

Minutes from the Public Hearing – Town of Trenton

Date: November 13, 2007 – 7:30 P.M.

Place: Town of Trenton Town Hall, 1071 Highway 33 East, West Bend, WI 53095

Prior to the Public Hearing, notice was posted, published, and mailed as required.

Present: Plan Commission Chairman Joe Gonnering, Town Clerk Barbara Davies, Town Attorney Deb Hoffmann, Plan Commissioners Scott Schweizer, Dennis Kay, John Herlinger, Joan Baumgartner, Mike Bykowski, Jeff Esselmann, Matt Muckerheide, Building Inspector/Zoning Administrator Frank Mayer.

Chairman Gonnering called the Public Hearing to order at 7:30 P.M. This Public Hearing has been called before the Plan Commission as required by Town Ordinances. Gonnering read the entire notice of Public Hearing called to consider the application of Darryl and Kelly Zellmer for a Conditional Use Permit to be issued in accordance with Article 4, Section 380-48 (J) (previously Section 10-1-92(J), Town of Trenton Zoning Ordinances, landscaping and lawn care, masonry, carpentry/contractor, and other businesses which may utilize off-site workers/employees in any residential, agricultural, or country estate district. The specific conditional use being requested is for a lawn and landscape company. The property address is 585 Washington Drive, Town of Trenton, Washington County, Wisconsin.

Attorney Tim Andringa of Cramer Multhaupt & Hammes introduced himself as Zellmers' attorney, filling in for Attorney Brejcha for this Public Hearing. Andringa confirmed the application for a Conditional Use Permit under Town Ordinance Section 10-1-92 (j). Andringa read the ordinance section aloud. A landscaping business with offsite employees is allowed with reasonable conditions under this section of the Town's ordinances. Andringa said that he wanted to address the concern of some residents about property values for those owners bordering Zellmers' property. He handed out a summary of assessed values of bordering properties for the past ten years. The summary showed an increase in assessed values for all properties surrounding Zellmers' property. Andringa said that Zellmers' position is that there will be no adverse impact to the public, and no detriment to the enjoyment of their properties for the neighboring property owners. Zellmer has 4 to 5 trucks, including one personal vehicle. He has five full-time employees and one part-time employee. The pole building was on the property when Zellmers purchased it. Andringa again said that he saw no substantial detriment to surrounding neighbors if Zellmers' application is approved. It will not impede the development of surrounding properties. There are no apparent traffic issues. Andringa asked that the Plan Commission recommend approval of the Conditional Use Permit, with reasonable conditions, to the Town Board. Andringa suggested that the Town Board could address issues that arise if it grants the Conditional Use Permit, perhaps on an annual review basis. Andringa closed by saying that Zellmers are asking for the permit because the business has already been conducted at this site for the past ten years.

Darryl Zellmer thanked the members of the Plan Commission and neighboring property owners for visiting his property at 6:45 PM this evening. Zellmer handed out a summary

timeline of his purchase and ownership of this property. Zellmer said that he has been running the landscape business at this site for almost 12 years. Zellmer said that he has four full-time employees, not five, and two part-time employees, not one. Zellmer said that he has the support of all surrounding neighbors except the Normans. Zellmer said that he did not know what else he could do, as he felt he had gone above and beyond to appease everyone.

Ted Kern, 5148 Washington Court, introduced himself as a property owner abutting Zellmers. Kern said that he had lived at 5148 Washington Court for 3 years and would never have known that Zellmer was running a business. Kern said that he had not heard any noise or disturbance. He expressed frustration with the number of hearings on this matter, and the length of time the Board has taken to consider the Conditional Use Permit.

Ken Traub, 5125 Wausaukee Road, said that he had no complaints about either Zellmers or Normans.

John Norman, 531 Paradise Drive, introduced himself as a bordering property owner and owner of several lots that front on Zellmers' property. Norman passed photos of the lots to the Plan Commissioners and anyone else wishing to view them. Norman said that the photos also show an area of his property that Zellmer drove across, as well as a load of mulch dumped in the road right-of-way. Norman noted that Ken Traub's property borders his property, not Zellmers. Norman stated that Zellmer has already been found guilty of violating the Town's noise ordinances in MidMoraine Municipal Court. Norman said that Attorney Andringa did not read all of ordinance section 10-1-92 (j). Arlene Norman read the balance of section (j), forbidding employees, supplies, etc. at the residence. John Norman said that he and his wife Arlene have owned their home since 1980. Norman reported traveling extensively in 1996 through 1998; he began to complain to Town officials about smoke beginning in 1998. Norman said that he and his wife want to enjoy their home, but the noise and equipment from Zellmers' operation make that impossible. Norman said that the residents of Washington Court don't hear the noise from Zellmers' business because the house and pole barn shields them from it. Norman said that he has the same question as Kern: why is it taking the Town Board so long to respond to his complaints? Norman said that he has been complaining since 1998. He gave background information on his burning complaints. Norman said that Zellmer had at one point called the Sheriff's Department to complain that Norman had been trespassing, resulting in a visit from a sheriff's deputy to Normans' residence, following up on Zellmers' complaint. Norman said that he had been working with former Town Chairman Jim Esselmann to try to resolve this matter. Norman said he ran for Town Board, and was elected, to prevent this from happening to other Town residents. The Town has sent letters to four businesses reported to be operating illegally, including Zellmers' business. Norman stated that three moved out of the Town, but Darryl Zellmer did not. John Norman then detailed a trespassing complaint filed by Darryl Zellmer against Arlene Norman. Arlene Norman said that this had occurred when she was on her own property, culminating in a profane statement from Darryl Zellmer to Arlene Norman when he saw her. John Norman said that he is sick of the delays, and sick of the noise from Zellmers' operations. Norman said

