

**CHOCOLAY TOWNSHIP  
ZONING BOARD OF APPEALS  
MINUTES OF FEBRUARY 23, 2006**

**I. MEETING CALLED TO ORDER**

Michelle Wietek called the meeting to order at 7:30 p.m. in the meeting room of the Township Hall. The Zoning Board of Appeals Welcomed Joy Verlinden.

**II. ROLL CALL**

Members present: Albert Denton, Carol Hicks, Michelle Wietek, Dan Maki and Joy Verlinden.  
Members absent: None  
Also present: Randy Yelle (Zoning Administrator) and Lori DeShambo (Recording Secretary).

**III. APPROVAL-MINUTES OF THE OCTOBER 22, 2005, MEETING**

Two changes were noted to the 10-27-05 meeting minutes

1. Under Section IX- Planning Commission Members' Comment (William Sanders) should read, "None, as Bill Sanders was not in attendance at this meeting."
2. Under V- Public Hearing (page 3). In the third paragraph, the second to last line should read, "Mr. Wahlstrom is asking that his property be placed as Class A non-conforming so he would simply re-present to the Planning Commission the proposed changes he would like to make to his business."

Al Denton motioned, Carol Hicks seconded that the minutes of the 10-27-05 meeting be approved with the above referenced changes. Aye 5, Nay 0. Motioned Approved.

**IV. APPROVAL OF AGENDA**

Al Denton Motioned, Michelle Wietek Seconded that the agenda for the February 23, 2006 Zoning Board of Appeals meeting be approved. Aye 5, Nay 0 Motion approved.

**V. PUBLIC HEARING**

A. Class A Designation Request #06-01

Pursuant to Randy Yelle, the Range Bank building is currently non-conforming. It requires a re-classification to allow the drive-thru to be relocated. Michelle Wietek asked if the front of the building will meet the set-back requirements. Randy Yelle responded with the front is much closer, the Terrace side does encroach on side easement.

B. Revoke Class A Designation - 320 Shot Point

The actual request was for a variance which was approved incorrectly. Randy Yelle is asking that this be revoked.

C. Class A Designation Request #06-02

This is a request to re-issue the Class A non-conforming classification that is being asked to be revoked by Mr. Yelle by the new owner.

D. Expansion/enlargement of Class A Designation #06-02

**VI. PUBLIC COMMENT**

Bruce Pesola of 2717 U.S. 41 West, Marquette, Michigan stated he is requesting the Class A Designation at Shot Point and the request for an expansion as he is the new owner. He would be happy to answer any questions.

Peggy Loy of 2382 Werner Street, Marquette (Century 21 real estate agent) in attendance with Mr. Pesola as she sold the property to Mr. Pesola. She recapped the July 28, 2005 ZBA meeting wherein the Appeals Board was told that this property was to be sold.

**VII. UNFINISHED BUSINESS - None**

**VIII. NEW BUSINESS**

A. Updated ZBA “Rules of Procedure”

Mr. Yelle has contacted the MTA regarding the Rules of Procedure regarding Zoning Board of Appeals meetings. There is an actual form that is to be used at every meeting wherein the decision is recorded and signed by all members at the time of the meeting.

An attachment to this meeting’s packet included a one (1) page document entitled Chocolay Township Zoning Board of Appeals Rules of Procedure 2006. It was decided that paragraph 10, second line from the bottom should read “Shall” versus “Would.”

Carol Hicks stated to Mr. Yelle that this new procedure was forwarded to the board members a while ago and he believes it to be a good improvement.

Dan Maki asked if there was any significance to the bold lettering within the one page document. Mr. Yelle stated this was done to bring attention to it. It was stated that there must be 3 regular members of the Zoning Board of Appeals in attendance at any meeting.

Therefore, taken from the Chocolay Township Zoning Board of Appeals Rules of Procedure 2006, item #9 “Any action taken by the Zoning Board of Appeals requires a majority vote of the appointed number of board members. (**3 votes required out of the 5 Zoning Board of Appeals members**) Carol Hicks Motioned and Dan Maki Seconded to approve and adopt the aforementioned rule of procedure. Aye 5, Nay 0. Motion Approved.

B. “Decision Order and Date of Entry Form”

Mr. Yelle provided the ZBA members with a new form entitled Chocolay Township Zoning Board of Appeals *Decision Order* and *Date of Entry Form*. This is a form that will be signed and dated at the time of the meeting and the decision of the ZBA Board. This puts into place the 21 days of appeal rule. Michele Wietek wanted to make sure that this form is not shortening the appeal process of which she was assured it would not.

Dan Maki questioned that the form be signed at the time of the individual meeting of which Mr. Yelle confirmed.

Motion by Al Denton, Seconded by Joy Verlinden, To approve the adoption of the “Decision Order and date of Entry” form to serve as the Date of Entry for the 21 day appeal period regarding decisions by the Chocolay Township Zoning Board of Appeals. The Form shall be signed prior to concluding the meeting at which the decision is made. Aye 5, Nay 0, Motion Approved.

C. Class A Designation request #06-01

Class A Classification request #06-01 involved the relocation of the drive-thru for the Range Bank. Mr. Yelle requested approval due to the fact that he was already under the assumption that this was a Class A structure. Michele Wietek stated it was unfortunate that this has be retro-active, however, but the building is consistent with its usage and the remodeling improves the zoning compliance. Motion by Michele Wietek, Seconded by Dan Maki Granting a Class A Non-conforming Classification to the Range Bank building, parcel #52-02-252-003-00. Finding an existing practical difficulty and unnecessary hardship. Aye 5, Nay 0, Motion Approved.

**Note: The new Chocolay Township Zoning Board of Appeals *Decision Order* and *Date of Entry Form* was signed and dated at this time.**

#### D. Revoke Class A Designation – 320 Shot Point

A meeting was held of the Zoning Board of Appeals on July 28, 2005 wherein property at Shot Point was given permission to add to an existing structure. The Zoning Administrator is now asking that this approved request be rescinded as proper procedures were not followed at the July 2005 meeting.

Motion by Al Denton, Seconded by Dan Maki because of procedure error, the approved Class A Non-conforming Structure Classification granted to the structure located at 320 Shot Point, parcel #52-02-003-010-00 at the Zoning Board of Appeals meeting of July 28, 2005 is hereby revoked. Aye 5, Nay 0. Motion Approved.

#### E. Class A Designation Request #06-02

Request is for a Class A designation of a non-conforming structure at 320 Shot Point. Owner would like to enlarge home. This structure must have a 100 foot setback from the water, which it does not.

Owner Bruce Pesola stated that currently the upper level of his home at 320 Shot Point consists of a small office that he uses as a bedroom and a small bathroom. He stated that he would like to expand to the back of the home that would consist of an average size kitchen, stairs, one bedroom, and one bathroom. He said the result would be a small living room, and office, family room, bedroom and bathroom.

Ms. Wietek inquired about where the property sits on the property line / set back line. In response, it was stated that the structure is on the property line, not the set back line.

Mr. Pesola spoke to the Board saying that he has done a lot of research regarding this. He said there is a physical line that is basically just a “high water mark.” He said that isn’t the end of the property line and that a property owner owns all the way to the water’s edge. He said that is what the legal description states. He reiterated that his home is not over the property line, and that the high water mark line and property line are different.

Mr. Pesola said he also spoke with a surveyor to confirm the property line. He also referred to Al Haikenn’s survey records from 1965. Mr. Pesola continued to say that a surveyor (referred to as Bob) told him that the Lake Superior high water mark is at 604 feet, and that they use a hundred year mean. Mr. Pesola said he is using this to show that the high water make is a mean average.

There was discussion made about what is the front yard and what is the back yard. Mr. Pesola said that the front setback is 30 feet and the back is 35 feet. Mr. Pesola said that he had a survey done to make sure that his additions would be at least 30 ft from the property line because that is what he was told he would have to make sure of. He said that he would follow that rule and all additions would be 30-40 feet from the property line. Mr. Pesola stated that he passed on other properties and bought this one at 320 Shot Point because it had a Class A non-conforming status.

Discussion referred back to the July 2005 meeting and minutes. It was said that the decision had been made to allow the roof to be raised to allow for more living space and still would require a variance from Sec. 403 of the Zoning Ordinance 100 foot setback.

