

WALES TOWNSHIP
SPECIAL PLANNING COMMISSION HEARING
MARCH 15, 2021
By ZOOM

The meeting was Called to Order at 7:05 p.m. and opened with the Pledge of Allegiance.
Roll call was taken: Members present: Perry, Watkins, Thomson, Minor, Downey; Jewell.

Members absent: Basnaw, excused.

Recording Secretary asked that the Minutes of the January 19, 2021 and January 25, 2021 Planning Commission meetings be added to this agenda. **Motion** by Watkins, second by Minor, to add the Minutes to the agenda. Roll call vote taken: Watkins, aye; Minor, aye; Jewell, aye; Perry, aye; Thomson, aye; Downey, aye. Six ayes motion carried. Approval of Agenda: **Motion** by Minor, second by Watkins, to approve the Agenda, as amended with the addition of the Minutes of the January 19, 2021 and the January 25, 2021 Planning Commission meetings. Roll call vote taken: Minor, aye; Watkins, aye; Downey, aye; Jewell, aye; Perry, aye; Thomson, aye. Six ayes; motion carried.

Chair Perry read the rules of conduct before opening the scheduled Public Hearing.

Scheduled Public Hearing – Lixey Storage LLC

a. *Chair opens Public Hearing at 7:05 p.m.*

b. *Chair summary of issues.*

- i. *Statement of general case.* The issue brought before this body is a petition to amend an existing site plan issued to Robert Lixey for Lixey Storage LLC.
- ii. *Explanation of Order of Business given.*
- iii. *Statement of Rules for Public Hearing given.*

c. *Applicant presents: Attorney Allen Francis, speaking for Mr. Lixey, gave a brief history of the original Site Plan Approval, granted in 2003. He then explained the erection of three canopy tent-type buildings starting about ten years ago, placed between the existing buildings to accommodate additional storage. Then about seven or so years ago Mr. Lixey started accumulating shipping storage containers, also to be used for storage, not changing it, just growing it. During that course of time he has invested nearly one million dollars in improvements; painting, roofing, etc. to change it from the eyesore it once was. Mr. Francis said that Mr. Lixey made one mistake: he said that he believed under the terms of his permit, by continuing to grow the project, he was operating legally. On February 04, 2019 he found out that wasn't the case, in a letter from Zoning Administrator Waddy,, who said he noticed some outside storage and temporary containers, which violated his permit, and he would have to submit a plan to bring the site plan up to date. He immediately went to the Township offices to find out exactly what the letter meant. There is a Township note to confirm this. It wasn't until September of 2020 that he received a letter from Township Attorney Dubay saying Mr. Lixey was ignoring township Ordinances, which upset him because he thought he was doing everything he was supposed to do. On December 12, 2019 he submitted a site plan. Mr. Francis cited most of Section 18.01 and 18.08 of the Wales Township Zoning Ordinance Book to emphasize under what authority they are submitting their request to amend the number of buildings or structures on the site. We are looking at Section 18.01 to about 18.06 of the Zoning Ordinance, for Site Plan Review. He cited 18.01, saying there may be certain other uses or structures that may be necessary or desirable to allow in certain locations and districts but because of the actual or potential impacts on neighboring uses or public facilities, there is a need to carefully regulate them with respect to their*

location and for the protection of the community. with regulations. You must look at each petition's circumstances. Here storage use has already been established. In '02 and '03, the Township established that the existing buildings had no other feasible use, so we're looking to amend 18.06 to amend the number of buildings on the site. I have six reasons for the request.

- 1. Will the request be consistent with the general objectives and intent of the Ordinance?*
- 2. Will the general public be served by the use?*
- 3. Will the use be of such a nature that basically traffic won't be adversely affected one way or the other?*
- 4. Will the use be compatible with adjacent uses and structures?*
- 5. Will the use promote the use of land in an economically manner?*
- 6. Will the use relate harmoniously to neighboring property uses?*

These are the general factors that the Township must consider. It's important that we're starting from the base-the property is already storage use. That's already been approved. When the Commission weighs all these factors, all of them weigh in favor of granting the amendment to the Ordinance. The object of the Ordinance is to repurpose farm buildings and provide storage. The area isn't going back to farmland. In 2002-2003, by necessity, the Township had to determine that there was no other feasible use for those buildings. The tents have been there for over ten years., The con-exes have been there for five or six years. We know they are serviced by public utilities. This isn't a self-service operation. There is a landscaping business on one side and a machine shop on the other side. I've talked to Mr. Lixey about "It's better to comply than to beg for forgiveness". The scope and the nature of the business won't change. There is no signage. We're asking the Council to approve the petition before them.