that Zellmer does not meet the home occupations requirements. The length of time a business has been operating is not an exception to the rule. Norman asked the Plan Commission to adhere to the ordinances in considering this request. Norman said that he did not have an attorney and is fighting his own battles. Norman said that this situation has been a living hell for he and his wife Arlene. He asked the Town to uphold its ordinances. Arlene Norman also questioned a complaint about the length of time to resolve this matter. She stated that Zellmer has been dragging the matter out himself. Arlene Norman asked Attorney Deb Hoffmann to clarify why Zellmers had recently sued the Town. Hoffmann stated that Zellmers had appealed a prior Town Board decision to District Court. The District Court said that the Public Hearing needed to be in front of the Plan Commission, not the Town Board. That is what has caused this evening's hearing. John Norman said that he tried to do the best he could for people, had given a lot to the Town, and respected the laws of his country and Town. Norman said he objected to Zellmer's claim that his business was "grandfathered in"; the pole building, existing on the property when Zellmer purchased it, was permitted to remain on the property. Norman described a past meeting with himself, former Town Chairman Jim Esslemann, Darryl Zellmer, and Police Chief Gabrish present. Burning was discussed, not running a business. Norman disagreed with Zellmer's timeline of events. Norman asked that the Plan Commission deny the Conditional Use Permit application.

John Glass, 547 Washington Drive, said that he was the owner of half of the mulch that was identified as being in the road right-of-way. Lori Glass, 547 Washington Drive, said that she was at home when Zellmer moved the mulch onto her property but did not hear any noise from the equipment. She said that she did not hear noise from Zellmers' at night.

Kelly Zellmer, 585 Washington Drive, said that she and Darryl Zellmer have resided at the Washington Drive address since 1996 and have had the landscaping business there since then. She stated that it is now 2007. She acknowledged that the past matters, but she questioned how relevant some of Normans' complaints are to the current Conditional Use Permit application. Zellmer said that when she and Darryl moved to 585 Washington Drive, they did not try to hold anything back. She said that they had asked in the past if they needed to apply for a Conditional Use Permit. She stated that they were told verbally "no", they were "grandfathered in", don't "open a can of worms". She did not identify the source of these statements. Zellmer said that they have renovated their home and property. She said that they stress ethics and morals and try not to bother anyone.

Diane Herlinger, 1044 Birchwood Trail, said that she had driven down Washington Drive and felt the road was terrible. She asked if weight restrictions were in effect.

John Glass said that he had known about Zellmers' landscape business when he looked at the lot he purchased. Zellmers' business did not discourage Glass and his wife from purchasing the lot and building a home there.

Arlene Norman said that there were others interested in Zellmers' property prior to Zellmers' purchase of the home. Others came to the town but did not buy the property

when they found out they could not put a desired business at that location. Arlene Norman said that Zellmers never came to the Town. She stated that if Zellmer sought approval from a Town Supervisor “on the side” (outside of a Town Board meeting), that is not valid approval.

Attorney Andringa asked to respond to the comments of John and Arlene Norman. He said that he did not misread 10-1-92(j) of the ordinances and quoted from the ordinance section downloaded from the web site link. Andringa said he did not want to debate 1998 vs. 1996 vs. 1997: there is no further burning at the site. Andringa objected to any noise complaint that includes normal residential noise such as children, etc. Cars and dumpsters would be allowed in residential zoning if no business were located there. Andringa asked the Plan Commission to follow the ordinances and consider the Conditional Use Permit application, as Zellmer has submitted a valid application based on a valid position. Zellmer denies making a profane statement to Arlene Norman. He is not looking for another business site. There have been no noise complaints except those of the Normans. Andringa asked the Plan Commission to follow the ordinances and consider recommendation of approval of a Conditional Use Permit with reasonable restrictions.

Darryl Zellmer referred to the handout he had given out at the beginning of the meeting. He said that he is not burning anymore. He said that Normans are bringing up all old past issues. He stated that he had never driven on Normans’ property. There are no weight limits on Washington Drive. Zellmer agreed that Washington Drive is in poor condition but stated that he did not think he had caused it. Zellmer stated that Arlene Norman was trespassing and had a camera around her neck. Zellmer said that he did confront her but denied using any profanity in addressing her. Zellmer denied operating “under the radar”, stating that he had gotten a building permit for a bathroom in the pole barn for his employees. Zellmer said that five cars would be the most in his parking lot.

John Norman disagreed with Zellmer’s statement that he had not driven on Norman’s land. Arlene Norman asked why a full-blown business had been permitted to operate at this site since 1996, in violation of Town ordinances.

There were no further questions or comments.

Plan Commission Chairman Gonnering closed the Public Hearing at 8:32 PM.

Respectfully submitted,

Barbara Davies, Town Clerk

Affidavit of Posting:

These minutes were posted at the Town of Trenton Town Hall on Friday, November 16, 2007. Barbara Davies, Town Clerk.

