

Swan Creek Township

Zoning Commission Meeting

Record of Proceedings
APRIL 23, 2008

Meeting was called to order at 6:00 p.m. by Chairman Walt Lange

Roll call was taken by Chairman Walt Lange

Members present: Chairman Walt Lange, James McConkey and Robert Westmark

Township Officials & employees present: Trustee Holdeman, Trustee Wiland, Trustee Leu, Dawn Wheatley, Fiscal Officer, Christine Lauch, Administrative Assistant

Visitors: Steve Brown, Fulton County Regional Planning Commission, and Larry Freestone

Welcoming of Robert Westmark to the Zoning Commission Board

The meeting was called to discuss proposed changes to the current Swan Creek Township Resolution listed below:

Item #1:

- Proposed Zoning Resolution Amendment ~

Non Conforming Validation Certificate 100-6.7 - #4, Page 16

Add the word "AND" and Change the word "SHALL" be renewed to "MAY", so the Resolution reads as follows:

4. *The Validation Certificate issued by the Zoning Inspector for nonconforming use shall state the use and may be continued for a period of twelve (12) months. The Validation Certificate may be renewed.*

***2-26-08 Request for Opinion of Fulton County Prosecutor & 3-13-08 Legal Opinion #08-02, attached.**

Walt Hallett, Zoning Inspector explained that the Resolution states that he SHALL renew a Non-Conforming Use Certificate, however, 100-6 states; A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination, shall not be extended or enlarged. If these nonconformities were to be in violation of this Resolution as it is, the Zoning Inspector can not deny the certificate because of the word SHALL. The Zoning Inspector needs to have regulatory ability. The current language doesn't have outright denial ability, however it implies it in Article 100-6 and then it becomes an interpretation issue. The word SHALL means mandatory, the word MAY gives room for denial if in violation. The 1982 through 1987 Resolution had the word MAY.

Walt Hallett expressed his letter for Legal Opinion presented to the Fulton County Prosecutor's office and Mr. Paul Kennedy, Assistant Prosecuting Attorney's, Legal Opinion #08-02 which states Mr. Kennedy's suggested language.

Mr. Lange read the suggestion to the Public;

The Validation Certificate issued by the Zoning Inspector for nonconforming use shall state the use and may be continued for a period of twelve (12) months. The Validation Certificate shall be renewed, provided that the existing use remains legal or in compliance with any other ordinance of law, or in the case of a building remains fully compliant with the Building Code of the Zoning Resolution in effect at the time its construction or alteration.

Chairman Lange asked Walt Hallett if he feels the language of the Opinion is acceptable to him. Walt Hallett stated that he does not see a problem with the suggested language because it is not changing any rules and does not make any current nonconformities in any direct violation to lose their status.

The Zoning Commission Board discussed the current versus the past 1982-1987 Resolution language.

Bob Westmark moved to change the language of the Zoning Resolution of Article 100-6.7 #4 to the suggested language above. James McConkey 2nd the motion.

~ Roll Call: Bob Westmark - yes, James McConkey - yes, Walt Lange - yes

Item #2 -

- Proposed Zoning Resolution Amendment ~
Definition of "FARM" 100-23 - Page 91

Striking of the portion of the definition which states "hereunder unless combined with bona fide farm operations on the same continuous tract of land of not less than 20 acres." ***See 2-27-08 & 3-17-08 Letters to Board of Trustees from Walter Hallett, III, Zoning Inspector & Legal Opinion #08-05, attached.**

Chairman Lange read the Farm Definition.

Walt Hallett, Zoning Inspector, stated that he felt this section of the Resolution should be removed to ensure that owners of 20 acres of zoned land cannot farm strictly for the reason of becoming Agriculturally Exempt, then creating a mining operation. As the Resolution stands it cannot be prohibited nor regulated. Article 100-5.2 #15 Which reads; "*This resolution does not confer any power on the Board of Township Trustees to prohibit the use of any land for agricultural purposes or the construction of accessory buildings.*"

Chairman Lange referenced Legal Opinion #08-05 which states that Assistant Prosecutor, Paul Kennedy, confers that portion should be removed.

