

## RECORD OF PROCEEDINGS

### MINUTES OF JACKSON TOWNSHIP BOARD OF TRUSTEES MEETING

**AUGUST 3, 2007**

Meeks called the meeting to order at 4:15 p.m. at the Jackson Township Hall with all Trustees, Fiscal Officer, Fitzgerald and Jim Matthews.

The Pledge of Allegiance was recited.

Meeks: We are here this afternoon for Zoning Amendment 562-07, TRC Realty Limited, Walgreens. Neal.

Fitzgerald: At the July 23, 2007 public meeting a question was raised. The Board of Trustees has a policy of posting a sign on the properties that are applying for rezoning. I sent letters to the attorneys involved and asked for their input, and of course, the applicants attorney. So I have provided you with my written opinion which I would like to read into the record.

This is in response to the question as to the effect of the Applicant's failure to post the Zoning Amendment Notice sign described in the enclosed Policy and Procedure For Notification to the Public of Proposed Zoning Amendment upon the property rezoned in Zoning Code Map Amendment No. 562-07. Upon review of the question, the correspondence thereon and after consultation with Attorney Greg Beck and his attached July 26, 2007 recommendation upon the issue, it is my opinion that the Board of Trustees enclosed decision on July 9, 2007 adopting Zoning Code Map Amendment No. 562-07 and the Zoning Amendment application and all proceedings thereunder should be voided, revoked and/or invalidated as a result of the Applicant's failure to post the above described sign. Accordingly, I recommend that the Board of Trustees adopt the attached proposed Resolution, which is now in front of the Board.

#### **RESOLUTION 07-086, ATTACHED**

Meeks moved and Burger seconded a motion based on the attached August 2, 2007 Law Director's opinion which is incorporated herein, we hereby void, revoke and/or invalidate our attached July 9, 2007 decision adopting Zoning Code Map Amendment No. 562-07 and the Zoning Amendment application and all proceedings thereunder. **3-0 yes**

#### **RESOLUTION 07-087, ATTACHED**

Meeks moved and Burger seconded a motion to adopt and authorize the placement of our signatures upon the attached Affidavit regarding Smith Outdoor Advertising. **3-0 yes**

Unidentified man: Are you not receptive to a question?

Meeks: No, sir. Sorry about that. Unless, Neal.

Fitzgerald: No.

Unidentified man: I'm sorry you're going to hear from the public. Okay? What you're doing, excuse me, what you're doing here is completely wrong.

Meeks: Hold on, sir, hold on. Hold on.

Unidentified man: Okay.

Meeks: Neal.

Fitzgerald: You know we took the position that we weren't going to have Public Speaks at the Special Meeting. It's a Legislative Rule of the Body. I don't think it's going to affect anything but you could be in a legal action.

Meeks: I understand. Now let me ask you this. I understand, but out of respect for our residents and quite frankly that is the reason why we are here today, because of our residents. That is why I sit on this Board because of our residents.

Fitzgerald: I'm not going to foreclose a man from making a statement.

Meeks: Okay.

My name is Paul Clark at 9235 Shady Brook. A lifetime resident of Jackson Township. I was at the last zoning meeting on July 9<sup>th</sup>. There was no opposition from anyone from the public against this zoning change. The notice was published in the paper. Okay? Everyone had opportunity to review that, to come and voice their opinion at that time. Nothing was done. The only person that gave any negative comment was someone on that side of the table which is Mr. Gonzalez, which is a real problem. Mr. Gonzalez stated that his personal issue was they didn't pass the zoning at my house, so why should they pass the zoning at yours. His face was red as a beet and I have a very big problem with someone that is an official from Jackson Township that has a personal vendetta and has launched this situation right now. And that's the only reason we're here today is because of that situation. Walgreens coming to Jackson Township is a 100% positive thing. Look at our community, look what's happened lately with business moving out of the area, business failing. Okay? We have a great company coming to Jackson Township. It will bring millions of dollars of revenue, it will give you jobs, it will allow people in the construction industry to have work while it's being built, it'll let Rohr's Nursery possibly bid on the landscaping. Okay? And Clark Wood Special is my company to bid on the cabinetry. It's totally a positive situation. There are three small residents on Frank Avenue. The houses are in disrepair. They look out of place completely. These people did not choose for the zoning around them to be changed. It was forced upon them. My father built the house on 6733 Frank Avenue. They've taken 20 feet of his front yard and now there are plans to widen Frank Road again. Let's take another 20 feet. So my mother will step out of her front door and be onto Frank Avenue. So you have taken, I won't say you, the zoning and the progress in the area has taken a beautiful residential area and turned it into a completely commercial area. It's not suitable for residential living and you need to pass this and honor your decision, which was the