Michelle Wietek said that nobody should have promised to grant permission to raise the height of the roof without making a motion. Carol Hicks stated he made the original motion regarding this property and that he was trying to find a way to help the homeowner. Joy Verlinden suggested that the ZBA approach the Township Attorney regarding the legalities of this issue. Carol Hicks and Michelle Wietek agreed.

Carol Hicks motioned, Al Denton seconded, that the Request 06-02 Class A Classification (320 Shot Point) be tabled until this issue has been reviewed and an opinion rendered from the Township Attorney. Aye 5, Nay 0. Motion Approved

Michelle Wietek motioned to table the second part of the non-conforming request to enlarge the structure until the Class A is resolved. Dan Maki seconded. Aye 5, Nay 0. Motion Approved.

### **IX. PUBLIC COMMENT**

Mr. Pesola said he is not satisfied with this decision. He stated he could have purchased the lot next door for a lesser amount of money without any hassles. He stated that he is paying taxes on this Shot Point property in question.

Mr. Yelle advised that the next ZBA meeting will occur on March 23, 2006.

Peggy Loy wanted the members to understand that if they can not fix this problem, then she will end up having to fix it.

**X. TOWNSHIP BOARD MEMBERS' COMMENT (Dan Maki)**

Dan Maki stated that he hoped that the ZBA members and the Township Attorney would be able to do something to help them out. He also advised that he would not be at the next meeting.

**PLANNING COMMISSION MEMBERS' COMMENT (Albert Denton)**

Mr. Denton advised of the outcome of the issue regarding the snowmobile trail near the Bayou Bar and Grill and the DiLoretto property. He also said the Planning Commission has recommended approval of the proposal for rezoning of the O'dovero property.

Michelle Wietek asked that she be provided with a copy of the communication submitted to the Township attorney. Randy Yelle said that a copy will be forwarded to her by e-mail.

**XI. INFORMATIONAL REPORTS AND COMMUNICATIONS**

- A. Information: News Paper Ad, Residents Letter, ZBA Meeting Dates 06
- B. Communication: MTA updates
- C. Reports: Township Fee Update.

**XII. ADJOURNMENT**

Michele Wietek adjourned the meeting at 9:00 p.m.

Respectfully submitted:

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Carol Hicks, Secretary

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Rebecca Stachewicz, Recording Secretary

**Charter Township of Chocolay**  
**Zoning Board of Appeals**

March 23, 2006

7:30 P.M.

**I. MEETING CALLED TO ORDER**

Meeting called to order by Michelle Wietek at 7:33 p.m.

**II. ROLL CALL**

Present: Lois Sherbinow, Michele Wietek, Albert Denton, and Carol Hicks

Absent: Dan Maki and Joy Verlinden

Staff: Randy Yelle (Zoning Administrator) and Rebecca Stachewicz (Recording Secretary)

**III. APPROVAL OF MINUTES FROM FEBRUARY 23, 2006 MEETING**

Michelle Wietek recommended that the minutes from the 2/23/06 meeting be rewritten. Carol Hicks said that the meeting was taped so it shouldn't be a problem. Randy Yelle agreed. Ms. Wietek referred to the top paragraph on page four as being inadequate. She said some sentences are poorly written and some issues aren't clearly explained. It was decided that the minutes will be sent back to be rewritten from the tape.

**IV. APPROVAL OF AGENDA**

Michelle Wietek motioned to approve the agenda. Lois Sherbinow seconded the motion. Aye 4, Nay 0. Motioned approved.

**V. PUBLIC COMMENT**

None. Four attendees declined to public comment.

**VI. UNFINISHED BUSINESS**

**A. CLASS A REQUEST # 06-02-tabled 02/23/06 meeting**

Randy Yelle said it was his opinion that the structure was illegally built so they cannot issue a Class A permit. Mr. Yelle said he requested, and has received, an opinion on the matter from attorney Michael G. Summers. Attorney Summers' written opinion to the board was that no Class A designation or permit can be obtained in this situation.

Carol Hicks asked Mr. Yelle if he was right in the understanding that that a Class B cannot be altered. Mr. Yelle said this is correct; you cannot alter a Class B designation.

Michelle Wietek further reviewed Attorney Summers' findings. It was stated that the ZBA could not appoint Class A designation if it is not a legal structure. According the Attorney Summers, "Unless this was a legal nonconforming structure, it is not eligible for Class A designation. Illegal nonconforming structures, both by law and by ordinance, are to be eliminated, not maintained or expanded (Rural Twp. Zoning Act, MCL 125.286(3). Illegal nonconforming uses are defined as nuisances *per se* subject to mandatory abatement by the court. At the time this nonconforming building was constructed, the Township had in place the 1962 Ordinance. This structure does not meet the restrictions in place at that time and therefore was not legally commenced. No building permit or Zoning Compliance Permit was obtained."

Carol Hicks reviewed the case saying that the property owner wanted to increase the ceiling height by two feet, but you can't do this with a Class B designation, so it was suggested to change to a Class A in order to help the property owner accomplish what he wanted to do. At the time though, it wasn't realized that changing from a Class A to a Class B designation was not an option. Mr. Hicks also stated that they didn't give a proper public hearing in regards to

the possible class change. It was further explained that the property owner did not ask to change to a Class A. At the last meeting, the applicant seemed to think that she did request a Class A. Randy Yelle said that what they asked for was a variance, not a Class A designation, and only the variance was what was paid for. He also said that he made a hand written note on the variance request that says "Class A" but that was only a personal note to himself, nothing more, and it was made inadvertently.

Mr. Hicks asked if this structure were moved back 100 feet from the waters edge would it be conforming. Mr. Yelle said that it would meet Chocolay Township standards, but it may or may not meet county code.

Ms. Wietek commented that Chocolay Township doesn't cover ceiling height in its regulations.

Michelle Wietek moved to Deny the Bruce Pesola Trust, Class A request #06-02, Parcel # 52-02-003-016-00 at 320 Shot Point to grant a Class A designation. Al Denton seconded the motion. Aye 4, Nay 0. Motion approved.

Ms. Wietek stated that the facts from the attorney are that the structure is not legal, there's no building permit, and therefore the ZBA cannot give a Class A. In addition, the legal opinion lists a number of other issues to keep a Class A designation from being given. The property doesn't meet setbacks with influence to the lake and it is closer than other structures on the lake. In conclusion, other options exist for this structure: it could be moved, or it could be demolished and rebuilt.

## **VII. NEW BUSINESS**

### **A. DATE OF ENTRY FORM FOR CLASS A #06-02**

The date of entry form was signed.

## **VIII. PUBLIC COMMENT**

None.

## **IX. TOWNSHIP BOARD MEMBERS' COMMENT (DAN MAKI)**

None. Mr. Maki not present.

## **PLANNING COMMISSIONER MEMBER'S COMMENT (AL DENTON)**

Mr. Denton stated that the last Planning Commission meeting was cancelled and not rescheduled, but they did hold a public meeting on 3-16-06 to discuss the U.S. 41 Grant Project. He said that they had a very good turnout and that all of the chairs were filled.

## **X. INFORMATIONAL REPORTS AND COMMUNICATIONS**

Attorney's Opinion dated 3/8/2006, 1962 Ordinance, and Z.A. Information Letter: Randy Yelle stated that the attorney letter was already discussed. Also, he has started working on the ordinance amendments, and there is about 15 different items he is working on. He said the sign ordinance needs some changing.

Mr. Yelle stated that he has issued six zoning compliance permits for new homes and two demolition permits.

Al Denton asked Mr. Yelle if anything has been done with the Wasalesky property. Mr. Yelle said that he hasn't been down there, so no citations have been issued at this time. Michelle Wietek asked Mr. Yelle to look into it further because this issue has been going on for too long.

Lois Sherbinow asked Mr. Yelle about John Sommers property. Randy said all the environmental problems there have been taken care of, and all the "agent orange" is gone. He also said all of the 37-39 cars are gone, and one of the trailers has been burnt down, but one remains.

**XI. ADJOURNMENT**

Michelle Wietek adjourned meeting at 8:00 p.m.

Respectfully submitted:

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Rebecca Stachewicz, Recording Secretary

**CHOCOLAY TOWNSHIP ZONING BOARD OF APPEALS**  
**APRIL 27, 2006**

**I. MEETING CALLED TO ORDER**

Meeting called to order by Michelle Wietek at 7:45 pm.

