

**Hiram Township Board of Zoning Appeals
Regular Business Meeting
October 19, 2016**

Board Members: Chairman, Janet Pancost, Gary Bott, Wendell Schulda, Tom Franek and Bette Gualtieri.

Public Present: None

Janet Pancost called the meeting to order at 6:30 p.m. and stated that we would wait five minutes to allow for the remaining Board members to arrive.

(Five minute wait)

Mrs. Pancost stated that a few days after the Hearing (Moore Family Public Hearing of September 28, 2016) she thought "What happens if the farm is sold and the next owner wants to use the airport". Tom Franek added that he didn't like the idea of making a decision that night. He further stated that this is a big decision and he felt differently the day after than he did that evening. He added that it would have been nice to have a day to think it over.

Mrs. Pancost stated that she believes that the concern of a new owner has been covered in the conditions which state only Moore family members are able to use it. Mrs. Pancost shared that she consulted with Prosecutor, Christopher Meduri regarding the matter and non-conforming buildings and pre-existing use. Bette Gualtieri stated that the issue of non-conforming use is granted to a person not to a property. Mrs. Pancost stated that she discussed the issue with Christopher Meduri and that non-conforming use is granted to a property and not the person.

Wendell Schulda stated that Mrs. Pancost's point is well taken. He added that he heard that Clarence Moore had a trust and that his children were to "sell the property within two years and divvy it up". He added that he isn't certain if this is true. Mrs. Pancost stated that may explain why the Moore family is fighting the conditions. Mr. Schulda added that he didn't know who would be in charge of enforcing the trust. Mrs. Pancost replied that Clarence Moore's daughter would be the trustee. Mr. Schulda stated that if the non-conforming use would be passed on to the next owner it would be beneficial to the sellers. Mrs. Pancost added that only Moore family members can use Far View Airport, even if the property sold. Mrs. Pancost stated that Christopher Meduri informed her that additional language could be added regarding the potential sale of the property and that the new owners would have to come back before the Board of Zoning Appeals.

Gary Bott asked how "far does blood go out", "cousin, aunt or uncle?" Mrs. Pancost replied "probably". Mr. Bott added that other family not involved in this could end up with it and it is still by blood. There was a brief discussion regarding the definition of family. Mrs. Pancost added that she isn't sure if there if there is a way to limit this.

Mrs. Pancost further stated that trying to protect the township, uphold the Zoning Code and pay respect to the Comprehensive Plan, the fact that only they can operate and only engine powered aircraft has to be owned by a Moore family member should help but maybe it is not limiting enough? She expressed that she hopes so.

Mr. Schulda added that we granted a non-conforming use with conditions and we could put another condition that the sale of the property makes the non-conforming agreement null and void. Mrs. Pancost stated that they could but have been advised otherwise and added that she would hate to do something that would make it seem like their decision was not well thought out. Mr. Franek added that if in fact they have an airport and should have been granted a permit, this is out of our hands and needs to be sorted out. Mr. Franek added that this "isn't our decision". Mrs. Pancost replied that it is. She further stated that while the airport was established in 1948, one of the big things no one has proved is continuity of use. Mr. Franek replied that they are only required to have one flight every two years (per LaVon Moore's testimony at the September 28, 2016 Hearing). He added that this would give further credence that it is not a nuisance if the community doesn't even know that it is there. He added that his thinking the next morning was that he should not have voted to not allow others to use it.

Mr. Bott shared that from his memory there were many years when the airport was not in use. He added that he flew out of the airport in 1957. He recalled the location of the Moore family house at that time and there was a driveway that went south and there was a hanger. The hanger is no longer there. When he flew out, the present Moore family house belonged to Carl and Ester Nichols. The airstrip was never on the Nichols property. His thinking is that the airfield is longer than it originally was. He asked if an airstrip can go on to someone else's property does anything further need to be done. Mr. Bott added that "Mr. Moore's boys brought in the ultra lights". He added that due to Clarence Moore buying the Nichols house, there is a building that will accept an ultra light and it is bigger than a building is allowed for that size lot. He added that was previous to 2004 and that doesn't go with the "agricultural thing". He added that the building has been explained to him as a "farm building" and as a "hanger". He added that the "boys have been bucking legalities all along". He added that Lowell Moore stated that he wants an airport like what his father had and that is not what they are doing. What do we have in zoning that specifies the structure of an airplane hangar and are they allowed to be built.

Mrs. Pancost stated that before this came before the Board of Zoning Appeals she spoke with Mr. Meduri regarding this matter. She added that it is the Moore family's responsibility to provide evidence that the airport has been used every year of the entire span. There was nothing compelling presented at the Hearing regarding this matter. She added that the other item we have to be concerned with is that Hiram Township is charged with enforcing the Ohio Preserved Farm Land Trust. She added that Mr. Meduri is going to be in a position to have to pursue legal action as they have been using it for commercial business. They took taxpayer dollars to preserve the farm land and the airport was allowed for personal use not commercial use. Mrs. Pancost added that we need to have conditions on this and that there is a good chance that these conditions will be violated by the Moore family.

Mrs. Pancost added that this is not a good situation and there is not a good answer to it. She added that "we did the best we could to allow personal use". Mr. Bott discussed activity at other local airports. He asked pilots if they keep records regarding incoming and outgoing flights. He was informed that they do not keep records and inquired as to how you could show proof of activity. Mrs. Pancost stated she

would have been comfortable if by way of proof they could show flights with an airplane they own, she would have given them the benefit of the doubt. She added that the Preserved Farm Land Trust states that it has to be used for family use. The gentleman that has been using the airport for commercial use had business cards printed and obtained a grant for improvements. Mr. Bott shared that he thought that the Moore family owned an ultra light and did not recall any recent airplane activity prior to the ultra lights.