d. Public Input

- i. Correspondence received pertinent to Application.
There were 18 form letters submitted by Mr. Lixey in favor of his proposal, all but one from nearby residents.
There were two, from nearby residents, opposing the project because of worries about growth and increased traffic.*
- ii. Persons speaking in support. None.*
- iii. Persons speaking in opposition. None.*

e. Chair closes the Public Hearing. Public Hearing closed at 7:27 p.m.

Consideration of Applicant's request.

f. Township Planner's report on Applicant's request.

Mr. Chris Adkin, Planning Consultant from Carlyle/Wortman Associates, speaking on behalf of Mr. Scurto, who has been working on this project, related the history of the site. Many of the requirements listed on the original site plan, issued in 2003, have yet to be completed. He also cited Section 18.32 of the Wales Township Zoning Ordinance Book to emphasize what was originally required.

Commercial storage of operable vehicles, snowmobiles, jet skis, boats, boat trailers, automobiles, and trucks may be permitted as a special approval use in AG, Agricultural Districts provided the following conditions are met:

- 1. All storage shall be within fully enclosed buildings.*
- 2. All storage shall be conducted in a building which:*

- A. *Lawfully existed prior to the adoption of this ordinance, and*
 - B. *Was formerly used for agricultural purposes, and Contains no less than four thousand (4,000) square feet.*
3. *The operator shall apply for a special haul route with the St. Clair County Road Commission as may be required by the Road Commission. The operator shall abide by all conditions imposed by the Road Commission which may include, but not limited to, a financial surety, maintenance conditions, and/or improvement. At the time of the application for a special land use permit, the operator shall include in his/her application, the expected Road Commission requirements and a copy of the approved special haul route permit shall subsequently be provided to the Zoning Administrator.*
 4. *No building shall be used for such storage unless a determination has first been made by the Planning Commission that it is no longer feasible for the building to be used for agricultural purposes nor reasonable for it to be used for any other lawful principal permitted or special land use.*
 5. *All structures qualifying under this section shall also comply with minimum building code requirements and obtain all necessary permits.*

Mr. Adkin then reviewed documents, aerial views of the site, and verification of dates and conditions by the Township Building Official to identify the following violations.

1. Site plan approval in 2003 for the original storage buildings was conditioned on the north/south shared drive being closed with the storage use being accessed by a south drive. These conditions were not enacted, violating the site plan approval. Release Conditions were not enacted.
2. Three new buildings are located between the original buildings. These buildings are not permitted as they do not predate adoption of the zoning ordinance. [Section 18.32(2.)]
3. A row of storage containers is located west of the original buildings. These may not be considered buildings as required. Section 18.32(2) requires storage in buildings. We rely on the Township Building Official to define whether these are considered buildings. If considered buildings, then these are not permitted according to Section 18.32(2.) as they do not predate adoption of the zoning ordinance. Either way, the containers are prohibited.
4. Outdoor storage happens on all parts of the site. This condition violates Section 18.32(1.) which requires all storage to be indoor.

There were additional requirements from the St. Clair County Road Commission:

- 1. Zoning compliance and building and trade permits were not issued by the Wales Township Building Department.
- 2. A special haul route permit as required by the St. Clair County Road Commission was not part of the information packet received. If not secured, Section 18.32(3) is violated for the original storage buildings. Mentioned Section 18.32(4) Commercial storage in an Agricultural District.

Other Consultant's report on Applicant's request.

Township Attorney James Dubay spoke about the scope of the original Special Use Permit. If this has gone beyond that, it must be stated, and taken into consideration. An amendment could be considered, but must be consistent with the area.

Planning Commissioner Watkins wanted to know what can be stored there, and if there is documentation. Mr. Francis replied and asked Mr. Lixey to answer Mr. Watkin's questions. Mr. Lixey

said he stores cars and trailers and boats and other powered vehicles. He explained the process he has of making appointments for receiving vehicles, making them safe for storage, and returning them to their owners. Mr. Watkins asked about documentation, and Lixey replied that he has forms to be filled out. Chair Perry broke in to say that Zoning Administrator Waddy has yet to give his report.