proper decision for our community, and honor what you had done before and stay with that decision. There's something in the works here that isn't quite right. It's just not right to me. Are we going to stop, look at the Akron Canton airport, and let's talk about Frank Road, because I grew up on this street. Akron Canton Airport is going to grow. We're going to have total business from Akron Canton Airport all the way down Frank Avenue. It is a commercial area, so what is the situation of not passing zoning on this street. Comments of it being a buffer zone, it doesn't work with me. Are we going to stop, if you look down the businesses there, Scheetz Building Corporation, BJ's, Goodyear Tire, Sam's Club, Home Depot, right across the street, Rockne's. We have many businesses all the way up and down the street. So why would we not welcome as a community and embrace Walgreen's coming in and we should welcome them and do whatever we can to help our community. We lately have built within the last six years have built two very expensive schools, Strausser Elementary, Jackson High School. The tax burden is fully on us as residents. Okay? My taxes have gone up in double since I bought my house in 1990. Okay? And so we have an imbalance here. These schools were well needed I'm not knocking it. But we have an imbalance of residential versus industrial and business. The tax burden needs to be shared with good business in the community. Now why our Trustees would be against that is beyond me. I can't even understand and I need an explanation from all of you. Personally, each one, I would like to hear.

Meeks: Well, I'll start. I tend to agree with 95% of what you just said, sir. I will not address your comments to Mr. Gonzalez however I do think that was very unfair because Randy, even though he is our Fiscal Officer, he does have a right to speak as a resident and that's what he was doing. You're absolutely right. I mean we have talked time and time again about trying to promote and bring business into our community, new business, to try to balance that tax burden from the business end to residential property tax. And this is an example where that would help pull the businesses up and hopefully even that out. I think even at the hearing I think Walgreens is a very good company and one that we should welcome with open arms. Absolutely. I do think that the residents on Frank Road have an opportunity and a right to sell their property. And they should do so. What we're doing here this evening isn't based on us, or at least this Board member, not approving the zoning for Walgreens to be built. What it is is because, you're absolutely right, we had no opposition, the Commission had no opposition, but let's stop and think why there wasn't any opposition. And maybe that is because the sign that we require to be placed on the properties to notify the residents around, not just the ones adjoining, to be notified that, hey, there's a zone change happening in your community, you need to be aware. And that is the reason why we were inundated with phone calls of the residents in that area wondering why we weren't notified. Why did we not see the sign, how come the sign was not placed?

Clark: It's peculiar to me, Mr. Meeks, that these residents seem to know about a sign because it's not even in Jackson Township ordinance, there's no public record of sign posting.

Meeks: There is. In our resolution, there is.

Clark: Okay. It's not in your ordinance. Is it?

Fitzgerald: It's a legislative decision.

Clark: In a former meeting it was public knowledge and it's in the paper that this has never been enforced but your inspector, your zoning inspector. And all of a sudden we're going to start, let's decide to enforce it now. It's been in apparently in play for how many years and we're going to enforce it today.

Fitzgerald: I think you have a right to make your statements, but this could eventually and will probably end up going to court, you can make your statements but I don't think questioning the Trustees any more, we usually don't allow that. We've allowed you to speak, make your statement, I'm not trying to cut you out, sir, but I don't think it's the procedure to question the Trustees.

Clark: I just want an answer. Is it in the ordinance of Jackson Township?

Fitzgerald: Yes. It's a legislative resolution.

Clark: Can I see that document, please?

Fitzgerald: I'll give you a copy of it after the meeting. I'll get you whatever you want, sir.

Clark: Sure.

Fitzgerald: I'll give you a copy of all this.

Meeks: What we asked before we got to this point was for the applicant to provide proof that they did place the sign. They were not able to do so. And then what we asked is that voluntarily would withdraw your request and start over. Because it may sound ludicrous to do so once you have received approval and I can understand that, however, if you truly believe that it definitely passed once and know a flaw has been brought to our attention by our residents who we represent, we have to investigate those concerns. And all we were asking was work with us, work through it, put it back on the table. If your project is worthy enough then it should heed the storm, possibly, that would come with it. And you would have a favorable outcome. However, that didn't happen. So that is why we're here today.

Clark: One thing I think we're doing in Jackson Township by this is sending a message to other businesses that may want to locate here how difficult we are to work with. So are we welcoming business with open arms? I understand what you're saying but at the same time, notice was given, registered letters were sent out to the people in the community in the surrounding area. It was in the paper, everyone had a chance to read it and make their voice heard at the meeting before. To go backwards now and to renege on a decision that was made which was a proper decision is, I believe, completely wrong for our community and I'm just very much opposed to it. Thank you. Can I hear from the other gentlemen here?