Mrs. Pancost stated that another option is to limit the type of planes allowed. She further stated that she is reasonably content with the decisions made at the Hearing. Mr. Franek added that he felt that it was reasonable. There was a brief discussion regarding air traffic with a private airstrip with family use. Mr. Bott asked language should be added regarding having a pilot's license. There was a brief discussion regarding the requirement of a pilot's license.

Mr. Schulda stated that he felt that the conditions are more restrictive than in the Pinter case and sighted Mr. Essell's allowance for two flights a day. Mrs. Pancost stated that the Court was not enforcing the Farm Land Trust. Mr. Schulda added that he felt that the push for the non-conforming use was so that new property owners would be free and clear to establish flying clubs. It would add value to the property. He further stated that there was a Trustee pushing very hard to present this matter to the Board of Zoning Appeals. Mr. Schulda added that Trustee, Kathy Schulda told the other Trustee to leave the matter be and that everything would be okay. We have a Trustee that expedited the application with the Board of Zoning Appeals. Mr. Schulda stated that a Trustee has nothing to do with the Board of Zoning Appeals outside of hiring. He added that once something is presented to the Board of Zoning Appeals the Trustees stay out of it. Mrs. Pancost stated that if we are going to discuss Trustee Groselle's involvement, she wanted to share that she spoke with Mr. Meduri regarding this matter and Mr. Groselle's attendance at the Hearing. From a legal stand point, how do we as a Board deal with this? She stated that Mr. Meduri advises Trustees not to get involved, if they want to attend then any comments a Trustee would make at the Hearing should be considered as a private citizen and it does not have any additional weight as a Trustee. She added that she found it irregular that Mr. Groselle came into the private deliberations at the Hearing while they were with counsel. She also stated that Mr. Groselle is somehow related to the Moore family. Mr. Schulda expressed his aggravation with the aforementioned Trustee.

Mr. Franek stated that things are being discussed that reveal more complexity to this issue. Mr. Schulda stated that there is an ulterior motive somewhere. Mrs. Gualtieri stated that the main problem with the airport intact was the flying of the ultra lights. She compared it to having a dirt bike club at her home and requiring payment and that it would not be allowed. She further stated that this is the only instance of flying in the Township.

Mr. Bott asked if the request for a certificate of non-conforming use came about after they lost the court case. Mr. Schulda stated that the Moores were dismissed from the Pinter case. Mrs. Pancost stated that the Moores were dismissed on a procedural error and not on merit. She further stated that the Pinters were granted an injunction against the Moores by limiting their neighbor to two flights a day. While this may be okay on a Court level, it is not okay on a Township level and enforcing the Trust. Mr. Franek stated that the Moores personal use would not have broken the Agricultural Easement but

commercial use would. Mr. Schulda shared that the trust is a public record and anyone can get a copy of it.

Mr. Franek stated that he was surprised that the airport was allowed with the Agricultural Easement. There was a brief discussion regarding fair use. Mrs. Pancost and Mr. Franek discussed the different interpretations of personal use.

Mrs. Pancost asked the members if they were comfortable reviewing the September 28, 2016 meeting minutes. Mr. Schulda stated that if we started adding additional language it would just complicate things. The members reviewed the meeting minutes and made grammatical corrections.

Mr. Franek asked if there is any township record that they should have been granted a permit or certificate. Mrs. Pancost replied "sort of", when zoning was first introduced into the township the zoning inspector at the time was given permission to grant certificates of non conformance to anything that was not in conformance at that time. Mrs. Pancost shared that her family should have received one for a building they had and never did.

Mrs. Pancost requested that the minutes reflect the derogatory gesture LaVon Moore made with his middle finger when the conditions were being read. She further stated that she felt that it was uncivilized that the public continually interrupted Mr. and Mrs. Pinter's counsel when he spoke.

Tom Franek motioned to approve the September 28, 2016 meeting minutes as amended. Wendell Schulda seconded the motion. Roll Call: Janet Pancost YES, Wendell Schulda YES, Gary Bott YES, Tom Franek YES, Bette Gualtieri (abstained).

The members signed the Decision regarding the Moore Hearing.

The members reviewed the August 24, 2015 meeting minutes and made a grammatical correction.

Bette Gualtieri motioned to approve the August 24, 2015 meeting minutes as amended. Janet Pancost seconded the motion. Roll Call: Janet Pancost YES, Wendell Schulda (abstained), Gary Bott (abstained), Tom Franek (abstained), Bette Gualtieri YES.

Secretary, Kellie Durr confirmed with Mrs. Pancost whose attention to mail the Decision and Meeting Minutes to. Mr. Schulda asked if there was any issue forwarding meeting minutes to someone in Columbus that knows quite a bit regarding conservation. Mrs. Pancost replied that they are public records. Mrs. Pancost further stated that the Court has expressed concern of the use of taxpayer dollars going to that land and having commercial business going on at the same time. There are multiple levels to rectify that situation. Mr. Franek asked if this is something that the Township addresses. Mrs. Pancost answered yes. Mr. Franek stated that normally with easements, there should be an annual inspection. Mrs. Pancost replied that Trustee, Kathy Schulda has tried to do this. However, the previous Zoning Inspector felt otherwise.

Wendell Schulda motioned to adjourn the meeting. Gary Bott seconded the motion. Roll Call: Janet Pancost YES, Wendell Schulda YES, Gary Bott YES, Tom Franek YES, Bette Gualtieri YES.

The meeting adjourned at 7:51 p.m.

