

WESTFIELD TOWNSHIP BOARD OF ZONING APPEALS

November 6, 2006 @ 7:30 p.m.

Meeting to Review Item 9 of the Conditional Use
Granted to North Coast Premier Soccer Ltd.
(suitable screening)

Chairman Michael Schmidt called the meeting to order at 7:30 p.m. Roll call indicated five members of the Board of Zoning Appeals were present: Michael Schmidt, Larry Bensinger, Kevin Daugherty, Robert Gecking and Ron Oiler. Others in attendance included Zoning Commission member Wayne Brezina, Trustee Tim Kratzer, Trustee Jeff Plumer, Trustee Carolyn Sims, Tim Sims, Willie Carrasco, Mike Sweeney, Joe Hanna and Chief Assistant Prosecutor William L. Thorne.

MINUTES

Upon motion by Larry Bensinger, duly seconded by Ron Oiler, the October 9, 2006, meeting minutes was unanimously approved.

The following is a summary of tonight's meeting, which was recorded on audiotape.

Review of Item 9 of Conditional Use Permit

At the November 7, 2005, Board of Zoning Appeals meeting the temporary Conditional Use Permit to North Coast Premier Soccer was approved with nine provisions listed. Item 9 stated "that a review meeting shall be scheduled at the close of the 2006 season to determine if suitable screening meeting township approval has been placed on or near the Hanna property line." Present on behalf of North Coast Premier Soccer were Mike Sweeney and Willie Carrasco.

Chairman Schmidt read into the record a letter from Ryan Gregoire, Agricultural Design, Inc., indicating the mound screening was completed in April 2006 as proposed and that he had recently been contacted by North Coast Premier Soccer to replace 20 dead trees and weed eat the mound (see attached letter). Mr. Gregoire could not be present tonight because of a family commitment (a special mass for his recently deceased mother).

The secretary swore in Mike Sweeney on behalf of North Coast Premier Soccer. Ryan had brought the drawing that he had done up and he put in the smaller trees on the west side of the mound all the way down. You cannot see them if you are driving on our driveway but there are several small trees. He said to us that some of the big trees will not transplant well and may have to be replaced and we have asked him to replace the larger trees that are not coming back around. He's been here with you guys several times and he's been genuine with us in everything that he has done for us so I have every reason to believe that he will do it. Obviously we are not happy with what we have there today. Ryan has made a commitment to replace the dead trees but if there are other things to be replaced or added (per the diagram) we will have them done as well.

The Board members looked at and discussed the previous screening plan that had been reviewed and discussed earlier this year. Upon their review of the site recently there were some dead trees that need to be replaced. It looked like at least part of what was

supposed to happen went in – the pine trees went in between the taxus and it was hoped they would fill in the holes but the pine trees are pretty sparse at this time.

Chairman – This is a detailed drawing of every mound and what is supposed to be on every mound. Perhaps Gary Harris (zoning inspector) could go out there to see what is there and what is not because we said this plan was going to be acceptable and this may not be what is out there.

Willie Carrasco was sworn in. From the beginning we asked Ryan to do the job and he came and did this drawing and everything in the drawing is there plus. He went crazy with putting in bushes, which will grow pretty big but it will take some time. He put in more than what was called for. Some of the trees are not looking too good but we don't know why except at the time we were in a hurry to get them in. We told him that we have to do better and he put some fertilizer on the trees and a lot of them are coming back but I don't know how long it will take to screen in everything. We are working on it.

Chairman – I think we may need to have another disinterested landscape party go out there with Gary and Ryan to look at it and get input as to whether everything is correct per the plan but now you need to do this or let's try that, etc.

Sweeney – We are responsible – there's no question about that. We agreed to it and it's got to get done so if you want to give us one month, two months, or whatever to do what else needs to be done.

Chairman – Fortunately we have the luxury of having our esteemed counsel from the Prosecutor's Office here tonight - Mr. Thorne, what type of teeth do we have to put on this?