Pizzino: Sure. I'll tell you my thoughts. Again, I believe when we passed that we even made a comment that we were really surprised that had no opposition. And since then my phone's been ringing off the hook and I guess what bothers me more than anything else is that this Board has always let everybody speak and we always listen to everybody on both sides. You said this is the first time we did this, you're probably right because this is the first time I've set on this Board that the sign was never posted. It was brought to our attention after that. Now I feel that it's only right all people should have a right to speak just like you're speaking today. Again, I personally, I have nothing against that project. But you know maybe, I don't live there. Maybe they could shed some more light, the people that live in Quail Hollow and there have been a lot of calls from there. I think it should be properly done, I think it's very clear the only thing to do was once we found out, I think it's our obligation to let everybody have a chance to speak. So that's why I voted for this Resolution.

Clark: Okay. Thank you.

Burger: Before I start on that, Mr. Meeks apologized for me for being late and I would like to apologize to the people in the room, too. I think it's the first time in six years that I've been a few minutes late. But, basically, to repeat what John said, I felt very comfortable with my vote on the situation that occurred. And I personally was not aware of the fact that a sign needed to be posted and from checking back and doing my homework, I was informed by the zoning official that other projects such as this did have signs posted. Some how or another, this was overlooked and unbeknownst to us until someone brought it to our attention. Obviously, there weren't very many people there that were opposed to it and I can understand why. You have the three residential homes there side by side. The house on the corner is being used for a business by a person. And I thought if anybody would have been opposed to it, it would have been the occupants of that building there. I think they went back and came up with a drawing of how they wanted to build this business, means of ingress and egress, and so forth. I felt very comfortable that somewhere down the line with all the medical buildings and other things that extend south on Frank that is going to be involved. Listening to people the night of the meeting, I felt very comfortable with the situation until it was drawn to our attention that there was no sign posted. And I think, I agree, maybe not in the same words but I personally felt, right or wrong, we should go back and follow the proper format, post the sign and have another meeting if we have to, and then have the people show up here to voice their opinions right or left. I think my conscience would be clear if we did follow those procedures and I'm not so sure deep down in that we will get the same results. But I can't remember back when something like this has happened as far as following the proper steps. That's why I'm in favor of going back and going through this procedure again.

Clark: Again, I made the statement, I'm a lifetime resident of Jackson Township and I never once have seen a sign posted on any property for a zoning change. It must be a really secretive type thing that goes on. I'm not quite sure.

Meeks: Actually, it's not. And actually the sign is quite large. It's a white sign with red letters and it stands on two four by four posts. Here's the problem. Out of this we see where we put the burden to place the sign on the applicant. Okay? We're going to change that and take that out of the applicant's hand so this mistake doesn't happen again and put it back in our lap where it

needs to be. When it is applied for and we know the change has been asked for it will be up to the Zoning Department to place that sign so that we know that the sign is in place. There is no guessing, you know the check and balance needs to be a little tighter. We understand that.

Clark: My final request would be for you to change your decision today based on the correct thing to do.

Meeks: I appreciate that.

Gonzalez: Could I respond?

Clark: Sure.

Gonzalez: Would you feel better if I walked down there and stood on that side? I'll be glad to come around and stand on that side.

Clark: Okay.

Gonzalez: Are you okay with me sitting here?

Clark: Sure, go right ahead and speak, sir.

Gonzalez: I was speaking and the reason I did that that night was, I am an elected official and I didn't know that was on the agenda, excuse me for not knowing; doing that was bad on my part. I saw the agenda and I couldn't tell by looking at it, nor my wife and I have a huge impact from that by where I live. Do you know where I live?

Clark: I sure do.

Gonzalez: That would affect me a great deal. And my arguments about my house and the rezone, I was trying make the point that was when I tried to rezone my house, I never tried to rezone it to what these three were. I was going for B-1, leaving it a house and operating an accounting business out of the house. That's how that whole side of that street is. It's B-1, there's not one piece of retail on that side of Frank, all those businesses you mentioned are on the other side of the street. The drop dead line in Jackson Township retail has always been Frank Road. Now we're crossing it. I have a huge problem with that personally. And you're right, I mean, it's going to be a big traffic nightmare when Shuffel opens up, they're going to take our land for streets and they're going do a lot there, sure. But that intersection and turning that into retail is going to make it far worse on all of us that have to travel there. I think as a resident I still have the right to express my opinion of them. I'm sorry if you don't think I do but I feel real strongly I do.