Steve Brown, Fulton County Regional Planning Commission, said he did some research on that section and found that it was created in the 1970's. He agrees that it should be removed also.

Bob Westmark moved to change the language of the Zoning Resolution of the farm definition' 100-23 striking the words **unless combined with a bona fide farm operation on the same continuous tract of land of not less than twenty (20) acres.** James McConkey 2nd the motion.

~ Roll Call: Bob Westmark - yes, James McConkey - yes, Walt Lange - yes

Item #3

• Wind Turbines

***See Draft by Steve Brown, Fulton County Planning Commission. Submitted to FC Prosecutor for Opinion by Walt Hallett & 4-7-08 Legal Opinion \$08-07, attached**

Steve Brown, Fulton County Regional Planning Commission, stated that they are working together with several counties on the construction of language for the allowance of wind turbines. They are still in process of accessing how it should read. Wood County has a potential draft constructed and has consulted the Wood County Prosecutor (Legal Opinion attached). Steve stated that wind turbines and solar panels are a growing trend and there is residential as well as industrial concern for the locations and size of the wind turbines. There is a potential of them falling onto surrounding properties. Mr. Brown explained his draft resolution and stated his proposed height, acreage and location of a “clear fall zone”. Mr. Brown informed the Board that he is working on a potential draft ordinance not to be regulated by the Public Utilities Commission if the wind turbine is under 50 mg watts, allow it not be considered a public utility.

Trustee Leu stated his concern about the “FARM” resolution being only 5 acres. He said there is the potential of someone building a “Solar Wind Farm” with the requirement of having only 5 acres to do so. He feels that there needs to be more than a 5 acre requirement to define what a “FARM” is. Trustee Leu also stated that the wind turbines should have self supporting pedestals, not guide wires due to the noise issue.

Discussion of the placement of the wind turbine in the Zoning Resolution.

Walt Hallett, Zoning Inspector, stated that if this were to be a Conditional Use it would give the Board of Zoning Appeals regulation and allow for public input. He stated the process of the Board of Zoning Appeals hearing is stated in the Zoning Resolution. Steve Brown agreed that Conditional Use is the way to go.

Walt Hallett stated the difference with a Variance is that hardship would have to be proven. It is more difficult to get a Variance approved than a Conditional Use, however, if the standards are met the Board of Zoning Appeals would have to approve it or it could be legally appealed if it were to be denied. Steve Brown said as with any permit the requirements have to be met and the language would set the requirements.

Standards and requirements were discussed.

Height of the wind turbines discussed. Walt Hallett explained that when the airport sold the HUB homes the purchasers unknowingly gave away their rights to the airway above their homes.

Walt Hallett said that he has already been asked about the Township’s regulations on a solar wind farm. He informed the resident that there is nothing currently regulating them, however, it may be implemented at a later date.

Steve Brown stated that the County will be doing some testing on the wind turbines to see if they are even feasible and that he is trying to get public input. If the Board of Zoning Appeals has any input he will change his draft accordingly.

Walt Hallett stated that the Fulton County Prosecutor said to regulate it as a structure for the time being until a resolution is constructed. The current height restriction is 30’, 21/2 stories, with maximum ground coverage of 30%, therefore allowing for a Variance to be presented to the Board of Zoning Appeals or it would have to be considered a solar farm in an AG/RE district.

Chairman Lange asked Mr. Hallett if a solar panel generates enough energy to be considered a public utility. Mr. Hallett stated he didn't know yet.

James McConkey questioned that if a few families wanted to go together on the construction of a wind turbine how it would be regulated if it stayed under 50 mg watts. He stated that the Board needs to consider 5 years from now, not just the present and that there is a great amount of hardship now. If it was regulated by a Conditional Use and the resident was found in violation would they be forced to tear it down. If so, the money to tear it down has to not be taxpayer money to do so. Walt Hallett referenced Article 100-5, #6 which states that the Zoning Inspector shall make an inspection of a structure to be moved to ensure that it is structurally safe and will not adversely affect the welfare of the Township. He stated that the Township can require a bond. Article #6 may have the ability to assist should it ever go to court.

