

**Cannon Township Zoning Board of Appeals
Regular Meeting Held Tuesday, March 18, 2014 at 6:00 PM**

Business Agenda Items:

1. ZBA 14-1 Jack & Dorothy Wiersma
2. ZBA 14-2 Paul Geer

Members Present: Eslinger, Hanna, Levan, McBrien, & Van Keulen

Members Absent: None.

Staff Present: Zoning Administrator Julie Lovelace & Attorney Doug Van Essen

The invocation was offered by Commissioner McBrien.

Approval of Minutes: Move to approve minutes from 12/17/2014 as written. **Motion: McBrien.**
Support: Levan. Voice vote: Yes – 5, No – 0. Motion carried.

Public Comments: None.

Public Hearing: Open 6:10 p.m. Attorney Hoogeboom spoke on behalf of the Wiersmas. He wished to emphasize that there is some public good from this variance. Shawkoto Trail runs parallel to an easement. When the Wiersmas bought their parcel, they relied on this easement. Eventually, Shawkoto physically replaced “Jack’s Trail.” He stated that the other users of Shawkoto are not in favor of improving the road. They wish to retain the rural character. In addition, if Mr. Geer and Mr. Wiersma were granted the variance, that would resolve the easement controversy. If this were to be granted, there would be a signed written abandonment of the easement for both parties.

Paul Geer 5959 Cannonsburg - Owns 5400 Shawkoto and 5917 Cannonsburg. He stated that he is asking for a transfer of a road cut from the 5400 parcel to 5917 Cannonsburg.

Phil DeWildt 5525 Shawkoto - Asked how the amount of traffic will increase by granting these two variances. McBrien stated the typical standard is 10 trips per home per day for traffic. DeWildt owns 10 acres at the end of the trail. He stated there is an east and west easement. The east easement is now Shawkoto. He wondered if more people will be able to claim an easement in the future.

Ruth Kaminski 5430 Shawkoto – Argued that this would not be the end of easement issues. She has seven acres and has a cut into the east Shawkoto Trail easement.

Steve Ragsdale 5460 Shawkoto – Stated that there are two separate owner agreements. One is East Shawkoto Trail Property Owner Association. The other is West Shawkoto Trail. The people on the west side of the road are not part of the Shawkoto Trail Property Owner’s Association. Mr. Ragsdale does not want to see Ruth Kaminski lose her right to divide her parcel and be the 10th house on Shawkoto without having to upgrade Shawkoto. Attorney Van Essen explained that Ms. Kaminski’s argument cannot be addressed within the scope of this meeting tonight.

John Earl 5475 Shawkoto – He felt the Township messed up on the easements. It is unfair for Ruth to pay for something he feels the Township made a mistake on. Attorney Van Essen explained that the Township does not have any jurisdiction over easements or private road agreements. That was not a mistake on the part of the Township. Earl stated that there is an entrance issue. It is a very narrow entrance. He felt that adding houses will only exacerbate the issue. He did not feel there is any public good there.

He did not feel that this meets an extraordinary circumstance. He felt that this is self-created and that there is no substantial justice.

Jack & Dorothy Wiersma's son stated that this has to be decided on the merits on this application and deal with the other problems later.

Rick DeGraaf 5530 Shawkoto - Stated that the private road needs to be upgraded. He felt that if all parcels were to participate in evenly upgrading it, this would not be an issue. This would be preferable to a legal battle.

Steve Ragsdale agreed with what DeGraaf said except that people who live on single parcels now are very happy with Shawkoto Trail the way it is. He thought that if the road is being upgraded by new houses, those new houses should bear the cost. Levan stated that the Township still has standards for emergency vehicles and safety standards.

Eslinger reminded everyone that we are not here to decide what is fair for Ruth. Van Keulen said that, as an association, they are eventually going to have to solve this problem.

Barbara Heisler, realtor, spoke on behalf of the Wiersmas. She said that when Mr. Wiersma originally brought her the properties, he thought he had four lots, but the Township told him he had two. She felt that he has given up enough.

Mr. Ragsdale stated that this could be just as easily resolved by improving the first 400' of Shawkoto. He stated that the Township could just as well require this. Mr. McBrien stated that this is not the job of the ZBA. That would be more of a Planning Commission issue. Ragsdale stated that he does not believe that anyone within the Shawkoto Trail Association is willing to sell access to anyone on the West side.

Public hearing closed 7:37 p.m.

Pending Business: None

New Business:

ZBA 14-1 Jack & Dorothy Wiersma
5425 Shawkoto Trail Belmont MI 49306
41-11-20-300-051

The applicant appeals a decision under Zoning Ordinance Section 19.08 Standards for Private Roads Serving More Than Ten Lots) and asks the Board to grant relief from this ordinance.

ZBA 14-2 Paul Geer
5917 Cannonsburg Rd NE Belmont MI 49306
41-11-20-300-040

The applicant appeals a decision under Zoning Ordinance Section 19.08 Standards for Private Roads Serving More Than Ten Lots) and asks the Board to grant relief from this ordinance.

Board Comments: Hanna stated that when the East Trail association granted rights to the west, at the time it seemed like a good idea, but now it may be regrettable. Hanna was initially against the variance, but after listening to Mr. Van Essen (taking Ruth's situation into consideration); he felt that we need to vote on the merits of getting rid of the easement.

McBrien asked about the details from Mr. Wiersma being given a citation of civil infraction for accessing his property through the Remelts' property. When they tried to use the Remelts' property for access they were cited. Attorney Van Essen considers this situation to be one of the most exceptional circumstances he has ever seen. A safety ordinance kicked in to prohibit Mr. Wiersma from using this access. McBrien stated that he has the biggest struggle with the first standard. He stated it is a pretty extraordinary circumstance when the district court tells him he cannot have access to his easement.

Eslinger stated that there are a lot of layers to the problem and the Township cannot solve all of them tonight. He felt money would be better spent to agree on the private road agreement than in court.

Levan stated that this is a unique situation because they cannot use their easement. Eventually everyone must have realized that, in the future at some point, the road would have to be upgraded.

McBrien stated that, if they vote yes, this will all be dealt with at circuit court. His hope was that homeowners get together and make something work.

Move to approve both variance petitions on Geer and Wiersma's properties with the following findings:

- 1. Extraordinary - The district court prevented access to property via the easement**
- 2. Unique - Related to ordinance forbidding use of easement**
- 3. Not Self Created – Applicant had no control over creation of Shawkoto Trail first**
- 4. Substantial Justice - The property owners should be treated the same regarding egress**
- 5. The minimum variance necessary to grant relief - Yes**
- 6. The motion is subject to covenants of abandonment.**

MOTION: McBrien. SUPPORT: Hanna. Roll call: Eslinger - Yes, Hanna – Yes, Levan - Yes, McBrien - Yes, Van Keulen - Yes, Motion carried.

Hanna mentioned that Scott Christopher Homes (Wierenga) have applied to PC for text amendment for guest homes. They originally came before the ZBA for a variance and have now, appropriately, approached the PC.

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Adjournment: 7:46 p.m.

Next Meeting: No applications received for April meeting.

Julie Lovelace
Zoning Administrator

Wade Van Keulen
Chair, Zoning Board of Appeals