**II. ROLL CALL**

Present: Michelle Wietek, Joy Verlinden, and Albert Denton

Absent: Carol Hicks, and Dan Maki

Staff Present: Randy Yelle (Zoning Administrator) and  
Rebecca Stachewicz (Recording Secretary)

**III. APPROVAL OF MINUTES OF THE MARCH 23, 2006 MEETING**

Al Denton motioned to approve minutes from 3-23-06; Joy Verlinden seconded. Ayes 3, Nays 0. Motion approved.

**IV. APPROVAL OF AGENDA**

Al Denton motioned to approve agenda; Joy Verlinden seconded. Ayes 3, Nays 0. Motion approved.

**V. PUBLIC HEARINGS**

**A. Variance #06-02, Elwin H. Leach, 425 Green Bay Street**

Randy Yelle stated that Mr. Leach of 425 Green Bay St. is requesting a variance to construct an addition to his existing home, for the purpose of having a bedroom on the first level. He said that a 16 ft. variance would be needed if granted as request. Mr. Yelle said he recommended approval.

Mr. Edwin Leach stated he had no comment.

Public comment: Mr. Mark Maki, 370 Karen Road, said he wanted to know why Mr. Leach needed a variance for this request when the Township doesn't follow the Zoning Ordinance.

**B. Class A Classification #06-03 "Marina"**

Randy Yelle stated that Chocolay Township is requesting a Class A classification be granted, along with the approval to improve the Marina at 137 W. Main St. He said that the marina, according to the information he has available, was in place prior to the adoption of the Zoning Ordinance in 1977 and has a Class B nonconforming classification as the zoning district is R1, and Marinas are allowed as a principle use within the LS/R zoned districts only.

Mr. Yelle said that the best way to approach this would be to request a Class A classification and approval allowing the improvements requested in accordance with the site plan provided.

Dennis Stachewicz, Chocolay Township Director of Planning and Community Development, said that they are dealing with a project with a lengthy history in Chocolay Township. He said it started in 2002 with a recreation survey, and subsequently, a recreational plan was done in 2004 that identified this project as part of the 5-year action plan. Mr. Stachewicz gave a handout to the ZBA Board members present that outlined his discussion regarding the Township Recreation Plan. He



continued, stating that in the end of 2005 / beginning of 2006, they found out that they received grant from state of MI to start implementation plan of this project. He said this is when the parcel was identified to be a Class B non-conforming use. He also said that when dealing with grants, it is bad if you miss the deadline and because it is very possible to lose the the money if this happens. Mr. Stachewicz said that the long-term intent is to make this right by working through the zoning ordinance but time is not on their side due to grant requirements. He asked for the ZBA to approve this request with any conditions to ensure property doesn't become a nuisance or become used for other than main purpose. He directed technical questions regarding grant issues to Tom Murray.

Mr. Murray presented the site plan and construction plan to the board and explained that they applied for this through the Michigan Natural Resources Trust Fund and it was awarded to them in late 2005. He further explained that the Township purchased this land area from the Nelson's and improvements will consist of a kayak storage locker on west side of existing boat ramp that will house 4 kayaks and its size will be 6 feet x 20 feet. He said the plan also shows a walkway, picnic table, and two 10 foot x 10 foot tent sites. He stated the walkway would be floating and function as a small fishing pier. He said there should be conditions placed to protect the property owners and to prevent things like bonfires. He said proposed quiet times would be between 10:00 p.m. and 9:00 a.m. and camping would be by permit only.

Michelle Wietek asked who would issue permits. Mr. Murray said more than likely it would be the Chocolay Township office.

Joy Verlinden asked if locker storage accessible by those staying at the campsites. Mr. Murray explained that it would be and that they kayak lockers would have locks. Mr. Stachewicz said the Township would work with the Hiawatha Water Trail group to ensure that it will not become a storage yard for kayaks and they will look for a way to police that.

Ms. Wietek asked about directions to the Chocolay Business District. Mr. Murray said that there will be an information board at the site.

## **VI. PUBLIC COMMENT**

Shaun Devlin, Chocolay Township, said he has been working with Randy Yelle to place signs directing people from the highway to the access site. He said they would be glad to help with signs to direct trail users back to the business district.

Robb Cookman, 320 Green Garden Road, said there will be an access point brochure that will show motels, restaurants, sport shops, etc. He said that there is also a Hiawatha Water Trail Map and that there is currently no advertising in it because no one has wanted to step up and sponsor it, but it is an option in the future. He said that on the locker itself will have a sign stating various information and it could be used to encourage users to come into Chocolay businesses. As for the plan layout, they want to make it visible from road to make it easy to monitor and to keep undesirable activity to a minimum. He said that people using this area will be older well-established people and not young people who will cause trouble. He also stated that the people camping there will only have what they can carry with them in their kayaks.

Mr. Mark Maki, 370 Karen Rd., asked if any of the development is on the "island parcel". Dennis Stachewicz said that there is a floating boardwalk that leads to the peninsula but there is not any physical development on the land.

Joy Verlinden asked where the Township is in the process for applying for the needed permits. Tom Murray said they were submitted a couple a weeks ago, and that the DNR is excited about the project. Mr. Stachewicz said the Army Corp of Engineers and MDEQ has done an on-site evaluation in the past with the previous staff members who applied for the grant.

Mr. Maki commented that there is no public agenda available for the public and that there is no site plan or legal description available for the audience to have. Mr. Maki discussed the fishing platform on the island. He cited section 604.A.4 of the Zoning Ordinance and said the Township Board needs to rezone this, that the Zoning Board of appeals cannot approve it.

Mr. Maki stated that on 4-18-06 he submitted a letter requesting info on this proposal but hasn't received an answer. He said Greg Seppenan blocks his phone calls and when he comes down to the office the info isn't available. He said he wants to know why the Township is censoring mail.

## **VII. UNFINISHED BUSINESS**

### **Approval of Minutes from February 23, 2006 minutes**

Al Denton moved to approve minutes; Joy Verlinden seconded.  
Ayes 3; Nays 0. Motion approved.

## **VIII. NEW BUSINESS**

### **A. Variance #06-02**

Randy Yelle said no written comments were received. Al Denton said the addition would line up with others in that area. He said it doesn't look distracting or of any negative impact. He said it was built in the 40's and has been well kept.

Ms. Wietek asked Mr. Yelle about character of neighborhood. Mr. Yelle said it is in-line with the other houses and he recommends approval.

Joy Verlinden questioned whether or not the expansion would be allowed per the Zoning Ordinance language that prevents further expansion of an existing non-conformity. It was decided by the Board that clarification was provided further in the ordinance that would support this request.

Motion by Al Denton, Seconded by Joy Verlinden to approve variance request #06-02 granting an 16 ft setback variance from Sec. 300 of the Chocolay Township Zoning Ordinance, allowing for the construction of an addition 12 feet from the right-of-way of East Wright Street, Parcel #52-02-218-017-00, Sec. 6, T47N-R24W, Township of Chocolay, County of Marquette, Michigan, mailing address of 425 of Green Bay St. Finding that practical difficulty exists.

Ayes 3, Nays 0. Motion approved.

### **B. Class A Classification #06-03**

Al Denton said he was just out to the site that afternoon and he talked to neighbors and they are looking forward to a quality use for that site.

There was discussion about the soil on the island. Mr. Stachewicz said that the East side is sandy and there are a few people who fish there but there is no development proposed on the land. He said the DEQ will never allow any development on the peninsula, that's why the boardwalk is floating. Mr. Stachewicz said he talked to people who live across the

street and they said the current use of the area is seasonal, in line with fishing season.

Randy Yelle said he hasn't received any letters from residents.

Ms. Wietek addressed Mr. Maki's comments about the island. Joy Verlinden said what is proposed is not increasing or enlarging what was happening before, but it is of better quality and would make it more enjoyable for people and families.

Dennis Stachewicz asked Randy Yelle to research if the floating boardwalk could be approved as an accessory structure in the R-1 Zoning District.

Mr. Maki said it is the specific language he has a problem with and not the project. Michelle Wietek questioned whether or not the floating boardwalk was a very important part of the project.

Mr. Stachewicz said that the floating pier is an integral part of the grant and any changes to the project may affect the decision regarding disbursement of funding. He also said that the long range intent is to rezone Township owned parcels to the appropriate Zoning District, however, it can be a 60-90 day process per parcel.

Michelle Wietek asked if the floating walkway is a development on the actual land are of the island or changing the physical use of the island.

Tom Murray said that the fishing pier and boardwalk was encouraged by the DNR and was designed with U.P. Engineers and Architects and said it would not be easy to alter the plan.

