

SWANCREEK TOWNSHIP ZONING BOARD OF APPEALS

May 17, 2007

Record of Proceedings

Board members present: Bill Grimsley, Darrin Gramling & Tom Baker, & David Smith, Alternate.

Elected Officials: Phil Wiland, Ron Holdeman

Employees: Walt Hallett, III, Zoning Inspector
& Christine Lauch, Administrative Assistant

Visitors: See sign-in sheet

- Meeting was called to order at 7:00pm by Darrin Gramling

- Bill Grimsley lead in Pledge of allegiance

- **New Business:**

- Ebraheim Variance Permit Request

~ Roll call: Tom Baker – yes – Recused himself from voting, but will go through the Standards with the rest of the board.

Darrin Gramling – yes, Bill Grimsley – yes, David Smith - yes

- **Ebraheim Variance Request:**

Mrs. Ebraheim is requesting a Variance for a 4.5 acre pond. The Ebraheim's have stated that no soil will be removed from the property, it will only be used for fill dirt for low-lying areas that they call "little swamps" on their properties.

- Walt Hallett, III, Zoning Inspector: Stated his case –

The Ebraheim's requested a zoning permit to dig a 4.5 acre 'pond'. The permit was denied by virtue of resolution number 100.82-10; A, B, & E – for residential use, restricting a pond being over $\frac{3}{4}$ of an acre, and dirt being redistributed on other parcels. The request meets the 5 acre minimum property requirement; however, there is also no dwelling on the parcel for residential use.

- Darrin Gramling questioned Walt Hallett, as to the language of the resolution regarding "pond" or "lake", if it falls under mining and if it follows EPA guidelines because of the size. Walt Hallett answered that if the soil is not being removed from the parcel the Ebraheim's would not need a mining permit. Walt Hallett described the difference for a pond and a lake as stated in the resolution for size of construction.

- Darrin Gramling asked if we have a similar case in a previous year, from a previous owner of this property. Walt Hallett stated that it cannot have any barring on this case.

- David Smith asked Walt Hallett if the entire 73 acres that the Ebraheim's own is all the same zoning. Walt Hallett said "yes, it is all AG/RE District".

- David Smith asked how deep the lake would be. Walt Hallett quoted the resolution for the required depth being 17'. David Smith asked if the fill dirt will be elevating the grade. Walt Hallett stated that surrounding issues could occur if the grade was elevated to high, but that the resolution 100-8.2 F states requirements of grade.

- Tom Baker asked Walt Hallett to explain the Fulton County Auditor's aerial view of the adjoining property owned by the Ebraheim's, which has another 2 ponds. He wanted to know approximately how much larger it would appear in comparison to the existing bodies of water.

- Tracy Ebraheim sworn in to testify:

