEB ADDRESS: <http://www.gfn.org/flushing/main.htm>

MEETING CALLED TO ORDER at 7:30 p.m. by Chairman Henneke. He asked the recording secretary to call the roll.

MEMBERS PRESENT

Edward Henneke, Chairman
Lynn C. McLean, Township Board Representative

James Sarka
Richard Vaughn

ALSO PRESENT:

Jerald W. Fitch, Building Inspector
Ida M. Reed, Recording Secretary

MEMBERS ABSENT: Harvey Workman

OTHERS PRESENT: Attorney Zintsmaster, Brent and Dorothy Parker and 10 area residents.

APPROVAL OF AGENDA: The agenda was approved as presented. The only issue on the agenda was an appeal by Brent and Dorothy Parker.

APPROVAL OF PREVIOUS MINUTES: McLEAN MOVED, seconded by Vaughn to approve the minutes of June 1, 1999 as printed. MOTION CARRIED.

UNFINISHED BUSINESS:

NEW BUSINESS:

APPEAL BY MR. & MRS. BRENT PARKER: CHAIRMAN HENNEKE explained that the Parkers are appealing a decision made by the Planning Commission on October 11, 1999 concerning their request for a renewal of a permit that had been previously issued for earth removal. Pursuant to our ordinance, an administrative official charged with enforcement of the zoning ordinance institutes appeal procedures to hear and decide appeals from, and review any order requirement, decisions and determination. Planning Commission decisions may also be appealed. The chairman continued to review the procedure for an appeal.

It was noted that all procedures were properly followed. Notices were published in the paper and letters were sent to those living within 300 feet of the request.

It is the responsibility of the Zoning Board of Appeals to consider whether the decision of the Planning Commission was appropriate based on the provisions of the ordinance, and record provided to this board. We may take additional testimony to make a proper determination. In making their determination they shall have all the powers of the administrative body (Planning Commission) from

which the appeal was taken. They can also enforce conditions on any approval. The ZBA decision is final, and if the Parkers wish to appeal the decision, they must appeal it to Genesee County Circuit Court. The decision made here tonight takes a majority vote of the board. It also requires that they need grounds for any determination made by the board and it must be stated in writing

We also have rules for our appeal procedure, which indicates the appeal is based on the record that was presented to the Planning Commission. This means that we don't start anew with testimony and new presentations. We do give an opportunity for interested parties to present to us a memorandum to support their position. They may also give an oral presentation that is limited up to 30 minutes. They may allow new evidence to be presented upon written request. We have not received a written request to present new evidence. Chairman Henneke asked Attorney Zintsmaster to make his presentation on behalf of the Parkers.

MR. JOHN ZINTSMASER, Attorney for the Parkers presented to the board his opinion on what the Planning Commission based their decision on. A lot of the records that we have, shows that the parties involved felt there had been unnecessary delays in this matter. He showed a large detailed map of the location of the Parker's property in respect to the surrounding neighborhood. It also showed the location of the Parker's home, where the ponds are located and the drives they were using to move the sand from their property. After they were told they could not use Frances Road they have been using a drive off McKinley Road. They are willing to put in another drive off McKinley Road and alternate the two drives off McKinley Road.

He explained that it is true that the Parkers did in fact receive an earth removal permit on several occasions since 1989, but never really acted on them. They had difficulty getting a reliable excavator to come in and dig the ponds, take out the sand and finish up the job as they wanted it done. There was a lot of difficulty down through the years, and is all detailed in the minutes of the many meetings of the Planning Commission.

The biggest problem as he understands it, is, it was felt that the parties were not acting expeditiously enough to get this over with. It was the opinion of some on the Planning Commission that they had requested permits over a 10-year period and still had not completed the process. In reality they had tried to start the process by getting the permits, but they had never actually got around to actually removing large amounts of sand until 1997. From 1989 to 1997 there was only 1000 yards of sand taken from the property. Mr. Zintsmaster reviewed with the board the number of times that the Parkers had met with the Planning Commission and requested permits. All these dates are in the records.

It is the desire of the Parkers to have a pond that would support a fish farm, and they are willing to do whatever it takes to see this dream fulfilled. They will even post a \$10,000 bond instead of the usual \$5,000 bond to guarantee completion of the pond. Mr. Parker requested a one-year earth removal permit for pond #2. It is not their intent to have an ongoing mining operation. There are several people that are more than happy to buy the sand, but they have not been able to move any of the sand for two months. The Planning Commission shut them down during the best weather for moving the sand. This caused a very serious problem, and this has been harmful to the Parkers. We feel the Planning Commission abused their discretion in not allowing the Parkers to finish pond #2. It has been left in less than an attractive state. It has to be finished to allow the Parkers to enjoy their property.

CHAIRMAN HENNEKE reviewed the Planning Commission minutes where the Parkers have requested earth removal permits for the past 10 years. The pond size has increased from approximately an acre to the point that the Parkers now want to have a pond that is over 4 acres.

CHAIRMAN HENNEKE opened the meeting to anyone that wished to speak in opposition to this request. There was no one that wished to speak against this request.

CHAIRMAN HENNEKE closed the public comment time at 8:40 p.m. He opened it to the board for their thoughts on this issue. For all practical purposes this situation has been going on for 10 years,

SARKA stated that the Parkers have been to the Planning Commission on several occasions since 1989, and nothing seemed to get done until the past year and a half. He doesn't believe they have been putting it off on purpose. He has a feeling that if they hadn't had problems with Adkins the permit would have been renewed again. For the Planning Commission to deny them the permit they need to finish this project is not a wise decision. He doesn't believe the Planning Commission handled this situation fairly.