Mr. Murray and the Board looked at a map and discussed parcels. Joy Verlinden believes that whether land was private or public, the previous use of the property can be established as accessible for fishing and recreation. Dennis agreed with her about the establishment of the previous use of the property being for recreational and fishing access.

Motion by Joy Verlinden, Seconded by Al Denton to grant parcel #52-02-203-010-00 a Class A Lawful Nonconforming Classification and approve the grant supported addition to the Marina, as proposed, with the following conditions:

1. That Chocolay Township and the Hiawatha Water Trail Association will cooperate in the enforcement of the conditions of approval; and
2. Signage shall be installed stating that the two tent platforms are intended for use by Water Trail participants and that use is allowed by permit only; and
3. Quiet hours be established and posted between the hours of 10:00 p.m. and 9:00 a.m.; and
4. Open fires are not permitted.

Ayes 3, Nays 0. Motion passed.

## **IX. PUBLIC COMMENT**

Mr. Elwin Leach, 425 Green Bay St., said he appreciated working with Mr. Yelle and appreciates the Zoning Board's work.

Dennis Stachewicz, Chocolay Township Director of Planning and Community Development, said he appreciates professionalism of the board and said they will move forward on rezoning of parcel and it will be a public process. He

said he encourages residents to participate in Chocolay Township's planning issues and stated that they are working on updating the Zoning Ordinance this summer.

Joy Verlinden thanked Mr. Maki for his comments.

Mr. Maki read section 604.A.4 of the Zoning Ordinance into the record and stated the Class A Classification of the Marina was granted irrespective of the law.

**X. TOWNSHIP BOARD MEMBERS' COMMENT**

Dan Maki not present.

**PLANNING COMMISSIONER MEMBERS' COMMENT**

Al Denton said that the last Planning Commission meeting was a long one. He said they approved was several items including the Conditional Use Permit for Jill Hendrickson to build a house, recommended approval of a Private Road request for Mr. Frank Ward, recommended approval of a rezoning for the John English property on Kawbawgam Road, and recommended approval of vacating an alley between Main and Fairbanks Streets. He stated they are looking at hiring a company to help with updating the Zoning Ordinance.

**XI. INFORMATIONAL REPORTS AND COMMUNICATIONS**

Randy Yelle stated that Mr. Maki's letter was handed out to the Board members prior to the meeting because the letter was not received prior to the packets being sent to Board members.

He also said Mr. Wasalesky's license from the State was received (permit # C002588) and that he has issued a citation to Mr. Wasalesky for noncompliance with ZBA conditions.

The Board signed the date of entry forms for the record.

**XII. ADJOURNMENT**

Ms Wietek adjourned at 9:05 pm

Respectfully submitted:

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Rebecca Stachewicz, Recording Secretary

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Carol Hicks, Secretary

**CHOCOLAY TOWNSHIP ZONING BOARD OF APPEALS**

**August 24, 2006 7:30pm**

I. MEETING CALLED TO ORDER

Meeting called to order by Michelle Wietek at 7:33 pm.

II. ROLL CALL

Present: Michelle Wietek, Lois Sherbinow, Albert Denton, Dan Maki, Joy Verlinden, and Carol Hicks

Absent: None

Staff Present: Randy Yelle (Zoning Administrator) and Rebecca Stachewicz (Recording Secretary)

III. APPROVAL OF MINUTES OF THE APRIL 27, 2006 MEETING

Joy Verlinden motioned to approve minutes from 4-27-06; Al Denton seconded. Ayes 6, Nays 0. Motion approved.

IV. APPROVAL OF AGENDA

Dan Maki motioned to approve agenda; Lois Sherbinow seconded. Ayes 6, Nays 0.

V. OPEN PUBLIC HEARING

a) Class A classification request #06-03

1. Zoning Administrator comments

Randy Yelle recommended to the board that the structure in question be granted a Class A classification.

2. Public Comments

Mr. Brian Gnauck asked that the property be given a Class A Classification. He stated that he didn't know that there was a zoning ordinance change and didn't know there was a problem in the classification until he went to build a new garage and request variance #06-06.

b) Variance #06-06, Brian G. Gnauck 282 Shot Point

1. Chair or Zoning Administrator comments

Randy Yelle recommended to the board that they do not grant a variance to the property in question.

Ms. Wietek asked Mr. Yelle to clarify the connection between 06-03 and 06-06. Mr. Yelle explained that the 06-03 would be for the Class A classification and 06-06 would be for a garage expansion.

2. Mr. Gnauck's presentation

Mr. Gnauck stated that he is requesting a variance allowing the setback from the lot line to be 8 feet verses the required 10 feet. He said that when he first built the house the setback was only 5 feet, and that he believed

that allowing him to do this would increase the tax base in the township. He also stated that his neighbors do not have any objections to the garage addition.

3. Public input “support”

None.

4. Public input “opposed”

None.

VI. PUBLIC COMMENT

None.

VII. UNFINISHED BUSINESS

None.

VIII. NEW BUSINESS

A. Amend and Adopt “Rules of Procedure”

Motion by Michelle Wietek; Seconded by Joy Verlinden  
To amend the existing Rules of Procedure to incorporate the requirements of the Zoning Enabling Act, Act 110 of 2006.  
Ayes 6, Nays 0. Motion approved.

B. Amend and Adopt “Date of Entry” form

Motion by Carol Hicks; Seconded by Dan Maki to amend the existing Date of Entry Form to incorporate the requirements of the Zoning Enabling Act, Act 110 of 2006, and adopt Date of Entry form; Ayes 6, Nays 0. Motion approved.

C. Class A Classification #06-03

Michelle Wietek asked Mr. Yelle about the process of going from Class B to Class A when the new ordinance was enacted. He advised that if the property owner or zoning administrator would have come in and asked for a change to Class A, at the time the zoning ordinance was changed, it would have, most of the time, automatically be granted by the Zoning Board of Appeals.

Ms. Wietek asked Carol Hicks about conflict of interest on his part. Mr. Hicks stated that he did have a conflict of interest and he removed himself from the table.

Dan Maki commented that granting the Class A Classification, would keep them in line with the comprehensive plan.

Motion by Joy Verlinden; Second by Al Denton.  
Finding that said structure was in place prior to the adoption of the May 9, 1977 Zoning Ordinance and the property owner having no knowledge that he/she was required to request a Class A Classification, and that the Township did not address the classification, causing the structure to become a Class B structure, we shall consider this an unnecessary hardship and grant the requested Class A structure classification #06-03.  
Ayes 5; Nays 0; Abstained 1. Motion passed.

D. Variance #06-06

Randy Yelle stated that the ordinance “is what it is” and he recommends denial of this variance request because it does not meet the ordinance requirements.

Michelle Wietek asked property owner, Mr. Gnauck, why he can't meet the setback requirements.

Mr. Gnauck presented his drawing plans to the board and stated that his log home and garage is not like stick built where you can pick up the building and move it. He also stated that if he did try to move the building in question it would cut into his black top driveway.

Ms. Wietek asked about alternative building plans. He stated that doing it any other way than what he has planned, wouldn't architecturally make sense. He said that he does not want it to look like a shack, and he doesn't want it to look like an “add on” at all when he is finished.

Carol Hicks explained that the depth for the stall of a car in a garage is minimum 18 feet, and 16 ft for a canoe. He also said that, AGS, Architecture Graphic Standards, stated that the absolute minimum radius for a circle driveway is 18 ft, which is what he is at now, making him unable to cut into the driveway at all and that Mr. Gnauck drives a Ford Expedition with a canoe rack on top, so the full radius is needed. Mr. Hicks also stated building it as planned will make it look like it belongs there.

Dan Maki asked about having the garage entry on the West and turning it around; instead of 16 wide by 18 deep, go 18 wide by 16 deep. Mr. Gnauck looked at the plans and stated that wouldn't work with his round, black top driveway.

Mr. Yelle stated that they are trying to eliminate nonconformities and he would rather see the garage relocated to meet the current standards.

Mr. Hicks always thought that side yards and set backs were meant so that a person could walk around their property and structures without trespassing. He stated he believes you can do that with an 8 ft setback.

Michelle asked what “practical difficulties” there would be building this garage on another part of the property. Mr. Gnauck stated that it would be 33% more building material and logs are expensive, and he wants to integrate all of the buildings together.

Dan Maki said he would rather see this plan take place, then build another separate garage being built on the property.