Assistant Prosecutor Thorne – They still have the conditional use permit until October 31, 2007 and this meeting was scheduled to see what they have done with the screening and what I'm hearing is that it is not entirely satisfactory. At this point you set another hearing and have that other gentleman who you were talking about show up or you give them so many days to get another professional to come in to tell you what needs to be done and maybe have both of them come in. The conditional is good to October 31, 2007, and this meeting was to see how they are progressing with the tree line. It's really up to the Board's discretion. A professional horticulturist can tell you whether it is really feasible to survive the way it is, what may be needed and what the cost would be to bring the rows up to that sketch design or he may say it's coming along fine and it's still too early to tell if the trees will come back or not. You might have a lot of trees out there and the right number but the wrong type of growth.

Bensinger – When we look back as to how this occurred it was indicated that a lot of trees were pulled out of the woods. The other thing that happened was the ditch was trenched, the mounds put up and then the trees put in that soil. I doubt very much if that's the best deal for planting trees that are going to last. I want to make sure that we get some quality items and that they go in there and are planted properly.

Chairman – We're all second guessing now and probably the conditions, like Larry was saying, were probably about as bad as conditions as possible by pulling that muck out of the trench there and trying to plant trees immediately.

Carolyn Sims was sworn in. I look at things very simply – the only thing that the Board needs to render a decision on does it or does it not provide screening and based on that, regardless of who is doing the planting, Ryan is just a subcontractor of the person with the conditional.

Daugherty – That's why we structured this review.

Thorne – It looks like they have a year to get it done before they have to reapply. The question is do you let it keep bouncing along as it has or do you have them come in with something new to show that they are going to get it done.

Chairman – Bill, can we request NCPS, within a certain period of time, to have somebody take a look at it, render their opinion and come back to us with their review.

Thorne – That's what you need to do and that's what they need to do also. Everybody may be over critical and it may be something that's coming along fine. Another professional may say give it some time it's going to make it. I think at this time you need another party to take a look at it as to whether what's out there will grow and what more needs to be done to make it comply with the plan.

There was discussion about the time frame for the third party review (30 or 60 days) and a 30-day period was set to get the review and then another meeting would be set within the next 30 days.

Joe Hanna was sworn in. You're telling him to get his landscaper out to look at it – are you just going to pick one out of the phone book. I had a horticulturist go out there and he said those taxus weren't going to survive, they were pulled out of the woods and most of them died. Can I bring in a horticulturist too?

Chairman – Ultimately the Board has to say that it is providing the proper screening so it's in NCPS's best interest to make sure that they get somebody good.

Sweeney inquired as to suggestions for the name of a horticulturist with a few names being suggested but it will be up to NCPS as to whom they select for the review.

Hanna – Since that agreement, they put a parking lot next to my house. Instead of just that drive that used to be there, they put a parking lot there. It went from a couple of cars deep to one big parking lot.

Chairman – I understand what you are saying but there was always parking there.

Carrasco – We try to do the best we can in this whole thing. EMS said the field was too far away so we decided to put in parking in the middle so they could go both ways. We are trying to solve the problems and the EMS requirement was a certain distance to every field.

Sweeney – EMS requirement was to provide a very good road. The actual parking closer to your house is not there any longer because of the mound. If I remember correctly, it was either all the way around the outside or in some way within two fields away as EMS had to be able to get there.

A motion was made by Larry Bensinger that North Coast Premier Soccer is in violation of Item 9 of the temporary Conditional Use Permit issued November 12, 2005. As a result the Board is requesting that North Coast Premier Soccer provide us with an independent third party written review of the landscaping as it exists to determine what needs to be done to fulfill Item 9 of the temporary Conditional Use Permit, pursuant to the screening plan previously approved by the Board. This shall take place within a 30-day period from 11/6/06. Ron Oiler seconded the motion.

Roll Call Vote:

Larry Bensinger	- yes
Kevin Daugherty	- yes
Robert Gecking	- yes
Ron Oiler	- yes
Mike Schmidt	- yes

(To reiterate - the objective is to provide adequate screening. A third party review of the previously approved screening plan with the current screening will determine if the current screening meets the plan, if it is adequate, and/or what additional bushes, shrubs, trees, etc. may or may not be needed to fulfill Item 9 of the temporary Conditional Use Permit. The review shall take place within 30 days of 11/6/06 and Mike Sweeney will notify the zoning secretary when the written review is complete. Upon notification, another meeting of the Board of Zoning Appeals will be scheduled within 30 days thereafter.)