- Darrin Gramling questioned Mrs. Ebraheim as to why she needed a lake this size. Mrs. Ebraheim stated that she also has parcels that abut to this parcel and that there are extremely low areas. These areas are holding sitting water. Their vehicles get stuck in the muck and that they need this fill dirt to fill in these areas.
- Darrin Gramling inquired as to what if they did not need that big of a lake, the use of pumps, and excavation trucks, etc. and if she planned to only use what was needed to fill in the low areas.
- Mrs. Ebraheim said they would only use what was needed.
- Darrin Gramling asked what her future intent was. Mr. Ebraheim said she plans to build a home at 2400 Co. Road D.
- Mrs. Ebraheim inquired about combining her parcels and said that Tim Hallett told her there was no use in combining her adjoining parcels unless she was selling it.
- Darrin Gramling asked her if her intent was to just leave it vacant and fill in the low areas and build on the County Road D parcel only. Mrs. Ebraheim she doesn't plan on selling or leaving it vacant. She said a lot of the property is under water and it needs to be filled in.
- David Smith asked Mrs. Ebraheim how much fill dirt they plan to redistribute and if this would cause flooding in the neighboring yards. Mrs. Ebraheim stated that they wouldn't be going above natural grade, just filling in the areas that are very low and that they paid over \$20,000.00 for fill dirt when they built their barn. She made the point; why pay for dirt when they can just move their own.
- Bill Grimsley stated that when Mr. Parker owned the property he filled in a natural ditch that was there and it messed up the drainage, causing problems of flooding.
- Darrin Gramling stated that one of their options possibly would be to dig another ditch if that would take care of some of the flooding problem.
- Ken Poka was sworn in to testify:
- Mr. Poka stated that Mr. Parker left the land very low and that there is nowhere to pull dirt from on the land to fill these areas.
- Tom Robison was sworn in to testify:
- Mr. Robison wanted to know if they will need pumps, do they expect to mine the sand, will there be trucks hauling this away on the roads and mentioned the lake would be a nest for mosquitoes. Mrs. Ebraheim, again, stated the sand will stay to only be used as fill, she wasn't sure about the need for pumps and explained that she owns the land straight through, so there will be no trucks using the roads, they will stay on her land.
- Darrin Gramling stated it would be a deep lake, so that it wouldn't dry up and become a mosquito nest.
- Mr. Robison stated that it will be impossible to dig without pumping, he knows, he works for the Wylie's. Mrs. Ebraheim explained a map of her parcels and stated she would pump to a ditch to the West and said there is also a ditch on the East side.
- Darrin Gramling spoke of keeping the properties natural order and that maybe they should add a tile as well as fill. Mrs. Ebraheim has only owned this property for a year; it has been a very wet season.
- Darrin Gramling asked if they planned to stock the pond with fish, so as it won't be left stagnant. Mrs. Ebraheim said "absolutely and it will be done to quality".
- Mary Grimsley sworn in to testify:
- Mrs. Grimsley spoke on behalf of the construction of the Ebraheim's lake. She stated that she lives across from the Ebraheim's property located on County Road D and said that since the Ebraheim's have purchased the property they have done nothing but

improve it. She said that the last owner was suppose to address the lake he constructed so that there were to be no washouts and never did. Darrin inquired as to what improvement this will make. Mrs. Grimsley stated that they will fill in the ruts; that the garbage man cannot even go through there.

- David Smith asked if it was mosquito infested already because of the sitting water and stated there would probably be fewer mosquitos if the laying water was filled in. Mrs. Grimsley said “yes, it would be a big improvement”.
- Rick Swank sworn in to testify:
- Mr. Swank questioned if the Ebraheim were going to make sure they are doing the proper work to ensure that there is no future problems. Do they have a site plan, who have they contacted i.e. DNR, EPA, etc and have these entities have done anything in regards to the lake? Questioned whether or not the point well will run dry if they dig and stated that a 5 acre pond is a lot of dirt, is seriously a low line and possible deep elevation.
- Darrin Gramling stated DNR has a formula they work with regarding depth, slop, and ratios.
- Tom Baker asked if this land is considered wetlands and if it would endanger wildlife/species.
- Walt Hallett stated that the EPA would have to take a sample of the surface water and believes it is sent to Columbus for testing and that the first step to the Ebraheim’s Variance Request is to present their case to the Board of Zoning Appeals for local zoning regulations and that the Ebraheim’s would have to their own research as to what they would need further and abide by their terms. The board can make conditions that the Ebraheim’s follow up with the appropriate entities also.
- Darrin asked if they can attach the conditions that they provide proof that the Ebraheim’s contacted the engineer’s office or have a soil test done. Walt Hallett said “yes”.
- Joe Farkas sworn in to testify:
- Mr. Farkas asked how the digging will affect the water table and wells. He stated that when the previous owner dug the existing ponds and tried to enlarge a pond he had point well problems.
- Mary Grimsley stated that when they dug the sand pit across from their property, they had plenty of water.
- Mr. Farkas said that is different because the water travels different routes.
- Don Poka sworn in to testify:
- Mr. Poka feels it would only improve the property because there are a lot of low lying areas and that it would only help with the mosquito problem.
- Diane Gray sworn in to testify:
- Ms. Gray walked back during the construction of the Ebraheim’s barn and agrees that it is swampy because the ditch was blocked on the East side also. She feels that it would be an improvement and be beneficial. She feels strongly about not removing the dirt from the property, only to be used to improve.
- Darrin Gramling asked if the fill would potentially cause run off and cause more water. He said that the water needs to go East & West and North & South in the ditches. Ms. Gray said maybe the Ebraheim’s can make an arrangement with the board to reopen these ditches since they will already have the equipment to do so.
- Discussion of where ditches are located and if it drains through the ditch to culverts.