Mr. Gnauck stated all three buildings are parallel in structure to each other, and made of the same material and would like to see it kept in line with what it is now.

Mr. Denton said that the plan seems to fit the property, and realizing we need to address the fact that much of this lot would be considered wetlands, the requested plan looks good.

Mr. Yelle stated that adding another building, though he recommends it, would be close to violating the open space restrictions. Dan Maki stated that the current plan has a shared roofline, which cuts that down the open space problem.

Ms. Wietek asked if it would be a practical difficulty to build a 4<sup>th</sup> building

Mr. Gnauck stated that to build somewhere else, a big pine tree would have to be cut down, approx. 20 inch wide.

Dan Maki stated that the big pines are unique to that area and would think that removing those would be a practical difficulty. Ms. Wietek stated that 4 buildings on a 1.5-acres, is a lot.

Ms Wietek asked Mr. Yelle if there is a more precise definition of practical difficulty they are missing. Mr. Yelle said “no” and that the definition is up to the board to determine.

Motion by Lois Sherbinow, Seconded by Al Denton,  
Finding the existence of practical difficulties, the retaining of large pines, wetlands, and the existing blacktop driveway, variance #06-06 is approved.

Ayes 5; Nays 0; Abstained 1. Motion passed.

1. Date of entry form was signed

Carol Hicks rejoined board.

#### IX. PUBLIC COMMENT

No public present

#### X. TOWNSHIP BOARD MEMBERS' COMMENT

Dan Maki stated that the township board made a land deal with Dr. English, and made an amendment to a zoning map, from C3 to C2, 52-02-110-083-95 (Wennerberg)

#### PLANNING COMMISSIONER MEMBERS' COMMENT.

Al Denton stated that the Planning Commission met with Pat Coleman of U.P. Engineers and Architects to go over the Zoning Ordinance updates that are being addressed. He said there was a joint meeting between the Planning Commission and Township Board to discuss an all-purpose trail, and two grants are being submitted to MDOT for the project. The trail will allow for snowmobiling in the winter and other recreational uses in the non-winter months.

#### XI. INFORMATIONAL REPORTS AND COMMUNICATIONS

Mr. Waselesky property and his fences were discussed. Michelle asked Mr. Yelle to check on the progress monthly. Mr. Yelle stated “Citation have been written.”

Dan Maki asked Mr. Yelle to talk to property owners complaining about a residence collecting up trash. Mr. Yelle said it is an ongoing problem, he is there every other week and fines have been assessed. “Brookwood subdivision”

Al Denton asked Mr. Yelle to check on the Johnson property and junk cars on Cherry Creek Rd.

#### XII. ADJOURNMENT

Michelle Wietek adjourned meeting at 8:27pm

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Rebecca Stachewicz, Recording Secretary

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Carol Hicks, Secretary



**CHOCOLAY TOWNSHIP ZONING BOARD OF APPEALS**  
**September 28, 2006 7:30 pm**

**I. MEETING CALLED TO ORDER**

Meeting called to order by Michelle Wietek at 7:34 pm

**II. ROLL CALL**

Present: Michelle Wietek, Lois Sherbinow, Albert Denton, Dan Maki,  
Carol Hicks.

Absent: Joy Verlinden

Staff Present: Randy Yelle (Zoning Administrator), Jackie Earl, sub-secretary

**III APPROVAL OF MINUTES OF THE AUGUST 24, 2006 MEETING**

**Al Denton** noted two minor changes 1) on the top of page 3, “add” instead of “ad”, and 2) on the bottom page 3, remove the extra “that”. He asked about the region that tended to be wet in reference to the motion accepted. .

**Motion made by Al Denton, supported by Carol Hicks to approve the minutes from 8-24-06 with the corrections. 5 Aye, 0 Nay. Motion approved.**

**IV. APPROVAL OF AGENDA**

**Motion by Dan Maki, supported by Carol Hicks to approve the agenda as presented. 5 Aye, 0 Nay. Motion approved.**

**V OPEN PUBLIC HEARING ON 06-04 CLASS A REQUEST**

A. Zoning Administrator Comments: If it is agreeable with the board, I would like to combine the my comments regarding the two Besola requests, as I don't think the Class A should be issued, if the variance is not going to be issued. I reviewed the court case, and confirmed that Carl Besola's contracting business was grandfathered, and is a Class B, non-conforming use of that property, as it is zoned R1. My opinion is that it would have to be granted a Class A classification prior to addressing any variance request. Normally, I would not recommend approval, but in this case, with the existing court case, it may be beneficial to the township to approve with the conditions set forth.

B. Public Comments

**Mark Maki**, 370 Karen Road. General comment. He said one of the primary things is that the procedure for obtaining Class A designation requires a site plan and detailed explanation of the major scope and extend of the lot for nonconforming use. That was not contained in application. Sec 602-D also requires that the Zoning Administrator is supposed to, prior to the public hearing, review and evaluate the request and that did not occur also. His main point was that it requires that proper documents be filed when the application is made. The Ordinance calls for you to have this.

His second point is just a protest of the process. He said he was denied access to speak to the Zoning Administrator which is uncommon. Mark had a conversation with the Township Supervisor (on tape) that he wanted to play. Michelle Wietek asked if the Supervisor was aware that he was being taped? She said listening to a conversation where the individual did not know that he was being taped is not appropriate. Michele noted that Mr. Maki is

taping this meeting as well. His general protest is that anyone in the township should be able to come and talk to Zoning Administrator and he submits the report. Mark said the problem is that the process has been blocked by an overzealous supervisor. This board should put a stop to it as it is not fair to the public hearing process. Mark said he wants documents that are required by the Ordinance to be submitted, and wants to process to be open and fair.

**Carl Besola**, 6262 US 41-South. Carl and his brother would like to build a 40 by 60 pole barn, and also two other brothers that live on the property. They have stuff to store too. He said it would be nice to have a roof, since they have no room for equipment. It would keep some things out of the weather and out of sight. Don't know why anyone would object. When he filed the original plan, he drew up a rough sketch of what the plans were. Mr. Yelle and Mr. Denton went out to see where they planned to put it, quite a ways from the highway; the legal distance. (60 feet back) If it has to be a farther distance, he can adjust it.

**Jim and Carey Henning**, 177 Sandy Lane. Their property adjoins Mr. Besola's property. His shifter is very noisy, which was okay for previous owners, but she is a stay at home mom and it is very loud and they cannot open windows or go outside. They know there is a lot more property and wondered why it can't be moved. Their only concern is about noise. They bought their house on a dead end road to have peace and quiet. Noise is their only grievance. They have no problem with the building.

#### **PUBLIC HEARING CLOSED**

#### **VI. VARIANCE 06-07 CARL BESOLA, 6262 US 41 SOUTH**

Mr. Besola requests a Class A Classification if he is approved to construct the building.

**Randy Yelle:** Nothing to add.

**Carl Besola's Presentation:** He doesn't want to be a nuisance and wants be a good neighbor. Doesn't plan to quit his business but he also doesn't plan to expand too big. This building will just give him some place to get equipment out of the rain. He'll try keep the property up and be more responsible. He is okay with conditions as long as they are not too extreme.

#### **A. PUBLIC INPUT FOR SUPPORT**

Randy Yelle has received two letters from Robert Nieman and Michelle Hastings.

#### **PUBLIC COMMENT**

**Lee Blondeau**, 30 Tracy Lane: Supports Carl's project. He said to look at the character of the township. What makes it what it is? There are generations of families living here through the good and bad times. You see this less and less, the ma and pa businesses are going out of business because of large companies. He does not want extra burdens put on Carl.

**Jim Henning**, 177 Sandy Lane: He supports it and has no problem with it.

#### **B. PUBLIC INPUT OPPOSED**

Randy Yelle has no correspondence, nothing more.

**Mark Maki**, 370 Karen Rd. He is not necessarily opposed but under new business it also says agreement of conditions. He did not see anything in the packet. It is hard to comment on something you haven't seen.

**Randy Yelle** said it was there, the conditions he recommended.

**Michelle Wietek** closed the Public Hearing.

## **VII GENERAL PUBLIC COMMENT**

**Mark Maki** commented that he did not feel it was a fair public process when one citizen is denied access to information, he said he submitted at 11:00 yesterday about three or four questions and has no answers yet. He feels it's a tainted process. This board has a responsibility to straighten this up.

