

APPROVED

Kasson Township

Zoning Board of Appeals Special Meeting & Public Hearing

October 11, 2023 at 3 p.m.

Kasson Township Hall

Members Present: Don Drabik (Chair), Jerry Gretzinger, Dave Noonan (PC Rep), Roger Noonan (Township Board Rep), Scott Mills

Staff Present: Township Attorney Tom Grier, Zoning Administrator Tim Cypher, Township Clerk Dana Boomer (acting as Recording Secretary)

Call to Order/Pledge of Allegiance – Drabik called the meeting to order at 3:00 pm with the Pledge of Allegiance.

Approval of Agenda – Gretzinger moved, D. Noonan seconded to approve the agenda as presented. All in favor, motion carried.

Declaration of Conflict of Interest – Drabik asked if there were any conflicts of interest on the topic under discussion today. Scott Mills stated that he spoke during the public hearing for the Enduro Motorcycle events. His public comment was intended to be a point of clarification regarding the fact that Special Use Permits run with the land, not with the owner. That public comment fell during a portion of the public comment period that had been designated as being in opposition to the application. His comment was not intended to be in support or opposition for the application, only a point of clarification.

Grier asked Mills whether he intended to be listed in the section of the minutes designated as being in opposition to the application. Mills stated no, he was unaware that that designation was applied to that section of the minutes. Grier asked whether Mills intended to speak in support or opposition to the application. Mills stated no, he merely intended to clarify what appeared to be a point of confusion amongst the audience, which was that any approval would remain in effect regardless of whether the parcel was transferred to a new owner.

Drabik asked whether a vote was needed. Cypher read the conflict of interest section from the ZBA Bylaws. R. Noonan stated he does not feel that Mills has a conflict of interest. D. Noonan, Gretzinger, and Drabik concurred. There was consensus that Mills did not have a conflict of interest. Cypher stated he felt that during the meeting it was clear when the people in favor of the application were speaking. Grier stated that Mills has indicated to the board as a whole that he did not intend to be listed under a category in opposition to the application, and that he appears to have intended his comment to be neutral.

Approval of Minutes – December 19, 2022 – The board briefly discussed the minutes from the December 19, 2022 meeting. R. Noonan moved, Mills seconded to approve the minutes from December 19, 2022. All in favor, motion carried.

Public Comment – Charlene Verschaeve – She asked whether it was legal for Bill Kasben to not be present as the owner of the parcels in question. In her lifetime, she has been closely related to the land that this is proposed on. There are a lot of things that the owner has not taken responsibility for, and it is a pattern of his. This is another pie in the sky idea, and whatever happens, there will be no responsibility taken by the owner of the property. If this continues to drag on, the neighbors can prove the lack of responsibility taken by the property owner in the past.

Josephine Arrowwood – She asked whether 3 pm was a normal time period for ZBA meetings. If it is not, she would request that meetings be moved back to a more normal evening time. She does not see much in the way of facts in the petitions; they cite no law or zoning to support their point. She resents having to spend more time and taxpayer money on these appeals. They falsely state that they have not had their time to present their application, when there have been several meetings to discuss this topic. It is unfair that they keep coming back because they did not get the answer they wanted. There is a lot of fact-free noise and table pounding happening during this issue. She hopes that the ZBA will see that they need to stay within the confines of the Zoning Ordinance while deliberating this matter.

Dean Willig – He is opposed to the application today. From his understanding, the zoning does not allow this. The roads in this area are not built for the amount of traffic that would occur from this event. He and his wife are opposed to the approval of the application.

Stephanie Mills – She is very grateful to the ZBA for their work. She has read the documents that have been produced, and know that the ZBA has a tremendous amount of fact-based argument in front of them. She would like to step outside that frame, and urge consideration for the atmosphere and biosphere and plead that the township considers the health of the land for the community.

Mary O’Neill – She encourages the ZBA to maintain the denial and not set a precedent.

Public Hearing

R. Noonan moved to open the public hearing, D. Noonan seconded. All in favor, motion carried. The public hearing was opened at 3:25 pm.