McLEAN stated that he visited the site with the building inspector, and was aware of two large erosion gullies on the south side of pond #1. This has been going on for so long he is not surprised that the Planning Commission and the neighbors have said that they have had enough and closed down the operation. If we do give them approval to finish up this project we should ask for a \$10,000 bond, and have the bond extended beyond the date we set for completion of the pond.

HENNEKE reviewed four letters received from neighbors. One letter was received from Mr. and Mrs. Donald Bloss in opposition to this request. Annette Jenkins, Rex Kincaid, Duane and Donna Bilodeau signed one letter showing their support of the Parkers. Another letter received from by Brenda Matyhe was looking forward to having the ponds finished. A letter sent by Riske Custom Homes notifying the ZBA of their need for this sand, because it was a convenient location and the Parkers were very accommodating to their needs. The neighbors that were present wanted the Parkers to be allowed to finish pond #2.

CHAIRMAN HENNEKE was of the opinion that because of the winter months the only time sand can be removed from the site is from March 1st thru November. There has to be an end to this project. This isn't doing anyone any good to have this continue with no end in sight. The Planning Commission's decision to terminate operations was the right decision, but the ponds and the dirt on this farm need to be cleaned up. He asked Jerry Fitch his thoughts on this issue?

BUILDING INSPECTOR JERRY FITCH stated that he agrees with the chairman that this project needs to be completed. They will not have any trouble selling the sand, because it is of excellent quality. The Parkers have good intentions, but this project has to be completed.

HENNEKE stated that or purpose in this meeting is to essentially hear this as an appeal from the Planning Commission's decision. We are to determine whether the decision of the Planning Commission was appropriate based on the information in the ordinance and the record before them. We considered the record and have heard the arguments here tonight. Now we must make our decision based on all the information before us.

Fish has been mentioned in earlier minutes, but he was surprised to hear that the Parkers are now talking about a fish farm. There is nothing in the minutes to indicate any intention of having a fish farm.

Having fish in a pond, and a fish farm are two different things. He tried to find in our Zoning Ordinance a description of a fish farm, and none existed. At this point the fish farm is not the issue. He asked the Parkers who would be doing the work if the ZBA approved completion of pond #2.

MR. PARKER stated that he and 3 hired hands would be completing the pond. He purchased a 5-yard pay loader, 690 John Deere excavator, a backhoe, a 10-yard dump truck and pumps. If their appeal were approved they would like to ingress and egress from Frances Road for the earth removal, or they could alternate drives off McKinley Road.

****CLERKS NOTE: PARTIAL EXPLANATION FROM WEBSTERS DICTIONARY FOR A FARM:** 1. An area of land used for cultivation or animal breeding under individual or collective management.]] a tract of water for cultivating fish, oysters etc. 2. To raise (crops, stock, poultry etc) on a farm for the market]] to use (land) for this purpose.

HENNEKE MOVED, seconded by McLean to affirm the decision of the Planning Commission to shut down operations for pond #2 only. That the Parkers be allowed to move sand or dirt from March 1st 2000 to no later than November 30th 2000. We expect a majority of the pond depth to be 15-feet to make it suitable for use even if it is a smaller area, (such as 3 acres plus or minus) than what was originally contemplated. This is a condition of the appeal, that all dirt removal is done and over with on November 30, 2000. After that period of time the Parkers have an additional right to complete it without additional earth removal from the site, but to move the dirt around to get the proper slope. That they complete the proper sloping and depth within 6 months. By the end of May 2001 pond # 2 shall be completed. The Parkers shall post a \$10,000 bond to run to June 1st 2001. The purpose of the bond running beyond the limit of the completion date of the pond is to ensure compliance with this decision. If not completed at that time, we shall ask that the bond is revoked, and the funds used to complete the project. Any remaining funds will be refunded to the Parkers. That you use alternate exits, if possible, so the traffic is not constantly coming out in one particular area. There does need to be dust control wherever you ingress or egress. There will be no further extensions of this operation, because we are affirming the decision of the Planning Commission to terminate operations. We do feel it is necessary to give you some opportunity to complete this project. We are considering that basically from the standpoint of the interruption you had. The pond shall not be dug any closer than 75 feet from any boundary. There will be no Sunday work on this project. Work on the pond and removing dirt shall not begin before 8:00 a.m. and continue no later than 6:00 p.m.

CHAIRMAN HENNEKE broke from his regular pattern and asked Attorney Zintsmaster's opinion of the motion.

ATTORNEY ZINTSMASER appreciated their concern and felt that the motion was something they could live with. He and the Parkers thanked the ZBA for working with them on this issue and for a good decision.

CHAIRMAN HENNEKE called for a vote on the motion. Yes: 4 No: 0 MOTION CARRIED

CHAIRMAN HENNEKE instructed the Parkers that they should get their bond and permit in place so they would be ready to start moving sand on March 1st, 2000. He asked the neighbors if they had anything to add. The neighbors were glad the Parkers would have a chance to finish up pond #2.

The chairman then took a few minutes to discuss preliminary matters that may come before them in the near future. Discussion ensued concerning setting the meeting dates for 2000. This issue will be discussed again at the January meeting.

NEXT REGULAR MEETING will be held on Tuesday, January 4, 2000.

ADJOURNMENT: As there was no further business the meeting was adjourned at 9:15 p.m.

Edward Henneke, Chairperson

Ida M. Reed, Recording Secretary

Harvey Workman,
Vice-Chairman/Secretary

Date Approved