**Michele Wietek** closed public comment.

## **VIII UNFINISHED BUSINESS - None**

## **IX NEW BUSINESS**

### **A. Class A Classification #06-04**

**Randy Yelle** stated that the site plan which Carl Besola submitted is on the back of the Zoning Compliance Request dated April 21, 2006. It is very generic. It shows the setbacks.

**Michele Wietek** quoted from the Michigan Zoning Enabling Act in the packet, saying that Zoning Board of Appeals have the authority to grant variances for land uses if they are a township and a county that granted a use variance before Feb. 15, 2006. She said it doesn't have to be a use variance relating to the specific site, just a use variance in general, suggesting that the ZBA was a part of the routine.

**Mark Maki** said the Zoning Board of Appeals in this township has never granted a use variance.

**Randy Yelle** said in his opinion Waselesky's junk yard moving and expansion was a Class B changed to Class A. The authorized expansion was a use variance.

**Carol Hicks** asked Randy Yelle if this perhaps is similar to last month's meeting granting the Class B to A. The owner requested or the zoning administrator could initiate at the time the zoning was changed. Similar situation.

**Randy Yelle** said it will be similar again next month. He can get the attorney's opinion on use if you want to delay Carl Besola's variance. Normally we don't grant a change for non-conforming use.

**Michelle Wietek** said there is some question on whether the expansion of Waselesky's activities and granting him a Class A qualifies as a use variance?

**Randy Yelle** said as far as he was concerned it did. He can get our attorney's opinion if they want to wait.

**Mark Maki** said the term "use variance" is what he objects to. You granted Waselesky the ability to expand with his non-conforming use; you'd give Besola permission then to expand his conditional non-conforming use. You have the authority to do that. It's not called a "use variance". It's expansion of non-conforming use.

**Michele Wietek** cleared that Mark Maki was not objecting that the ZBA has the authority to do it, just objecting in using the term "use variance."

**Mark Maki** said don't get into the habit of granting use variances which you are not allowed to do. A use variance would be if Carl Besola came in and had no business on his property and said he wanted to start a contractor's yard. You guys

said ok we'll do that. That would be a use variance. He already has that grandfathered business there prior to 1977.

**Michele Wietek** agreed. She believes they have granted a use variance to LaJeunesse.

**Mark Maki** said no that was a Home Occupation.

**Michele Wietek** thanked Mr. Maki and read from Section 604 of the Zoning Ordinance. Contrary to public health safety or welfare, she asked Mr. Besola if his operation involves the storage of any chemicals used to maintain equipment of fuel?

**Carl Besola** said he has a fuel tank and one on top of the pick-up. Barrels for drain oil storage and then disposed of according to the law, it all kept under roof. All stays in the garage, uses long life oil and doesn't use a great deal. Can't see any public health risks. He stated the capacity one tank is 500 gallons and the tank on the pick up is 100 gallons. He has no steam cleaner, he uses a power washer. The skid tank located where the barn would be built. Would locate it inside the barn or back where his father's fuel tank is up in the air which hasn't been used in many years, there or behind the existing garage. It's above ground and it's on a skid. If it has to go, it can go, as it belongs to someone else.

**Michelle Wietek** asked Mr. Besola if he has ever done any environmental monitoring, soil boring, ground water investigation related to your dad's old tank?

**Carl Besola** said nothing is underground, it's all above ground and he has never had any environmental problems that I am aware of. No tests have been done.

**Michele Wietek** asked if there were any board comments contrary to the spirit of the zoning ordinance? She stated that 500 gallons can create long term concerns.

**Carl Besola** said many residents in the township that have underground fuel oil tanks that they are heating with, and you being Environmental Consultant may know much better than I, but it would seem to me that the underground tanks that do the polluting compared to above ground ones. The above ones can evaporate into the air.

**Michelle Wietek** stated you cannot see leaks underground but the above ground tanks can create considerable contamination with leaks, spills and overfills. She asked Carl Besola what is the role of brothers in your business?

**Carl Besola** said they have nothing to do with the business, that's unfortunate. We just want to build a barn, they need to store their personal toys.

**Michele Wietek** asked if there will be any increase in smoke, fumes, dust, heat, noise, noxious matter, glare or vibration? Anything else that by building this barn would allow you to expand?

**Carl Besola** said not from this barn. Not that I can see. I already have two dump trucks and heavy equipment and don't plan to go beyond that.

**Michelle Wietek** asked if he was willing to move the sifter?

**Carl Besola** answered yes, I'll either sell it for scrap iron or sell it to someone. He could move it to the other end of the property, by the highway where it is already noisy. It should not be a problem. He wants to just stick to the barn issue.

**Michelle Wietek** said the business at hand is storage of equipment related to the business. It is scattered all over, and we are looking at granting indoor storage in an R-1 residential area. The sifter is part of the business.

**Al Denton** stated he visited Carl's place and noted a lot of vehicles in disrepair and unlicensed. He asked if that would be the right word?

**Carl Besola** said out of service, not junk, not licensed at this time. Many are collectibles. Several pick-ups not licensed and several batteries not covered.

**Al Denton** said collectibles are if people have a nice little car in their garage. But I saw several pick-ups, a pile of batteries- 6 or 8. The equipment is the same as in the 1992 case. It has not changed, not expanded. There were a few more vehicles along the side; one on blocks, fixing the transmission. Carl is responsible since he is the owner.

**Carl Besola** said he is not totally responsible, there's joint ownership.

**Al Denton** said the condition of the property is unkept, lots of vehicles in less than running condition. There is a Ford van with junk stored inside, outboard motors. If you lived next to me, I wouldn't like it too much. I'd come over and say clean it up. With this new building you can get some of this inside, but certainly not all. Not the trucks and front end loader and backhoe. Your brothers have lots of equipment. You will be sharing the building with them. I'm not totally convinced that this building will clean up your area, but it probably won't make it any worse.

**Carl Besola** It's a really wide driveway so you cannot see much from the highway. If I build the barn, I do not plan to keep dump trucks in there all the time.

**Michele Wietek** agreed, but said maybe some of the stuff could be kept inside, not most. She is looking for the reason to expand the business and the benefit to the township would be to clean up this area in the R-1 district, which is the most stringent type of district, smaller lots, limited structures and activities.

**Carl Besola** said he doesn't want to sound snooty, but would they prefer to see us keep this as 50 acres, as it is, or subdivide the area? Their plan is to keep it a big pine plantation. They will clean things up. They were hell-raisers, but are now grown up and calming down. He doesn't think you can even notice his place if you keep your eyes on the road when driving by.

**Al Denton** wanted to get back to the court order. We can allow Carl to continue his business but not expanding or have additions. If we allow him to build this barn, and if we change this to a Class A, it is an expansion of the business. Then that court order is null and void, in my opinion.

**Randy Yelle** said that also is his understanding.

**Carl Besola** asked if he does expand in the future, would he have to go through this process again?

**Al Denton** answered yes, to build another building or increase 4 semis from 2. We have a court order that says you cannot expand without some procedures.

**Lee Blondeau** said in reading through the court transcript, the Township did not prove that there was not a business there. Carl Besola has not asked to expand. Carl wants to make it better and really, bringing in the court case just muddies the waters. In the Comprehensive Plan, you need to get this non-conforming use sorted out. Take a good look at it. The court case doesn't say he should not expand in the future.

**Michelle Wietek** asked Carl Besola if he has seen the conditions proposed and are these conditions livable for you? 1) She is concerned that they are not conditions that he would be able to live with. 2) It's going to be an ongoing battle with Besola being in compliance like Waselesky. Our actions in granting a Class

A and expansion would put us in legal straights. We should check on the implications of our decision before we go ahead.

**Carl Besola** said #1 is unacceptable and also he feels #10 is unnecessary and a hardship due to the cost of installing test wells. It would create undo hardship for me to have it tested professionally. Why can't he just test the ground water it from his sink? He is fine with keeping the appearance neat and clean and organized and fine with #8 and #6 if he can park his bulldozer. He lives on US 41 and there is lots of traffic from Little Lake, Ortman Road and Surrey Lane. There is lots of traffic entering 41. He thinks #4 is just a repeat. He has the 100' buffer zone. The 24 hour notice, he can live with that, but would rather not.

**Michele Wietek** said if she was enforcing these conditions she would be looking for a well driven well for ground water sampling looking for contamination from the fuel storage 15' deep maybe with the river there. There are issues with the indoor storage, as everything will not fit in the building.