Clark: I didn't say that. I didn't say that.

Gonzalez: And as far as the sign I can tell you that this Board, I'll tell you all a story that happened just recently. The Township owns the lot on the corner of Portage and Lake

O'Springs, you know where all the construction stuff was at during the. . . Well township owns that corner they own that and the Trustees had purchased that lot while that construction was taking place. In order to try to make the taxpayers as much money as they possibly could, they were going to change that zoning to duplexes on that corner. So they could sell a couple lots and the Township could make more money for that. The entire street is duplexes on that side. But you know what, that sign went up and people saw that sign and they came in here and they complained and they wrote letters and they made phone calls and they said we have enough duplexes, we don't want, it's too hard to get in and out of there and the Trustees withdrew that zoning. So that sign does play a big difference in there. They literally pulled that zoning off the board and went back to residential and that was only what three months ago, Neal?

Fitzgerald: About six months ago.

Gonzalez: Six months ago. So it does have a play in it. Lastly, the argument with my house is when I tried to do that, the allotment, the Song Bird Allotment, there were a hundred people in this room fighting any type of encroachment into their residential area. Nobody knew that took place, you wouldn't believe how many of my neighbors have come to me and said, what are you doing. I'm not doing anything, I pay the bills, I don't make those decisions anymore. But I'll guarantee you they would have shown up. So the Trustees only heard a one sided argument. There was nobody here in opposition, you're absolutely right but I'll guarantee you if they do the process right this room will be full.

Clark: Well you know what, I think we're talking about two different situations because, Randy, where you live its total residential. On the three properties that we're speaking of

Gonzalez: No it's not. Ben Wyles has had Wyles Heating and Cooling right next to me for years.

Clark: That's grandfathered in. That's since the beginning. Okay? But what I'm telling you is there is no residential on Frank Road right there.

Gonzalez: There isn't any retail on that side either.

Clark: There are three houses. There is business all the way up the street.

Gonzalez: Is there any B-3 any retail business?

Clark: All three corners are full of it. So why

Gonzalez: Where? (Indecipherable) on the corner, Fishers.

Pizzino: He's talking about across the street.

Gonzalez: Oh, now it's the other side.

Clark: Fifth Third Bank, Rockne's, and Gander Mountain, you know, Sam's Club, Home Depot, BJ's, the whole thing.

Pizzino: (Indecipherable) talking about an industrial zone.

Gonzalez: I agree with you.

Pizzino: On the other side of the street they're in the industrial zone.

Gonzalez: I'm not arguing that.

Clark: But the business we're speaking of is a retail business. It's just for physical size. That's the only reason that they're going for the B-3.

Meeks: Right, that's because our own zoning regulations would not require that square footage of a building in a B-1 or B-2.

Clark: I'm in the construction business, and another thing is as I look around the community there should be architectural control over things. Okay? Many times people take the cheap way out. Okay? So you have businesses that have metal siding on and build a pole building and do this and that. Right now let's just look at it, take everything else away, and let's look at it what is the esthetically going to be great for our community. Those three little houses look ridiculous where they're at and a beautiful Walgreens building is going to enhance the area, people coming from out of the area wanting to move in. It's all a part of it. It looks like a properly planned community versus, you know, the little tiny bungalow that's left after the whole commercial has built all the way around it. So, you know why we would be opposed to it and send that message out to Walgreens, send it out to future businesses wanting to be part of our community, when we are in a desperate recession in this area. Our housing is at 50% under the construction of previous years. We have more foreclosures in the community that we have had in record time. And we have a business that will bring income to the community, would employ dozens of people, hundreds of people that would service and supply Walgreens, it's a business that does not add more traffic. It's a business that's convenient, it's a business that people are driving by, people from Kent Stark up there, driving down the road, ah pull in, get some film. Back out. They're already there, it's not a destination – I'm going to Walgreens – you know, it's you drive by and conveniently go in. The traffic, the percentage would be minimal, what more traffic that it could possibly create. And the damage is done, the area is built up, the area, what it is it's going to get worse, guys, and it's going to be from the Shuffel Road off ramp and all the way up to the airport. And we should embrace it. We should welcome it. It's going to strengthen our community and help all of us financially in every possible way.

Gonzalez: We're going to have to agree to disagree between you and I on this situation. But you're making my whole argument for me. My argument is this argument should have been made. It should have been done at a public hearing. I should have voiced my opinion and everybody else in that area that it has an affect on, they should have been able to

Clark: It was done.

Unidentified: May the applicant speak just very briefly?

