

**WESTFIELD TOWNSHIP
BOARD OF ZONING APPEALS
JUNE30, 2008 PUBLIC HEARING
Variance Request by Mr. Scott May-5614 Eastlake Rd.**

Chairman Schmidt called the public hearing of the Westfield Township Board of Zoning Appeals to order at 7:30 p.m. Permanent Board members Poe, Oiler and Schmidt were present. Permanent member Daugherty was absent. Alternate member Tom Micklas sat in on the Board.

MINUTES

Mr. Oiler made a motion to approve the Board's June 12, 2008 meeting minutes as written. It was second by Tom Micklas. It was second by Mr. Poe.

ROLL CALL-Oiler-yes, Micklas-yes, Poe-yes, Schmidt-yes.

Mr. Oiler made a motion to approve the Board's June 19, 2008 meeting minutes as corrected. It was second by Mr. Micklas.

ROLL CALL-Oiler-yes, Micklas-yes, Poe-abstain (was not present at the meeting), Schmidt-yes.

VARIANCE REQUEST-5614 Eastlake Rd.

The applicant, Mr. Scott May was sworn in.

Mr. Schmidt: Why don't you tell us how we got into this situation?

Mr. May: How we got into this situation? I put in a plan to put in a pond. I got a zoning permit and all the permits from the County and apparently the pond is too close to the road right of way.

Mr. Schmidt: Did you read the pond permit application?

Mr. May: From the Township?

Mr. Schmidt: From the Engineer.

Mr. Schmidt: Did you fill this application out?

Mr. May: No, I did not fill this out.

Mr. Schmidt: Then who did?

Mr. May: Kent's Excavating I would think. All I did was get the zoning permit from Westfield Township. Ken Excavating got all the other permits.

Mr. Schmidt: Gary do we have a copy of the application?

On the pond permit application it states, "owner/contractor must check with the appropriate zoning code to determine if the Township requires a permit for any pond being built. Each Township has their own requirements." That's where we have gotten into the problem because the pond is too close to the road.

Mr. Oiler: Is this the original drawing submitted for the pond to be built?

Mr. May: Yes that is the original.

Mr. Oiler: So originally you had planned for the pond to drain into the ditch?

Mr. May: Let's clarify the ditch situation. The run off of the 22 acres or whatever they say it is runs into the ditch on my driveway. All we did was take it up the road 200-ft. No we did not want it to go into the ditch we wanted it to run down the backside of the dam but the Gas Co. said we were not allowed to divert water over their pipe. The pipe goes through the stream 3 times before it leaves my property. The only solution was, after the meeting with the Trustees, Lee Evans the Engineer and the gas people, is to put it into the road ditch. I see no reason why it should not go into the road ditch as it goes into the ditch on my driveway. All we did is move it 200-300 ft. up the road. But now there is big problem about the road ditch.

Mr. Schmidt: The problem is it is too close to the road.

Mr. May: What is?

Mr. Schmidt: The pond.

Mr. May: I was not aware of that when I got the zoning permit. It was 80 ft. from the center of the road. When I look at a pond, I look at a pond as the water. The water line is 80 ft. from the center of the road. I did not understand that the foot of the dam was considered the edge of the pond. That's how I got into this situation.

Mr. Schmidt: Who is your excavator?

Mr. May: Kent's Excavating.

Mr. Schmidt: Has he done work for you before?

Mr. May: No. Kent's Excavating is very reputable.

Mr. Schmidt: Then why did he build the pond too close to the road?

Mr. May: I don't think he was aware of the Township's rule.

Mr. Schmidt: Then how reputable is he?

Mr. May: All I know is we have a pond and it is filling up with water. I see a lot of other ponds close to the road and we are asking for this pond to remain where it is at. When the Township asked me for an easement to put the road ditch into my road ditch which is on my property, I said no problem so there would not be two road ditches there would only be one. But now when I want to divert the water into the road ditch where it originally goes we got a problem. I don't understand. Three hundred feet up the road is not a big problem.

Mr. Schmidt: We are really not here about the road ditch. That is not what this Board does.