**Michelle Wietek** said the board has been exceedingly quiet at this meeting. She would like table this issue to make sure we are not stepping on the court case in making any decisions on this and to give Carl a chance to look at the requirements and maybe talk with Randy on what precisely would be acceptable to keep outside and what would go inside, things like that. Then we can better gauge what benefit the township would see from granting this. We will check on the adequacy of the site plan to make sure we are not in violation of any definitions.

**Carl Besola** asked if instead of forcing the water testing on him, if he could dig a hole to test the ground water. It would only cost him \$5 for the fuel.

**Michele Wietek** he can negotiate while this is being tabled unless the board has an objection.

**Dan Maki** noted that process with the backhoe may contaminate the groundwater, it might hurt Besola to do that.

**Michele Wietek** said there are issues with that form of sampling. She can meet with Carl Besola and Randy on getting the cheapest groundwater sampling.

**Motion by Michelle Wietek, supported by Albert Denton to table this issue until the next meeting so they can consult with the Township Attorney on the impact of our decision on the court case so we have the opportunity to research what is required for a site plan and so that Mr. Carl Besola has a chance to consider conditions he would be willing to comply with in terms of improvement to the condition of the property with regards to the new garage. The conditions will be negotiable within the coming month to be set if we make a decision in favor of the new garage next month. 5 Aye, 0 Nay. Motion accepted.**

#### **X Appoint ZBA Chair for 2007**

**Randy Yelle** suggested to re-appoint Michelle to chair. Michelle said is expecting a child in March and it may impact her sanity, sleep and ability to attend all the meetings. She suggested the appointment of Joy Verlinden since she was once the chair in Sands Township. Since Joy was not present, they decided to wait to have Joy's approval.

**Motion by Michelle Wietek supported by Carol Hicks to table the issue pending the potential replacement of chair being present at the next meeting so we can have her input on her acceptance or denial of the position. 5 Aye, 0 Nay. Motion accepted.**

#### **XI Appoint Secretary for 2007**

**Carol Hicks** said it has been great when someone helps out. I will be willing to do it again; sign the book.

**Motion by Dan Maki supported by Albert Denton to reappoint Carol Hicks as Zoning Board of Appeals secretary for 2007. 5 Aye 5, 0 Nay. Motion accepted.**

**XII. PUBLIC COMMENT – None**

**XIII. BOARD MEMBER COMMENT**

**Dan Maki** reported it was a short meeting last month. They gave a 30 day extension for Ewing Pines.

**XIV. PLANNING COMMISSIONER MEMBER COMMENT**

**Al Denton** reported that they gave approval for the multi-family unit construction on Main Street and US 41 pending Health Department approval and permits from MDOT as they did not get permits in on time.

**XV. INFORMATIONAL REPORTS AND COMMUNICATIONS**

**Randy Yelle** received a fax from Mark Maki.

**XVI. ADJOURNMENT**

**Michele Wietek** adjourned the meeting at 8:44

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Carol Hicks, Secretary

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Cathy Phelps (from recorder and notes)

**CHOCOLAY TOWNSHIP ZONING BOARD OF APPEALS**

**October 26, 2006 7:30pm**

**(Not approved until 3-22-07)**

I. MEETING CALLED TO ORDER

Meeting called to order by Michelle Wietek at 7:30 pm

II. ROLL CALL

Present: Michelle Wietek, Albert Denton, Dan Maki, Joy Verlinden, and Carol Hicks

Absent: Lois Sherbinow

Staff Present: Randy Yelle (Zoning Administrator) and Rebecca Stachewicz (Recording Secretary)

III. APPROVAL OF MINUTES OF THE SEPTEMBER 28, 2006 MEETING

Ms. Wietek noted several changes that need to be made from the 9-28-06 minutes. She said she would give Mr. Yelle her notes so it can properly be done.

Dan Maki motioned to approve the minutes from 9-28-06 with said changes; Al Denton seconded. Ayes 5, Nays 0. Motion approved.

IV. APPROVAL OF AGENDA

Al Denton motioned to approve agenda; Dan Maki seconded. Ayes 5, Nays 0.

V. PUBLIC COMMENT

None.

VI. UNFINISHED BUSINESS

A. Class A Request 06-04, The Besola Property

Mr. Yelle said this has been done before, requiring or allowing property owners to build a garage or a pole barn to house equipment that would otherwise be left out.

Mr. Hicks said he saw the Township attorney's (Mike Summers) one word response, "No," and he was hoping for something more, a full written explanation, like they have seen in previous cases. (A copy of the email dated Oct. 11, 2006 was in the packet).

Ms. Wietek asked Mr. Hicks if his issue with the one word response would it keep him from making a decision tonight? Mr. Hicks stated that he felt he could still make a decision.

Ms. Wietek asked Mr. Yelle if he talked to Carl and Dan Besola at all regarding the conditions.

Mr. Yelle, yes, I did go through the conditions with Dan Besola last Monday.

Dan Besola, present at the meeting, said he talked to Mr. Yelle the other day, and did look at the conditions and they are "pretty much" acceptable.



Mr. Yelle said Carl Besola is willing to put in a test well as long as he can put in a point well to get ground water.

Ms. Wietek asked about the well casing. Dan Besola said it would be similar to his house's well, 2 inch, galvanized, sticking up with a cap.

Ms. Wietek said they would have to make sure the auger is clean without any oil on it, to prevent contamination. She said they would also have to make the well open to sampling which costs several hundred of dollars.

Dan Besola asked if the testing would be required annually.

Mr. Yelle said he would expect it would be done yearly.

Ms. Wietek said she didn't think that more than once a year would be necessary.

Mr. Denton said, with all the restrictions and conditions the site would be an improvement, over what it is now, but that the Township would have to check up and visit the property regularly.

Ms. Wietek asked if Carl Besola would be able to meet condition #4, "No outside storage of fuel, oil, batteries, or non-licensed and/or non-road ready vehicle/s, trailer/s, machinery, or equipment."

Dan Besola said he didn't think they could fit all of what they have at this point in the proposed storage garage.

Ms. Wietek asked if he plans on keeping all the vehicles that they currently have.

Dan Besola said they plan on getting rid of a few, but not all. He said he didn't see adding any more in the future.

Ms. Wietek went through the proposed conditions with Dan Besola. She asked if 60 x 40 is in line with what he was thinking in dimensions. Dan Besola stated it is.

Dan Besola also agreed that a 100-foot pine buffer would be OK and they would plant trees if necessary. He stated condition #3 will be fine, will not have a problem complying with ordinances, and #5 will be fine also, there will not be any increase in traffic. He stated that the proposed building will be storage and repair structure, so they won't have to do repairs outside, like they do now.

Ms. Verlinden asked if the non-licensed and/or non-road ready vehicles referred to in condition #4 were subject to the judgment that was issued by the district court previously on this property.

Ms. Wietek said she believed that the judgment found the property was grandfathered in.

Mr. Yelle said he would have to look at the court order to find out what vehicles were directly involved.

Mr. Yelle went over the contractor equipment and vehicles that were there during the judgement and what is there now.

Mr. Hicks asked if some are antique or on the verge of being antiques. Dan Besola stated they have 1934 model A with historical plates, a 1954 school bus, and a 1954 F600 truck. He stated that they also have at least 4

vehicles on the property that are unlicensed, one car is being worked on, and also some septic piping.

Dan Besola said a few vehicles are visible from the highway now, and if they moved them in the back where they are out of site, it's a problem, with vandalism, including windows getting broken.

Mr. Yelle explained Ordinance #55 in reference to condition #6. He said a person is allowed to have something for sale for 30 days in one spot and then it has to be moved. He said 1 unlicensed hobby vehicle is allowed, 1 plow vehicle is allowed, but they have to be out of site during the non-season. He said a stock car could be parked out front only during the racing season.

Mr. Yelle said that whatever vehicles they have on the property that are non-fixable should be removed, and he said he talked to them about that already, with the understanding from Carl that they would be removed from the property.

Dan Besola said there will not be any issues removing waste (condition #7) and condition #8 is fine also, but Ms. Wietek said she would like "Federal regulations" to be added to it.

In reference to condition #9, Dan Besola said he doesn't foresee a problem cleaning up the property, but it can't be done overnight.

In reference to condition #10, Ms. Wietek said that they should add that the sifter should be moved, as far away from neighboring dwellings as possible, and that they will operate in a manner to minimize disturbance.

Dan Besola said condition #11 wouldn't be a problem; the Township officials can come by any time.