Zoning Administrator's report on Applicant's request. Mr. Jim Waddy said that he wanted to go back to his efforts to bring Mr. Lixey into compliance. He said that Mr. Francis is correct that after Mr. Lixey received my letter of non-compliance, he did go right to the Township offices to find out what the letter meant. Mr. Waddy said he told Mr. Lixey to submit a Site Plan to the township with everything that is there, and everything he wishes to build. He has to get everything legal. Mr. Lixey mentioned to Mr. Waddy that he had some outdoor storage. Mr. Waddy replied that the site plan Mr. Lixey submits should have everything that is now on the property listed and that the plan should show anything he might want in the future. The main thing is to get the site plan approved and the buildings permitted and inspected.

Planning Commission deliberation on Applicant's request.

Planning Commissioner Thomson asked Mr. Adkin if he had a recommendation on approving or not approving the application. Mr. Adkin replied that the uses are in compliance with the original site plan, but there are violations to be considered. If he can correct those violations and meet those requirements there shouldn't be any problem with approving a limited site plan. We're looking at an amendment to the site plan.

Mr. Jerry Nuss, Emmett Fire Chief, speaking in regards to a report from the engineering firm BMJ; that there are no firebreaks; there is nothing to stop a spread from building to building.

Commissioner Minor addressed Mr. Lixey or Mr. Francis, asking why Mr. Lixey didn't apply for building permits for his new buildings? Mr. Lixey said he didn't think he needed them, since they weren't permanent buildings, they were just tents, and he didn't think tents needed permits and they were used for the same use that the permit allowed. Mr. Minor stated that a Special Use Permit does not override the need for a building permit. The same thing is true pertaining to the storage containers. Mr. Lixey gave the same reply for the containers. Mr. Minor also asked why Mr. Lixey never complied with the requirement that the residential home on the property be legally split from the commercial property. Mr. Lixey replied that it was discussed but never made a condition. Mr. Minor disagreed. Mr. Minor added to the Township Planner's list of five steps to be adopted if approval was to be granted the following: 1. The storage containers are not lawful; 2. There must be separation of the Residential and Commercial property; 3. The site must comply with State fire codes; 4. Absolutely no storage of toxic, hazardous, explosive, etc. materials; 5. Allow regular site inspections; Mr.

Thomson added "with 24 hour notice): All buildings need to meet regulations; 6: the applicant needs to submit a fire hazard plan; and that it must be made clear that the Applicant must apply for proper approval prior to any changes. If the applicant finds that he can't comply with existing regulations, then his next step would have to be the Zoning Board of Appeals, because the Planning Commission cannot change regulations. Mr. Waddy said that if the Planning Commission approves this Plan, Mr. Lixey must comply. There are many codes and requirements to be met, and insuring compliance would be the next step in this process if the application is approved. Mr. Minor asked the Chair if this would be a good time to entertain a Motion on the request. Mr. Watkins spoke to say that he wanted Mr. Lixey to understand that we are not here to harm him, or blame him for promoting his business, but this is a very important action. This is a test sample, and people are watching. We don't

want to set a bad precedent that allows for rules to go unnoticed. Ordinances are written to have meaning. This Commission needs to be careful going forward to not set a bad example by letting people have the impression that rules are to be broken. Mr. Francis said that if a lot split is required, it can be done, but he still doesn't see where it was a requirement in 2003. Mr. Thomson said that it is his impression that we are here tonight to approve or disapprove Mr. Lixey's site plan. His biggest concern is the spacing and fire hazard that spacing creates. Mr. Lixey said that he has a fire company come to inspect all of his fire safety equipment every year, and all of the buildings are equipped with fire extinguishers, even the tents. Chair Perry said that she feels there is great concern about the fact that fire equipment cannot get between those buildings if a fire were to happen. Mr. Jewell is concerned about considering approving all those buildings after hearing the Fire Chief's comments.