Mr. May: You're here about the pond so you are going to come up with a conclusion if the pond stays or goes so that is what I want to hear. The mistake is I did not know the 80-ft. was from the foot of the dam I thought it was from the edge of the water. My mistake.

Mr. Micklas: Did you instruct your contractor where the pond had to be placed from the information that you had or were aware of?

Mr. May: The zoning permit was the last permit pulled.

Mr. Schmidt: The zoning permit specifically said 80 ft. The drawing shows...

Mr. May: The drawing shows 80 ft. I did not know the 80-ft. was from the toe of the dam. I thought it was from the edge of the water.

Mr. Schmidt: That is like you buy a car and the speed limit is 60mph and a cop stops you for going 120 mph and you say but my speedometer goes up to 150 mph. Who's responsible? I would say that... You contracted with Kent's Excavating...Is he here tonight?

Mr. May: No.

Mr. Schmidt: If he is a reputable excavator, he should have been the one...as every township has different...

Mr. May: Kent Phillips is the one who is going to get sued after this is all over with. If it is not approved and the pond has to be moved he will be the one to go to court and be sued and I will win. That is just the way it's gonna be. I just want you to make a decision.

It is beautiful pond on a beautiful farm. Your children and everybody's children in this Township should be proud to see a farm with mules and cows, which is the heritage of Medina. I really don't think the pond is a problem. I am already buying the pipe to give you a storm sewer at my expense. All I am asking for is that you let the pond stay. After that we will go to court.

Mr. Micklas: Did your contractor contact OUPS?

Mr. May: They did come out and marked all that.

Mr. Micklas: I would assume that would be some indication that you are digging in the wrong place.

Mr. Micklas: According to the OUPS website, contractors and excavators are required by law to contact the OUPS and they contact the utility services which come out and mark the lines...

Mr. May: I don't know anything about these rules...All I was told when I got the zoning permit is the 80 ft is where the edge of the water is. That is all I...I hired the contractor and paid the contractor when he was done before I knew about all these problems. If I knew these problems were in existence I wouldn't have paid him. But paying him doesn't really matter because Kent Phillips will have to live next to me for the rest of his life. This will be a very sore thing if this all falls apart.

Mr. May: According to my attorney they do not have an easement on my property. The Gas Company has an agreement to run the line down it doesn't say anything about an easement. This went on back in 1920.

Mr. Poe: Do you have any knowledge at all if the contractor had a copy of the zoning rules of Westfield Township.

Mr. May: Yeah he had copy of what I got from the zoning inspector.

Ass't Zoning Inspector Lee Evans was sworn in.

Mr. Evans: What had happened is that he did not actually get a copy of what our pond requirements are out of the zoning book to give the contractor. As was previously stated it does read on the permit from the County that pond regulations differ from Township to Township. The main reason this was brought up was now I had water running into the ditch that was not made to take on that amount of water. As I started checking into things, the whole intention was per the drawing, for Kent to run it down along the dam on the other side of the fence and I would not have a problem with that. The water would then run back in to the 24" pipe in his drive and goes on its merry way. However there is a high pressure Columbia Gas line and they have issues with it running parallel with their pipeline. We had a few meetings and came up with a solution that if the Board grants the variance; Kent Phillips would put riprap straight down to the road ditch where there

would be a catch basin. Mr. May has already signed the paperwork to pay for the catch basins and pipe. We were going to go install that to alleviate the moving of the pond. Kent is now aware of the Township's requirements and when we began having these meetings I took a copy of the zoning requirements regarding ponds to him. Mr. May did not know any different at the time. As far as Columbia Gas is concerned, they are o.k. with us running the riprap and I have a letter from them confirming this.

(The Board did have that documentation).

I have discussed all this with Mr. May and he will be happy, Columbia Gas will be happy and I will be happy that I no longer have that water running down the ditch. Not everybody understood at the time.

Mr. Micklas: Does the location of the pond, as it is right now, impede Columbia Gas from bringing in any people, equipment etc. for maintenance purposes?