Cypher summarized the publication and public notices for the public hearing. Grier stated that there has been discussion between the attorneys to request of the Board that there be no decision made today. The attorneys would prefer that today was only for presentations and fact-finding, with a second meeting held to consider findings of fact and make a decision. There are two petitions in front of the ZBA today:

1. James Schettek (applicant) and Bill Kasben (owner) request administrative review of the denial by the Planning Commission of their Special Use Permit application to hold Enduro Motorcycle events on their property on S. Novak Road, E. Kasson Road, and S. Bright Road, Section 24, T28N, R13W, Tax Parcel IDs #007-024-001-10, 007-024-005-00, 007-024-004-30, 007-024-004-20, and 007-024-004-00. The application, made under Zoning Ordinance Section 7.15, was denied by the Planning Commission on July 17, 2023.
2. James Schettek (applicant) and Bill Kasben (owner) request administrative review of the denial by the Zoning Administrator to process and submit to the Planning Commission their Special Use Permit application to hold Enduro Motorcycle events on their property on S. Novak Road, E. Kasson Road, and S. Bright Road, Section 24, T28N, R13W, Tax Parcel IDs #007-024-001-10, 007-024-005-

00, 007-024-004-30, 007-024-004-20, and 007-024-004-00. The application, made under Zoning Ordinance Sections 4.4, 4.7.2, and 5.13, was denied by the Zoning Administrator on July 7, 2023.

- a. Presentation by Applicant – Attorney Peter Wendling presented for the applicant. Fran Seymour and James Schettek were also present. Wendling presented a standing objection to Scott Mills participating as a member of the ZBA, given that there was no court reporter present at the PC public hearing to take verbatim transcription for the record that would prove whether his comments were neutral. Wendling summarized the history of the application, including the initial confusion surrounding which section of the Zoning Ordinance this application should be presented under. This is going to be a complicated ZBA case. His clients feel that they were not given the opportunity to thoroughly present their case, given the early denial by the Planning Commission of the application under Section 7.15 and the refusal by the Zoning Administrator to allow an application under Sections 4.4, 4.7.2, and 5.13.

Wendling stated that the Planning Commission denied the application made under Section 7.15 prior to a full discussion of the findings of fact or potential conditions that might mitigate any potential nuisances. The PC denied the application prior to that discussion based on the recommendation of Grier, who opined that Section 7.15 was no longer an enforceable Zoning Ordinance section based on recent case law. Wendling summarized two other unpublished court cases that he felt would allow Section 7.15 to be an enforceable and usable section of the Zoning Ordinance, as discussed in his memo to the ZBA.

In addition, Wendling feels that the second application should have been allowed by the Zoning Administrator to be considered under Sections 4.4, 4.7.2 and 5.13, given that he feels that this event can be considered an outdoor recreational establishment, as well as a temporary outdoor use, given the 2-3 occurrences per year that are proposed. It is not the job of the ZBA to determine whether the proposed use may be a nuisance to the neighbors. It is their job to determine whether the Enduro Motorcycle event is substantially similar to the other recreational uses listed in the Zoning Ordinance and part of an outdoor recreational establishment, and therefore whether the second application should be considered by the Planning Commission. Wendling feels that the Enduro Motorcycle event can be considered an outdoor recreational establishment. The noise is a matter for the PC to address, but the applicants need to be allowed to go in front of the PC to present their full case.

While the township may want to update their Zoning Ordinance to remove or change some of these sections, an application must be processed under the ZO as it exists. The ZBA should allow the application under Sections 4.4, 4.7.2 and 5.13 to be processed in full by the Planning Commission, rather than being blocked by the Zoning Administrator.