OTHER BUSINESS

Chief Assistant Prosecutor William L. Thorne was present to address the questions posed to the Prosecutor's Office by the Board in its 9/22/06 memo regarding variances.

Thorne – The answer to the first one is that a variance runs with the land, that's the whole purpose of it. There can be unique circumstances where a variance can be terminated because of changed circumstances. They are generally something that alters the initial need for the variance.

I think the problem you have here is that you probably shouldn't have granted a variance to begin with. (Discussion concerned the Talmon and the Shetterly variances approved in prior years.) The problem is you granted it and the building is up and now they are not in compliance and this is exactly the reason you don't grant this type of variance because there is not much you can do. What you've got here is two buildings that you may have continuing problems with if people try to use them for other things unrelated to what they were intended for. In both these instances it appears that the barn/shed was going up in anticipation of building the house and they were going to store building equipment and that kind of stuff in it. So your zoning inspector can go out and cite them at this point and tell them to discontinue use of their property because their time is up and they haven't built the house so it's an illegal use but I don't think we're going to get the building ripped out nor do I think we can force them to build the house if they don't have the financial ability to do so.

Can you give them a one year time frame to build the house – probably should not have done that. I don't know any way we can force them to do it as the barn or garage went up legally and I doubt if I could get a court injunction to rip the barn down. You've got a situation where your zoning inspector could probably, since they did not comply, give them an order to cease use of the building but that would be a continuing problem for your zoning inspector.

There was an instance where Guilford Township gave a variance for a storage building but those people were quite honest in stating they didn't intend to build a house - what they wanted to do is keep the land open for picnics, etc. but they didn't want to be dragging a mower, etc. out there - there was no anticipation that they were ever going to build anything else and Guilford did limit the use of that building.

Oiler - So in the future it's in our best interest not to grant any variances of this nature?

Thorne – If the people tell you what they are going to use them for and that makes sense, you can. There are a lot of people who might not want to build a house on their property. For example, Hinckley let a guy build a barn to store equipment (even a little kitchenette) and he goes out on weekends to mow and plant trees etc. but they don't live there. The place has been there 10 years but that's all he wanted to build and Hinckley accepted that. He put it where it wouldn't bother the neighbors. But if they tell you in the beginning that they plan to build a house it creates a problem almost every time. Now you have a storage building out there and if a new owner comes up who wants to use it for something else, the zoning inspector is going to tell him that he can't have a commercial business in there, can't use it for commercial storage and technically can't use it for his own storage but it's going to be hard to enforce. The best bet at that point is to have them come in and ask for an amended variance to allow for personal storage in there.

One approach to this issue is that the zoning inspector can check the building out to see what it is being used for - to see if it's being used for anything illegal and he can cite them if other things are stored there other than why he got the variance. If other things are stored in there, it's an illegal use of the building – if it is used to store cars or something like that unrelated to the building of a house, the zoning inspector can cite them and an injunction could even be filed. So anything other than what was originally intended, they have an illegal building - unless they come back to you with a different request. The other approach would be for the Board to bring them in to show cause as to why they are not in compliance.

Chairman – Should we have the secretary write a letter first because obviously they are not living out there, and you write a letter first.

Thorne – Basically write a letter saying, upon review we note that you had one/two years to build a house and that time frame expired with no house being built. The board is having a show cause hearing as to why it should not take action to revoke your variance and you are requested to show up. In the interim you could have zoning inspector go out and come back in and report what's actually being done on the property. The guy may be able to come in and explain why he hasn't built the house and ask for a continuance of the time frame but that's why you have a show cause hearing to find out what's going on.

At this point the Board wants some explanation and if the Board is not satisfied, then the zoning inspector or township may need to take further action.

After further discussion, the Board decided that the zoning secretary would write the letter to Talmon and Shetterly as suggested by A.P. Thorne and a hearing date convenient to all members would be determined.

Adjournment

Upon motion by Robert Gecking and seconded by Kevin Daugherty, it was unanimous that the meeting be adjourned. Adjourned at 8:45 p.m.

Marlene L. Oiler, Certified PP, PLS
Westfield Township Board of Zoning Appeals Secretary

(Minutes approved 12/11/06)