Mr. Evans: No, that is why they did not want the water running down over the top of their gas line. They wanted it to come straight out to the road with riprap and material underneath so if they had to repair the line they would have the ability to do so. The Trustees and I had a meeting at Scott's house to come up with a solution without having to move the pond.

Mr. Oiler: What is going to be the Township's approximate cost to put the line in?

Mr. Evans: Mr. May is paying for the pipe and catch basins so it wouldn't be any different than anything else that I do as far as ditch enclosures.

Mr. Poe: Will there be any affects downstream?

Lee Evans: No, there will be perforated pipe and stone and when you have a small stream of water it will go through the perforated pipe and dissipate into the ground so it will not affect anything as far as downstream.

Trustee Likley was sworn in.

Trustee Likley: Initially the Trustees concerns were the water coming into the ditch in a different location than it did before. The ORC and other codes state that where water enters your property and exits your property cannot be changed. The water that is collecting and is now going to be coming into the road ditch was going down to his (Mr. May) driveway where there is a 24" culvert. From the letter from Columbia Gas they are going to be replacing that culvert. The concern of the Trustees was this water would then be coming into our ditch. With Mr. May willing to pay for the catch basins and the culvert pipe that eliminates our concern of the water coming into our ditch. The riprap eliminates the concern Columbia Gas of the water traveling over their easement or high-

pressure line. There is no additional water that will be coming 300 ft. east of where it was before. Our concern was it was coming into the ditch at a different location than it was before off of his property and the subsequent effect of washing the road base away. We have worked with Mr. May as well as the Road Dept. and Soil and Water as far as the area of water that is being collected and put into the ditch with the best remedy possible to eliminate the problem for the home owner. The Trustees are in agreement to allow the water to come into the ditch at that point because of the solution of the closed culvert and catch basin. Without Mr. May's willingness to do this we would not be able to accept that water at a 90-degree angle as there would be the potential of eroding the road base. One of the other things Mr. May did not mention was if the water was to be diverted into the lake instead of around the lake and into our ditch, then an overspill coming out of the lake at the same location the water use to exit his property, would then be required. This is a requirement of Medina County. The overspill would have to be engineered and would be a considerable cost. The Trustees, Mr. May, Mr. Evans and Mr. Harris met the property 3 or 4 times and to resolve this issue collectively and that is what you have before you this evening. This would require a variance for a setback to the road.

Mr. Schmidt: Mr. May what has Mr. Phillips said about the wrong location of the pond?

Mr. May: He was not aware of it. I told him when I got the permit that the pond needed to be 80 ft. from the road. He probably thought the same way I thought.

Mr. Micklas: How far into the easement is the toe of the dam?

Mr. May: The dam is 50 ft. from the center of the road.

Mr. Poe: And it is now 80 ft. from the center of the road?

Mr. May: 80 ft. from the water. When I talk about the foot it is where there is no more curve coming off that dam where it is actually at the virgin ground.

Mr. Poe: So this distance from the bottom of the curve is what?

Mr. May: At the bottom of the curve is where I measured to...I believe the side of road is where I was asked to measure from. We are only off by 20 ft.

Mr. Schmidt: The right of way is 30 ft. from the center of the road. The width of the road is...

Mr. May: The toe of the dam is not in the right of way. The foot of the dam is 50 ft. from the center of the road. We are 8 ft. off of Columbia Gas line, the foot of the dam. Columbia Gas is saying that is too close to their line for water to be around their pipe.

Mr. Schmidt: It is unfortunate...If you get the variance all that can be worked out but this Board does not really care about that. That is not what we are here for. We are here to decide if that pond is in the right location or not.

Mr. Poe: Is the amount of water going into that ditch the same as it was before?

Mr. May: It hasn't changed any. Once the pond fills up you will get the same amount. Regarding the amount of water, the neighbor has that ditch running through his front yard and he mows over that ditch yearly. There is always grass there.

Mr. Schmidt: We are here to determine the location of the pond. What we have to establish is if the toe of the lake is 40 ft. from the center of the road. Therefore you are actually off by 70 ft. not 10 ft. or 20 ft.

Mr. Evans: He only has to be 80 ft. from the center of the road.

Mr. Poe: What I am reading is that it has to be 50 ft. from the center of the road.