This issue is likely to be appealed to Circuit Court, regardless of the ZBA decision. Wendling asked that the ZBA consider the Zoning Ordinance and remand the decision back to the Planning Commission, either under the original Section 7.15 application or under the second application under Sections 4.4, 4.7.2 and 5.13, which was denied processing by the Zoning Administrator.

b. ZBA Questions/Discussion with Applicant – The ZBA had no questions for the applicant at this time.

c. Public Comment (limited to two minutes per person unless extended by ZBA) –

Kristin Houle – Mr. Wendling went through both applications, so she asked if she could have four minutes to address both applications. The ZBA agreed to this. Houle is the attorney for the Kasson Township Neighborhood Association. Houle referred the ZBA to her previous memos on the topic, as well as the recent memo submitted to the ZBA this week, with her opposition to granting the petitions today. Houle agrees with Grier that Section 7.15 is unenforceable and unusable under recent case law. This use is not needed for the area, and she asks that the ZBA deny the first petition. For the second petition, Houle supports the Zoning Administrator's decision to deny the processing of the application under Sections 4.4, 4.7.2 and 5.13. This use is substantially different than the light-use outdoor recreational facilities and temporary events, due to the long-term use (multiple times per year), camping, and potential danger to participants as determined by the necessity for signing waivers before participating. She requests that the ZBA deny the second petition.

Christopher Grobbel – Grobbel Environmental & Planning Consultants – He is here on behalf of the Kasson Township Neighborhood Association, and submitted a memo on the topic prior to the meeting. The PC did an excellent job of reviewing a complicated proposal, as did the Zoning Administrator. The Zoning Ordinance is unusual in the broadness of certain sections. The Forested District is specifically to preserve forests and woodlots while allowing uses that enhance this preservation. Events are not allowed. This is a high-intensity proposed use. The noise is the major issue, as it does not allow the peaceful use of neighboring properties. He would ask the ZBA to consider that this is not an appropriate use in this area, and determine that the PC and ZA made the right decisions. This use is not substantially similar to other allowed uses in the district.

Charlene Verschaeve – Mr. Wendling did a lot of cherry picking on zoning interpretations, and accused the zoning board of acting like a super-legislative body. She wants to let Mr. Wendling and their clients know that Leelanau County is a special place. The soil is highly erosive in the region, and people here are very serious about protecting this property. There is an association that has formed with people's own money, and so Kasson Township has an obligation to protect this area. This whole endeavor was started without permits, and development has continued

without permits, and this needs to be looked at. She is opposed to this as an environmental catastrophe, and disruptive to both the local people and the wildlife.

Josephine Arrowood – Adding to Mr. Grobbel's comments, there are concerns about deforestation and violations of agricultural conservation agreements. There was a claim that the applicants did not get to give their full presentation to the PC, but Fran Seymour withdrew the application. All of the events are taking place around the perimeter of the property, next to the neighboring properties.

Patti Travioli – She has a bordering property to the applicant property. She sent an email with photo to the Township Clerk earlier today. This is a photo of what has happened since fencing was put up a foot from the property boundary, showing washed out earth from erosion that is already occurring.

Tom Lufkin – Mr. Wendling stated that this is similar to a bicycle track. If this was a bicycle track, none of the neighbors would be objecting. This is also much different than the Silverdome issues in Pontiac. None of his neighbors are in favor of this.

Hannah Schweikart – She is a resident within 300' of the applicant. She is opposed to the application.

Ted Nelson – Mr. Wendling spoke about the spirit and intent of the ordinance. As everyone drove here today, they saw the beauty of Kasson Township. He asked the ZBA to consider how a dirt bike track fits into the spirit and intent of Kasson Township. He asked the ZBA to support the PC's decision.

Tim Dowd – He spoke at the very first meeting of the Planning Commission. This whole concept goes against the Master Plan, which calls for the peaceful enjoyment of the community. All of the neighbors surrounding this proposed racetrack would have their peaceful enjoyment stripped from them. He is opposed to the event.

Doug Young – Mr. Wendling seemed to be saying that the ZBA shouldn't weigh in on this because it should be a PC decision. The use of the land should be congruous with the Master Plan, and this is the ZBA's responsibility. It is their responsibility to maintain the values of surrounding properties. There is certainly a place for the ZBA to weigh in and support the neighbors. He urges the ZBA to deny these applications.

Pam Zientek – She and her husband have been neighbors of Mr. Kasben and his farm. They farm pigs and corn and would not be here today if Mr. Schettek had purchased his family's property. That property was put into the conservancy to preserve it. So Mr. Schettek has now come down the road to put in an Enduro racetrack.