- g. Approval / denial of request. Mr. Minor says he thinks that we are not here because of the conditions in the original permit, but because of the condition of the site presently.
Motion by Minor, second by Thomson, to accept the conditions listed by Planner Mr. Adkin to bring compliance. Mr. Minor would like to add to that list seven more conditions.
- 6 All storage buildings and areas shall comply with State Fire Codes and Regulations relating to storage areas.
 - 7 No toxic, explosive, hazardous, or flammable materials in the storage areas.
 - 8 The Applicant shall allow regular inspections of property and buildings by a Township Zoning or Building Official. Thomson added: "with 24 hour notice". Minor amended his Motion to agree with that. Thomson concurred.
 - 9 The Applicant shall comply with all Building Codes, Zoning Ordinances and Regulations, and correct violations.
 - 10 The Applicant shall apply for a lot split between the Residential use and Commercial use areas of the property.
 - 11 Applicant must submit to Planning Commission a plan for fire suppression and emergency access.
 - 12 Any alterations must comply with codes. Any further alterations or additions of buildings must be brought to the Planning Commission.

Mr. Watkins suggested that the person performing the inspections should be named. The Planner suggested someone from zoning should perform the inspections. It was decided a Zoning Official or Inspector should do it, or that the Zoning Official should. We do have a Building Official. Mr. Thomson said that his impression is that the chain of command is Supervisor; Zoning Administrator; Zoning Official; but if there is twenty-four hour's notice, the property owner could refuse that person. Mr. Minor suggested leaving the person doing the inspections up to the executive branch, as long as the inspections get done.

The Chair asked the Recording Secretary to read back the Motion. Mr. Francis broke in to ask a question. Mr. Francis asked about the wording in the first regulation. He said "I assume that we're talking about the five conditions listed in the Planner's report." Condition one says that all storage must be in fully enclosed buildings. Condition two says the buildings must have been built before the Ordinance was adopted; and Condition four says that the buildings are deemed no longer usable for agricultural purposes. It says the only buildings allowable must have existed prior to the Zoning regulations. Are we going before you with those conditions being applied to the Amendment, with

buildings that don't fit in? That means we must assume that we are denied unless we remove all of the con-exes and tents, then come back with another plan to get them all approved. Mr. Minor said that we are not denying the application, but that we must have compliance to zoning, Building Codes, health and safety, and have them clarified. When this use request was originally made, the Zoning Ordinance had conditions. That Site Plan was passed with conditions, including outside storage and pre-existing buildings. Those conditions have not been complied with. Also, the buildings which have since been erected did not comply, and still don't. And this Commission does not have the authority to override zoning.

Mr. Minor stated that he wants to make it clear what he's been saying all along.: to clearly indicate the Special Use Permit that was granted in the past we understand was suitable. We clearly indicate that the old Conrad chicken operation has been transformed. It's not an issue. We will approve, with conditions, clearly understood conditions, clearly stated conditions:

Motion by Minor, second by Thomson, to approve Mr. Lixey's site plan application, with the conditions listed above in the prior motion. Roll call vote taken: Minor, aye; Thomson, aye; Watkins, aye; Jewell, aye; Downey, aye; Perry, aye. Six ayes; motion carried.

Mr. Francis asked if the motion means that we are approved? He is unsure what just went on. He would like it to be made clear as to what just happened. Mr. Minor understood that Mr. Francis wants clarification, so Minor suggested we make a **Motion** stating that Mr. Lixey's application has been granted with the stated conditions, and those conditions were listed above in the first motion. Seconded by Thomson. Roll call vote taken: Minor, aye; Thomson, aye; Watkins, aye; Jewell, aye; Downey, aye; Perry, aye. All ayes; motion carried.

Mr. Watkins stated that a precedent was set here today. We have to set an example, that people must get permits, inspections; it is not just word-of-mouth. It must be there for the records, no matter who sits on the Planning Commission, who is Supervisor; we have to go through the records; we have to follow the protocol.

Chair Perry asked that the Motion be re-read. Recording Secretary "We will approve with stated conditions, and those conditions were listed above in the first Motion.

Mr. Thomson has a request of the Township that the Township does not apply those conditions listed above to the buildings existing in 2002. Suggestion agreed to by all. Mr. Watkins added that if that action was needed, it would have to go through the ZBA. That is why we have a ZBA.

Motion to adjourn made by Minor, seconded by Thomson. Roll call vote taken: Minor, aye; Thomson, aye; Jewell, aye; Downey, aye,, Watkins, aye; Perry, aye. All ayes, motion carried. Meeting adjourned at 8:29 p.m. Next regular meeting: April 18, 2021.

Respectfully submitted,

Judy Duncan, Recording Secretary