Mr. Schmidt: If Mr. May is 40 ft. from the center of the road you are 40 ft. in violation.

Mr. May: It is 50 ft. from the center of the road.

Mr. Schmidt: The application says the toe of lake is 40 ft.

Mr. May: I went out and measured it.

Mr. Schmidt: Did you fill this application out?

Mr. May: No, I did not put the toe on there. I measured from the toe of the dam and it is 50 ft. from the center of the road.

Mr. Schmidt: Is this your signature?

Mr. May: Yes, before all that stuff was written at the bottom of the application.

Mr. Schmidt: These are my notes down here. On the application it states, "Description of the variance, toe of lake is 40 ft. from center of road."

Mr. May: Yes that is my signature but I measured it and it is 50 ft. from the center of the road. That permit was done before the pond was built.

Mr. Schmidt: No sir this is dated 5-2-08.

Mr. May: The pond wasn't built then.

Mr. Micklas: Why would you ask for a variance if the pond wasn't constructed?

Mr. May: Oh, this is the variance application I thought it was the zoning permit. I made a mistake.

Mr. Gary Harris zoning inspector was sworn in. He approached the Board and reviewed the drawing of the pond.

Mr. Harris: The lake is lower than the ground. As the lake goes down hill that's what creates the toe. So part of it does meet the zoning. Two-thirds of the pond has a toe and meets zoning. He (Mr. May) has a big ravine there and thought it was the perfect place for a lake...

Mr. Poe: That means he (Mr. May) was right measuring from the edge of the water to the road on the east end but as it goes west the road goes down...

Mr. Micklas: So there was no dialogue between you and Kent's Excavating about relocating the pond?

Mr. May: No. The only dialogue between me and Kent was that it had to be 80 ft. from the center of the road. That is where the waterline is.

Mr. Micklas: So there was no post construction conversation that hey we're in the wrong place and we have to move it.

Mr. May: I was not aware of it being in the wrong place.

Mr. Oiler: Who made the decision to place the pond where it is currently constructed?

Mr. May: I guess it was me and Kent. I told Kent, this is where I would like to construct the pond and that we have to stay 80 ft. from the road. The toe is the issue that exists. I wanted him to make a good long toe so I could mow it without my tractor falling over. If we removed the dam it would be correct.

Mr. Schmidt: Let me read to you so you understand where we are coming from Mr. May. There are things that we have to follow under a practical difficulty test. Under area variances there are Duncan Factors that need to be considered. Which are as follows:

1. Will the property yield a reasonable return or a beneficial use without the variance request?
2. Is the variance substantial?
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted?

4. Will the granting of the variance adversely effect the delivery of governmental services?
5. Did the property owner purchase the property with the knowledge of the zoning restrictions?
6. Whether the property owner's predicament could be feasible obviated in some other manner other than the granting of the variance?
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution and would substantial justice been done in the granting of the variance?

It is unfortunate that this is all after the fact especially in regards to #6 whether the property owner's predicament could be feasibly obviated in some other manner other than the granting of the variance. Well if the pond had been moved back 40 ft. or whatever was needed then the Board would not be here tonight. These are the things that we have to weigh in considering a variance. Whether we think you are a nice guy or that the people of Medina County should come out and see horses and mules and think it's a nice thing is not a factor of consideration.

Mr. Micklas: There is an abundance of information out there regarding how to put in a pond-what you need to do, who you need to contact and how to put it in. It just seems that with all the information that is available it appears it is an easy enough process to put it in the right place.

Mr. Poe: I would agree with Tom and especially factor #6. It is unfortunate this took place but we are not here to re-write the zoning code.

Mr. Schmidt: It is not like there is a woods directly in the way and you want to...How big is the pond?

Mr. May: $\frac{3}{4}$ of an acre.

Mr. Schmidt: What we always look at is there any circumstances that would prohibit it from being in a particular location. We are always trying to work with residents on different things and there is no reason it could not have been moved 30-40 ft. to the south.

Mr. Oiler: If you were only talking 10 ft....

Mr. May: Thirty feet would have been too close to the barn.