Mr. McConkey stated he would like to have long term language.

Chairman Lange questioned Walt Hallett as to the location of the language in the Zoning Resolution. Mr. Hallett said the AG/RE Condition Use language is on page 26. It would have to be added as #13. He said he prefers to have solar panel energy as a separate item.

Non zoned areas discussed. There is no authority to regulate the wind turbines now; however, the Board of Trustees could implement a policy as they did for Junk Motor Vehicles allowing the ability for regulation.

The Board's consensus was to table this item until Steve Brown has the opportunity and time to research it more. He will notify the Township when he is finished to set up another Zoning Commission meeting to consider the language and implement a resolution.

Walt Hallett asked Mr. Brown if the County has any information on corn burner regulations. Mr. Brown told Mr. Hallett that he will get him information.

Item #4

- Parcel Splits 20 acres & smaller - proposed amendment to state *"shall have continuous, non-interrupted frontage to prevent non-buildable lots"*. ***See 2-28-08 Request for Opinion of Fulton County Prosecutor & 3-18-08 Legal Opinion #08-04, attached.**

Chairman Lange reiterated the concern about having continuous frontage for a lot split that was discussed at the 8-22-08 Zoning Commission meeting. He feels there should be no splits that create "flag lots". Steve Brown submitted proposed amendment language (addition to the resolution) which reads **"All parcel splits (20 acres and smaller) created after (date) shall have continuous (non-interrupted frontage."**

The date of adoption will be inserted so there will be no Non-Conforming issues for prior situations.

The Board discussed placement and instructed Christine Lauch, Administrative Assistant, to place the suggested, proposed language in the Zoning Resolution as follows: 100.84, page 32, under *"Minimum Yard Setback in Feet"* : the addition will be placed under *"Rear - 40 Feet"* and before *"Setback from Ditch"*, A #4 footnote of **shall have continuous non-interrupted frontage** will be created and placed in Article 100-18 in "Minimum Lot Size", and an addition of **non-interrupted frontage** will be placed in the "Definition of Lot Frontage" after the words *"The front of a lot shall be constructed to be the continuous* and before the word *"portion"* on page 94. Bob Westmark moved to change the language of the Zoning Resolution to the suggested language above. James McConkey 2nd the motion.

~ Roll Call: Bob Westmark - yes, James McConkey - yes, Walt Lange - yes

Item #5

- Proposed Zoning Resolution ~
 Addition to Article 100-20.1 "Administration & Enforcement" Duties of the Zoning Inspector, Page 79 - Allowing *"Zoning Inspector to make recommendations of changes that he sees fit to the Zoning Commission & the Board of Trustees"*

Discussion of placement and language.

Chairman Lange and the Board agreed this should be placed in Article 100-20 "*Administration and Enforcement*". A 5th paragraph will be created and inserted which reads:

"The Zoning Inspector may make Zoning Resolution amendment recommendations, which he sees fit, to the Zoning Commission & the Board of Trustees"

Bob Westmark moved to change the language of the Zoning Resolution to the suggested language above. James McConkey 2nd the motion.

~ Roll Call: Bob Westmark - yes, James McConkey - yes, Walt Lange - yes

The additional suggestions/comments of changes from the Zoning Inspector to the Zoning Resolution were tabled for the next meeting so that the Board has ample time to review each item.

To be placed on Old Business: Wind Turbines, Solar Panel Energy, Corn Burners, Minutes

Bob Westmark made Motion to adjourn, 2nd by James McConkey

~ Roll Call: Bob Westmark - yes, James McConkey - yes, Walt Lange - yes

The above suggested amendments will be presented to the Board of Trustees.

Meeting Adjourned: 7:40 p.m.

Zoning Board Approval of Minutes:

_____	_____
Walter Lange, Chairman	
_____	_____