- Tim Kolodziejczyk sworn in to testify:
- Mr. Kolodziejczyk thanked the board for the notice in the newspaper. He questioned our policy of sending out letters to adjacent property owners because he did not receive a letter. Chris Lauch, Administrative Assistant, told Mr. Kolodziejczyk that letters were sent to all adjoining and adjacent property owners to the Ebraheim's County Road E address because that is the property stated on their Variance Request form, not the County Road D parcel.
- Mr. Kolodziejczyk asked what the Board of Zoning Appeals policy was for having a neighbor of the Ebraheim's sit on the board that is in favor of the Variance Request to be approved. Darrin Gramling reiterated that none of the board members are neighbors to the County Road E address.
- Mr. Ebraheim sworn in to testify and wanted to address the neighbor's concerns. He stated that he only wishes to be a good neighbor and improve his property and surrounding areas. He said that it is slippery, muddy and very low land. He said when he gets a call from the hospital he does not want to get stuck in his vehicle in the mud. Mr. Ebraheim said that he paid the Amish about \$22,000.00 for fill so that he could build his barn and another \$6,000.00 for fill around the barn.
- Mr. Ebraheim only wants to enjoy what they have done with his wife and kids, but that it is just too slippery. He worries about vehicles. He reiterated that there will be no mining, just redistribution of the soil. He doesn't want to cause any harm to anyone. He wants to go "by the book" so that it is beneficial to everyone involved and wishes to enjoy his goats and sheep. He stated that he will only use 2 acres of the dirt if it is enough, but wants the ability of the 4 acres requested. He would like peace and said there will be no noise from commercial trucks as he will be staying on his property, not using the roads and will abide by all rules and regulations.
- Tom Baker abstained from voting, but will give opinions on standards.

• Standards Set Described in Article 100-21.5 list.

#1. Location, size and character as it relates to the development of the surrounding neighborhood and regulations of applicable zoning district.

Bill Grimsley – Important because of sitting water that is there now causing mosquito problems.

Darrin Gramling – Not size or character for district.

Tom Baker – Larger than maximum size allowed and no dwelling.

Bill Grimsley – yes, David Smith – yes, Darrin Gramling – yes, Tom Baker - No

#2. Impact on vehicular and pedestrian traffic.

N/A

#3. Any possible nuisance emanating from the proposed use.

Tom Baker – possible nuisance if property owner has to pump

Darrin Gramling – possible nuisance if land is raised too high and water runs off to neighbors, Tom Baker – agreed

Bill Grimsley – The possibility of run off was already discussed, Mr. Ebraheim ensures that won't happen. It can only help drainage problem – No to nuisance.

David Smith – Provided they fill only low standing water. Could be a problem if too elevated/grade issues, might consider smaller lake.

- Bill Grimsley – Suggested a recess to tour of the property to the board.
- Darrin Gramling – The board needs to take a proper vote if a property assessment is needed. Darrin Gramling asked the board if they felt that was necessary.

- Bill Grimsley – Motion to suspend vote until observation of property, Tom Baker 2nd.
- VOTE: Bill Grimsley – yes, David Smith – yes, Darrin Gramling – No
- Walt Hallett noted that discussion of the case must be when the board returns, in public forum, and that the board members must take separate vehicles to the site.
- Mr. Robison questioned the board as to if they will be making a decision when they return. Darrin Gramling said yes. Mr. Robison stated he felt there is a conflict of interest with a board member being friends with the Ebraheim's.
- Darrin Gramling motion to adjourn 8:15 p.m., Tom Baker 2nd.
- ~Roll Call: Tom Baker – yes, Bill Grimsley – yes, David Smith – yes, Darrin Gramling - yes
- Board of Zoning Appeals members left the Township building to assess the Ebraheim's property.

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- Darrin Gramling - Motion to call meeting back to order 8:55 p.m., Bill Grimsley 2nd
 - ~Roll Call: Tom Baker – yes, Bill Grimsley – yes, David Smith – yes, Darrin Gramling – yes
 - Darrin Gramling – Motion to go back through the standards now that new information has been received by the board upon inspection of property. Tom Baker 2nd
 - ~Roll Call: Tom Baker – yes, Bill Grimsley – yes, David Smith – yes, Darrin Gramling – yes

- Standards Set Described in Article 100-21.5 list.