Mr. Schmidt: Or further east or something I don't know.

Mr. Micklas: If it was too close to the barn and too close to the road then the original plan should not have been to put it there in the first place. If your are saying the toe of the dam

is 80 ft. from the road and it is too close to the barn then the initial plan to put this pond in...

Mr. May: Moving the pond with the toe of the dam would put it too close. If I was given the proper paperwork when I applied for the zoning permit that showed me and told me everything this would not have happened. I was sure the pond was the edge of the water. But if I put a big pile of dirt out there it would mean nothing it would be a big pile of dirt. But because the pile of dirt is holding back water your paperwork is saying it is part of the pond. Right down the street someone put a huge pile of dirt and I would think that would be same thing but it is not holding water.

Mr. Poe: With information on the internet, it kind of irritates me a bit that it appears now that holy cow we had to give you this information. The code under Article II Section 205 D. Lakes and Ponds, specifically states,

1. Ponds or lakes containing over 1 ½ feet of water depth shall be considered as structures. A zoning certificate shall be required for new construction or significant expansion of the surface area of a lake or pond.
2. Ponds and lakes and all associated structures and embankments, including the outside base of the dam associated with a pond or lake shall not be located in the required front, side, and rear yard setbacks and shall not be located closer than fifty (50) feet to the right-of-way of a street.
3. Ponds or lakes shall meet standards and specifications of the Medina County Soil and Water Conservation District and/or Chapter 1521 of the Ohio Revised Code. A copy of the approved lake specifications shall be submitted with the application for zoning certificate to the Zoning Inspector.
4. Fire Ponds. A copy of the approved fire pond specifications shall be submitted within the application of the Zoning Inspector.

It is pretty clear and available on the internet and you can look it up and you can find out that information. If you are a reputable excavator and cannot look it up on the internet you would at least know who to contact to get the information. On the other hand, I am looking at –it's a ¾ acre pond too close to the road. Is the run off going to erode the road? It appears we are not going to worry about that because pipe and a catch basin are going to be put in. Is it going to erode down and expose a high-pressure gas line? Well no, with the riprap the gas company is not concerned that will occur. How much water is going to drain into the ditch-well the County Engineer said it will not add any more water. So here I think, maybe it is too harsh to deny the variance because only half of the pond is in the encroachment.

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Mr. May: There is a plus to this. There are no fire hydrants on this road. Your fire dept. could use the pond as a dry hydrant to save a house if it caught on fire without disrupting me or my sleep. Lee Evans pointed that out to me. This could be a good thing. I probably could have gotten money to help build the pond because of that.

Mr. Poe: If I was your neighbor I probably would have donated to it.

Mr. May: No I mean from the government.

Mr. Poe: I don't know how that would work. I would say Duncan Factor #4 is a positive in that it would benefit for governmental services i.e. fire protection. But it is correct that Duncan Factor #6 could be considered and the issue obviated in some other manner than the granting of the variance. That could be by you contacting your reputable excavator and telling him to move the pond where it belongs. To say it is someone else's fault because they did not hand you a piece of paper with the...

Mr. May: I did not say it was someone's fault. There is another plus to the situation in that there will not be a ditch there anymore. That is a good thing especially with the amusement park.

Mr. Poe: That is where I stand on the Duncan Factors.

Mr. May: I even thought I would extend the pipe across the whole property so we don't have that big road ditch because the ditch in front of my place is 8 ft. deep.

Mr. Poe: Don't do it without getting approval to do so.

Mr. May: I won't. You will be putting the pipe in; I will just pay for more pipe to extend it.

Mr. Schmidt: The unfortunate thing is Mr. May is that it is already done. If you had come to us before you put the pond in...

Mr. May: I didn't know...

Mr. Schmidt: Ignorance is not part of the law.

Mr. May: But I telling you I would have done that...

Mr. Schmidt: Good well you still can.

Mr. May: I am asking could you stall this meeting so you can all go over and look at the situation and see if it is really that bad.

Mr. Schmidt: We can't consider the way it looks. Even if you were the most wonderful person in the world and were going to donate a million dollars to the Township because you thought we were good people it still would not matter. It has nothing to do with it.