Pizzino: No. Let this gentleman finish and then we'll. . . This is really not a public speaks and we're getting into this. We're not and let me just say this, we're not, everything you're saying I have no problem with. I just want the procedures followed properly. The sign was not posted, Walgreens did not post that sign, and the people for whatever reason did not get the same opportunity that the people did that night. We heard one side of it, it was a great side, and I don't know if I'd change my opinion or not, but I owe it to everybody in this Township who want to voice their opinion one way or the other to hear their opinion. Now again we wouldn't even be up here if they had followed that procedure. The procedure wasn't followed. The only thing this Board is asking Walgreens and their people to do is to follow procedure and do it right and give everybody the opportunity and I know you'll be there. I'm not disagreeing with you, I don't think Mr. Meeks or Mr. Gonzalez or anybody is disagreeing with you but I mean

Clark: That's why you made the decision you made earlier.

Pizzino: What we want to do is we want to give everybody the same opportunity that the other people had. That's all we're asking. And again I appreciate you coming in and I just think we're debating a totally different issue. The issue here we're trying to resolve is people felt the sign wasn't posted and, right or wrong, were they trying to hide something, was it just an honest mistake, whatever the problem was, I can't answer that and again I believe it was an honest mistake, too, just give everybody the same opportunity that you have right now. And again that's all of it. And I appreciate you coming in.

Clark: Okay. Thank you, gentlemen, for hearing me.

My name is Mike Chuparkoff and I'm with the TRC Realty, the applicant. I realize we're all professional here so I'm going to try to be as respectful as I can of this Board, because we're all professionals and hopefully, my upsetness of what has transpired and how I think we've been treated won't come through too much. I'm not going to debate the merits because the Board has already ruled on the issue. I would just like to state that quite frankly I'm offended and find it very disrespectful that you would entertain public speaks after you've already ruled on the motion and we didn't have any debate, we didn't have any discussion. I challenge anybody on that dais to look in your zoning resolution book, give me a code section, give me a paragraph that says that you can do what you're doing. And you're challenging us to say we didn't follow your policy and procedure, we did. It's you, it's your own zoning inspector who has not followed the policy and you're holding that against us. And you guys have ruled, you apparently don't want a debate or discuss the merits because you've already ruled in about two minutes and then you put up the image that we're going to have public speaks and entertain everybody's interest. And I just quite frankly find that a little bit

Pizzino: The only reason we had public speaks was to give this man the opportunity. We weren't going

Chuparkoff: I appreciate that.

Meeks: I'll tell you exactly why I let our residents speak. Because they are our residents and that is why we're here today, that is how we got on this Board, is because our residents think enough of us that we can lead this ship in the right direction in the positive sense and that's why we're here today. So out of respect for them it is not going to do anything to change our minds, at this point in the juncture

Chuparkoff: Isn't that disrespectful in and of itself for you to say you were put there by these people here who three weeks ago you told them you voted for the resolution and isn't it disrespectful for you to allow them to get up and speak after you've already voted?

Meeks: No it is not, sir.

Chuparkoff: I find that disrespectful.

Fitzgerald: Can I say something?

Meeks: Yes.

Fitzgerald: A legal question was asked of me, I'm the Law Director of the Township, and you're an experienced attorney, you may even have been a governmental lawyer and I gave yourself, Attorney Gruber, there was an abutting property owner, Attorney Mr. Williams, Attorney Woolbert, opportunities to respond to the legal question and I conferred with the law firm of Baker, Dublikar and I rendered my legal opinion and the Trustees, I recommended a course of action and they've accepted that. They're not lawyers. They're not supposed to, that's my job.

Chuparkoff: I understand that.

Fitzgerald: Not to be disrespectful to you but that's normally how that's done. You don't have public debate on a legal question. You had your right to debate it, Attorney Chuparkoff.

Chuparkoff: How about if you're wrong and I'm right.

Fitzgerald: What?

Chuparkoff: How about if you're wrong and I'm right. I didn't get a chance to. . .

Fitzgerald: You indicated the other day that you would file a lawsuit and the court would decide that.

Chuparkoff: But these gentlemen ultimately at this stage have that decision but they didn't want to entertain that. So, again, we can debate the merits. I don't think, respectfully, that this Board wanted to do that and I just wanted to take exception, quite frankly, to what's transpired and what's happened today. We're going to have to do whatever we have to do to exercise our rights and remedies and protect our interest.

Meeks: Anyone else?

Pizzino moved and Burger seconded a motion to adjourn.

**3-0 yes**

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**Steven Meeks**

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**Randy Gonzalez**