#1. *Location, size and character as it relates to the development of the surrounding neighborhood and regulations of applicable zoning district.*

Darrin Gramling – in lieu of what he saw at the property, he felt the lake would be harmonious. Bill Grimsley agreed, Dave Smith agreed, Tom Baker agreed.

#2. *Impact on vehicular and pedestrian traffic.*

N/A – all agreed

#3. *Any possible nuisance emanating from the proposed use.*

Tom Baker – no nuisance as long as the Ebraheim's follow the guidelines of the resolution regarding grade, etc. Dave Smith agreed, Bill Grimsley agreed, Darrin Gramling agreed.

#4. *Location, height nature of buildings and other structures as they relate to appropriate development and use of adjacent lands and buildings and how the proposed use affects values of other lands.*

Darrin Gramling – After reviewing the property his concern of run off to neighbor's property not a concern. However, the board needs to discuss Conditional Use structure for not meeting the required size for a pond. Terms of construction will be deemed by the conditions set forward in the Conditional Use section of the Resolution for a lake.

Tom Baker agreed – conditions for side slope, etc. stated in the Resolution under Conditional Use.

Walt Hallett described the Conditional Use section of the Resolution verses the Variance section. Condition Use is for a lake. Walt Hallett described the terms of requirements and stated that it is geared towards mining; however, in this case it is more for the size of the body of water the Ebraheim's are requesting.

Willy Gombash sworn in to testify:

Mr. Gombash stated that the Ebraheim's may not need the entire 4 acres, that maybe the board should decide on an arbitrary number. Darrin Gramling stated the need to accept or deny what is stated on the Variance Request by the Ebraheim's.

Darrin Gramling does not feel the construction will have an effect on the values of other lands - All agreed.

#5. Whether the proposed use will be harmonious with the physical and economic aspects of adjacent property.

Tom Baker stated the physical aspects are harmonious, economic aspects N/A -All agreed.

#6. The necessity of the proposed use for public convenience at this location.

N/A – All agreed

#7. Will the proposed use protect the public health, safety and welfare?

Tom Baker – as long as all the guidelines of the Conditional Use are followed regarding lockable gates, etc. Darrin Gramling agreed should be protected. – All agreed.

#8. The effect the proposed use will have on the value of other property in the area in which it is to be located.

Darrin Gramling – Could possibly raise the value if the Ebraheim’s fix the ditch that was filled in and take care of drainage of the other ditch on the adjoining neighbor’s property. The elimination of mosquitoes is also of value.

- Walt Hallett explained the difference of a Conditional Use permit and a Variance permit

- The board agreed on the following conditions:

1. The soil cannot leave the Ebraheim’s adjoining parcels.

The board made a condition that the Ebraheim’s may have the use of the dirt to be place on the parcels that they own to the date of this hearing, no future parcels purchased.

2. The Ebraheim’s must comply with any/all agencies; Federal, State, and Township authorities and the terms for construction. The board agreed that the stipulations set forth by the Condition Use regulations should be implemented and the Variance was needed because there is no dwelling.

3. There shall be no trucks using public roads. The trucks must stay on the Ebraheim’s parcels for the transported material.

- Darrin Gramling restated to refer to 100.83 of the Resolution.

- Darrin Gramling – Motion to adopt the terms and requirements stated in the Resolution 100.83 for Condition Use, Bill Grimsley 2nd.

~ Roll Call: David Smith – yes, Bill Grimsley – yes, Darrin Gramling – yes

- Bill Grimsley - Motion to amend Variance and grant a Conditionally Granted Variance, Darrin Gramling 2nd

~Roll Call: Bill Grimsley – yes, David Smith – yes, Darrin Gramling - yes

Old Business:

- Tom Baker - Motion to not read the April 19, 2007 Minutes out loud, Darrin Gramling 2nd.

- Darrin Gramling - Motion to approve the Minutes of April 19, 2007, Tom Baker 2nd.

~ Roll call: Bill Grimsley – yes, David Smith – yes, Darrin Gramling - yes

- Tom Baker - Motioned to adjourn the meeting, Darrin Gramling 2nd

~ Roll call: Bill Grimsley – yes, David Smith – yes, Tom Baker – yes, Darrin Gramling - yes

- Meeting adjourned at 10:00 p.m.