Mr. May: Maybe my peers would have something to say about it. Maybe I need to talk to all of them on Eastlake Rd. and see what they think.

Mr. Schmidt: The neighbors have been notified.

Mr. May: Is there anybody here opposing it?

(Silence)

Mr. Schmidt: That just means there is nobody here who wants to make a comment.

Mr. Oiler: It is incumbent when a resident of the Township wants to do something on their property or build something to come and get a copy of the zoning code and clearly understand. And if you don't understand then talk to the Zoning Inspector until you are clear as to what is required.

Mr. Schmidt: I think the contractor who is doing this work...If you hired someone to do the work and they did it wrong then it is your right to ask him to remedy the situation. This is a very unfortunate situation. What we are looking at is the distance of the pond from the road.

Mr. May: I have nothing else to say. Do what you have to do.

Mr. Poe: Your contractor should have known the code and put the pond where it should be. On the other hand, I don't think the pond is bad thing. The issue of the road eroding and the gas line have been rectified by the parties that be and the engineer is not concerned with the amount of water that will enter the ditch. As far as I am concerned I feel we should give him the variance.

Mr. Oiler: My opinion is based on Duncan Factor #6 that this situation could be rectified without granting a variance. I also have real concerns about the contractor. The variance is also too great. If we grant this variance we will be faced with more and more of these and I don't want to set a precedent. Let the Commission rewrite the zoning code.

Mr. Micklas: I kinda agree with Ron. It appears the contractor had a blatant disregard for the rules and regulations. Whether it was a lack of desire to fulfill the requirements or whether ignorance on his part I don't know, but he has an obligation as a contractor to follow the rules and do what he is supposed to do so I agree with Ron.

Mr. Schmidt: It is a very unfortunate situation we are in especially after the fact. If we were talking 5 or 10 ft. maybe but we are talking 30, 40, 50 ft. I really could not support the variance on this.

Mr. John Miller was sworn in.

Mr. Miller: I think I heard part of his pond has a curve and comes around but is within compliance of the code. The other part of the pond, which is shallow and going up the hill, is where the dike curvature encroaches the right of way. My question is to Mr. May, is it possible the excavator could come back and resolve the part of the curve which has very little water pressure and cut it away from the other side?

Mr. Schmidt: It is the deep end that...It's the dam that is the problem.

Mr. Miller: I'm sorry I got the wrong end.

Mr. Schmidt: Do I hear a motion.

Mr. Poe: I move we grant a variance to Mr. May to leave his pond the way it currently exists.

Mr. Schmidt: So grant him a variance of how many feet? The application says the pond is 40 ft. from the centerline so...

Mr. Poe: I make a motion we grant a variance of 40 ft. of Article II Section 205 D.2 Section for the toe of the pond located at 5614 Eastlake Rd. (PP#04115B06006) based on all supporting documents submitted.

Mr. Oiler: I second the motion.

ROLL CALL-Poe-yes, Oiler-no, Micklas-no, Schmidt-no.

Secretary Ferencz: Your variance request has been denied.

Mr. May: Thank you gentleman for wasting my time.

Mr. Schmidt: I think you have a very good case to go back to your contractor.

New Business

Secretary Ferencz asked if the Board was prepared to set a meeting date for application received from Cloverleaf Schools. She added that there will also be a site plan review to be heard by the Zoning Commission and asked that because she would be gone, if the Chairs of both Boards could coordinate a meeting date and e-mail her with that day and time.

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Mr. Micklas (liaison to the Zoning Inspector) stated he would review the application with the Zoning Inspector

Having no further business before the Board, Mr. Oiler made a motion to adjourn the meeting. It was second by Mr. Schmidt. All members were in favor. The meeting was officially adjourned at 8:43 p.m.

Respectfully Submitted

Kim Ferencz
Zoning Secretary

Mike Schmidt

Jack Poe

Ron Oiler

Tom Micklas

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Respectfully Submitted

Kim Ferencz
Zoning Secretary

Mike Schmidt

Kevin Daugherty

Ron Oiler

Tom Micklas