In reference to the previous court case / judgement, Ms. Verlinden said she had mostly looked at what was complained of in the trial brief and with regard to the conditions; she would possibly have an issue with condition #4.

Ms. Verlinden asked Dan Besola if he stored fuel outside.

Dan Besola said, yes, a 500 gal tank and a 100 gal movable tank on a truck.

Ms. Verlinden asked, is there oil being stored outside?

Dan Besola said that they have some inside, not outside.

Ms. Verlinden asked if they had batteries outside?

Dan Besola said they have 1 left, that they just got rid of some.

Ms. Wietek said that last meeting (September 2006) there were 8 batteries on the property, a 500-gallon fuel tank and 1 pick-up fuel tank

Dan Besola said that they buy fuel in bulk and then hang on to it because it is cheaper that way.

Ms. Verlinden said, it is her opinion, said that she would be hard pressed to require #4 because it was contested before and lost in court. She also wondered if we were going to give a time frame on these conditions particularly with regard to the time of year the water testing would be

performed and how long Carl Besola would have to bring the property into compliance.

Mr. Denton said he thought they would have to give the Besola's at least 1 year to meet the conditions. He asked if Oct. 31, 2007 would be acceptable? Dan Besola said "yes."

Ms. Wietek asked if condition #4 should be changed to say, "not increase in non-licensed and/or non-road ready vehicles."

Dan Besola asked if they could just keep the non-licensed vehicles out of site? He said he has some of them run fine but they just don't use them. He said they switch them out, license it and run it for a while, and then license a different one.

Ms. Wietek asked how many licensed vehicles are currently on the site.

Dan Besola said that there are 12-15 at the moment.

Ms. Wietek asked how many unlicensed vehicles are there.

Dan Besola said, "10-15, or maybe 20." He said he isn't really sure they are all scattered. It was asked if that number included trailers. He said yes.

It was reiterated that there are four Besola brothers that all have stuff on the property.

Mr. Hicks said he had questions regarding condition #1 and the size of the proposed building. He said this is zoned R1, and this will be a detached accessory building, which will be bigger than the house.

Mr. Yelle said the requested structure would need zoning board of appeals action, our attorney agrees, that it may be in the best interest for the Township to allow this, because it should help clean up the property.

Dan Maki said, the residential property doesn't come into play in this situation, because the business is grandfathered in as a contractor's yard.

Mr. Hicks said he just doesn't want to set precedence for someone else to come in the future and want to build a garage building larger than their house.

Mr. Denton said all the neighbors support this, which is good.

Mr. Yelle said that under the grandfather cause, Carl Besola can replace and/or upgrade the contractor equipment, but may not add to the numbers.

Mr. Denton said they would like them to do what they want as long as they don't create a junkyard or harm quality of life or decrease property values.

Dan Maki said he though condition #4 was unrealistic.

Ms. Wietek said they would have to alter #4 or divide it into two parts.

Mr. Hicks asked if this is conducted as a business, he sees nothing that addresses signage.

Mr. Yelle said there was one sign posted, it has been taken down. Mr. Yelle said any sign requested under the Class A Classification, would come to the board.

Mr. Hicks suggested adding right now about the signage.

Dan Besola said he doesn't have a problem with no signs, it is his brother's business and he would not speak for him.

Ms. Wietek said that she thought that maybe his brother, Carl Besola, should be present to go through the conditions.

Ms. Verlinden asked if Dan Besola is a partner, shareholder, or allowed to make decisions for the business. Dan Besola said "No." He also said that the business doesn't lease the property; the business just takes place there. He can't bind business decisions, but he can bind the property decisions.

Mr. Yelle said that Carl Besola is aware of all the conditions. He said they went through them together.

Dan Maki said, they can approve the conditions without Carl Besola being present, and if Carl doesn't agree with them, he just can't build the building.

Ms. Verlinden asked if the brothers are in the area.

Dan Besola said Carl is here, one is in New Mexico, and one is in Bark River.

Mr. Hicks said, we can make the decision and Carl can come in and sign a document saying that he agrees with it.

Ms. Verlinden said she agrees with Dan Maki, that if Carl doesn't agree, he just doesn't build.

Mr. Yelle said they could always pull the Class A Classification, using the same procurer that it was granted under.

Dan Maki suggested putting the proposed height of the building (24 feet) into condition #1.

Dan Besola asked if his brother's (Carl) truck with the movable storage tank would be a problem. Ms Wietek stated for the record, that it was not the boards' intent to require the small mobile tank be stored indoors. She asked the board if they had any concerns, there was none.

Ms. Wietek asked Mr. Yelle to do inventory of what is there now so they what to compare any changes to. Mr. Yelle said he would.

Motion by Joy Verlinden, Seconded by Al Denton.

To grant a Class A Classification Request #06-04, located at 6262 US 41 South, parcel #52-02-117-035-00, known as Besola Contracting, with the following conditions:

- 1) Construct one (1) 60 foot deep by 40 foot wide by 24 foot high structure for the purpose of servicing and storage of Besola contracting equipment and supplies, as located within the Site Plan.
- 2) No less than a 100 ft natural pine tree buffer, surrounding said property, some additional planting may be required; and
- 3) Must comply with all Township, County, State, and Federal laws and ordinances, including but not limited to the noise ordinance; and
- 4) No outside storage of fuel (not including one (1) 100 gallon mobile unit), oil, or batteries; and

- 5) No additional vehicle/s, trailer/s, machinery equipment, and
- 6) No noticeable increase in traffic, truck, car, equipment, etc; and
- 7) No outside display of items or material for lease, rent or sale, other than allowed by the Chocolay Township Ordinance #55; and
- 8) Any and all waste shall be disposed of immediately and properly; and
- 9) Any and all above and/or underground storage tanks shall comply with all Township, County, State, and Federal regulations
- 10) Appearance shall be neat, clean and organized in a manner that will not negatively effect the property values of the surrounding properties; and
- 11) No less than one (1) dedicated ground water testing well shall be installed by the property owner at a location upon said property agreed to by the property owner and the Township. It will be made of 2-inch galvanized material, with a locking cap and be tested annually. Water samples will be drawn with the property owner and a representative of the Township with required testing performed yearly, at the owners expense, with a copy of the results forwarded to the Township; and
- 12) Relocate or remove from site the sifter and operate so as not to cause a nuisance and or annoyance to the surrounding neighbors, and sifter operation, must comply with the Townships Noise Ordinance; and
- 13) No non-residential signage allowed; and
- 14) All conditions shall be met by October 31, 2007; and
- 15) With a 24-hour notice, the Chocolay Township Zoning Administrator and/or Ordinance Enforcement Officer may inspect site for compliance.

Aye 5; Nay 0. Motion approved.

Ms. Wietek asked Mr. Yelle if he would provide the Besola's with something in writing, so that they would be aware of the issues. Mr. Yelle said, "yes."

The date of entry form was signed.

B. Appoint ZBA Chair for 2007

Motion by Al Denton, Seconded by Dan Maki.

To re-appoint Michelle Wietek as Zoning Board of Appeals chair for the upcoming 2007 year.

Aye 5, Nay 0. Motion approved.

VII. NEW BUSINESS

A. Appoint ZBA Alternate Chair for 2007

Motion by Al Denton, Seconded by Michelle Wietek.

To appoint Joy Verlinden as Zoning Board of Appeals alternate chair for the upcoming year of 2007.

Aye 5, Nay 0. Motion approved.

Joy Verlinden departed the meeting early for personal reasons.

B. 2007 Meeting dates.

Ms. Wietek said they look good.

Motion by, Dan Maki Seconded by, Al Denton.

4 Aye, Nay 0 Motion approved.

VIII. PUBLIC COMMENT

No public present.

IX. TOWNSHIP BOARD MEMBERS' COMMENT

Dan Maki said that at their Oct. 16 meeting they approved the final plans for the Bayou Court Subdivision Plans, and that the Elderwood/ Ewing Subdivision plans were granted a 30-day extension.

PLANNING COMMISSIONER MEMBERS' COMMENT.

Mr. Denton said they are trying to deal with the English property on Kawbawgam Road. He said it was a full meeting last month and expects the same at the next meeting on November 6. He stated that everyone in attendance was against the development because of the water issues.

X. ADJOURNMENT

Ms. Wietek adjourned meeting at 8:45 pm.

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Carol Hicks, Secretary

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Laurie Eagle, Recording Secretary