Joey Reutter – This morning as he was at his house tending to his animals, he could hear the buzzing and smell of the coffee roasting plant up the road. This reminded him that he needed to be here today to enter his opposition to the Enduro race. He wasn't around to enter his opinion on the roaster.

Fran Seymour (applicant) – They are being unfairly painted as not caring about the land. They want to use 2% of the days of the year to hold events – 8 days. Instead of 100% of the year that they could use for uses that would not preserve the land. It could not be further from the truth that they don't care about the land. Anything that they did to prepare the property was to prepare for the application, which Mr. Cypher can attest to. There is a lot of misinformation out there. They want to use the land for a family fun, recreational event.

Mary O'Neill – 2% of the year is disingenuous. They were talking at the beginning of this about up to 6 events per year.

Christine Hauke – This use is going to use up more 2% of the year, with all of the property preparation and event preparation.

Jim Travioli – There is already evidence of land degradation where Bill Kasben has started prepping the property with a cow fence near where the track would be. The land is already eroding from this preparation.

Marcia Berry – She would like to point out that Mr. Seymour and Mr. Schettek do not live on this property. The ZBA is hearing from the people who live around the property and will be affected by this. She asked the PC and ZBA to recognize that it is their responsibility to keep the land under the same zoning as when the neighbors purchased their land.

d. Applicant's Response to Public Comment – Mr. Wendling stated that there are a lot of comments about the application itself, but that is not what the ZBA is deciding today. The second petition was denied by the Zoning Administrator before even reaching the Planning Commission, so the applicant was not able to present their case under this set of ordinance sections. It is the applicant's right to be able to take their case in front of the Planning Commission, and let the PC decide whether this might be able to be approved with conditions. He asks the ZBA to send this back to the Planning Commission where it rightfully belongs.

James Schettek – He is one of the applicants. The people who have been around here a while should remember that these races were held in the area 20 or 30 years ago, and they went off fine with no issues, and they were family fun. The people who don't remember these haven't been in the area long enough to remember these previous events.

e. ZBA Discussion with Staff (if required) – Mills asked whether they should continue the public hearing or table the discussion, per Cypher’s original comment regarding the attorney request that no decisions be made today. Grier asked that the ZBA table the discussion for at least 30 days, allowing 15 days for additional documents to be submitted, and an additional 7 days for the submission of draft findings of fact by any interested parties. After those submissions, Grier and Cypher will consider the proposed findings of fact and propose modifications to be considered by the ZBA. Grier asked the ZBA to make motions to memorialize this proposal. Grier summarized the requested motions, and requested that a second meeting be set up at least 30 days from now.

R. Noonan moved to table the matter for at least 30 days, Gretzinger seconded. All in favor, motion carried.

Mills moved to leave the record open for 15 days to allow interested parties to submit additional documentation for the record, R. Noonan seconded. All in favor, motion carried.

R. Noonan moved to add an additional 7 day period after the initial 15 days during which the record will be closed for additional documents and open for proposed findings of fact to be submitted by interested parties, Gretzinger seconded. All in favor, motion carried.

R. Noonan moved to close the public hearing at 4:34 pm, Mills seconded. All in favor, motion carried.

Other Business - None

Public Comment – Jerry Konczel – This should have been figured out a while ago, and this delay is just adding to legal bills on all sides. A decision needs to be made. The Leelanau Coffee Roasters issue took 40 meetings. This can go on and on, but this needs to be decided.

Chris Grobbel – As a point of order, at a Planning Commission meeting, the application was withdrawn by the applicant during that meeting. This is a waste of township resources to be in front of the ZBA on an invalid application. The ZBA should be clear on the procedural stuff. There can be no decision on an invalid application.

ZBA/Zoning Administrator Comment – Mills asked Grier what the procedure is if that application was withdrawn. Grier stated that he is unsure on this point; the question today is regarding the PC’s decision in July to no longer consider the application. The ZBA is here today to consider two matters – the July PC decision and the July ZA decision.

Next Meeting/Adjournment – **D. Noonan moved to adjourn the meeting, Mills seconded. All in favor, motion carried.** The meeting was adjourned at 4:29 pm.