

## **MARCH 7, 2005**

The regularly scheduled meeting of the Mansfield Township Zoning Board of Adjustment was called to order by Chairman Martin McMekin at 7:30 PM.

The meeting was opened by stating that adequate notice of this public meeting had been provided in accordance with the Open Public Meetings Act by:

1. posting a notice of this regular meeting on the bulletin board of the Municipal Building;
2. causing said notice to be published in The Star Gazette;
3. furnishing said notice to those persons requesting it pursuant to the Open Public Meetings Act; and
4. filing said notice with the Township Clerk.

Present: McMekin, Hight, O'Kane, Creedon, Harris, Smith, Rosenblum, Jewell, McGuinness.

Absent: None.

Also present: Lyn Paul Aaroe, Esquire.

The Pledge of Allegiance was recited.

**MOTION** was made by **HIGHT** to approve the minutes of the February 7, 2005 meeting, as written.

**SECONDED: CREEDON.**

Those in favor: Hight, O'Kane, Creedon, Harris, Smith, Rosenblum, McMekin.

Opposed: None.

Abstained: None.

**MOTION** was made by **CREEDON** to approve the resolution for Case #Z05-01, Henry Olla.

**SECONDED: HIGHT.**

Those in favor: O'Kane, Creedon, Harris, Smith, Rosenblum, Hight, McMekin.

Opposed: None.

Abstained: None.

### **Case #Z05-02, Dale Gilmore**

Present for the applicant: Dale Gilmore; Howarth Gilmore.

O'Kane recused himself from the case.

Aaroe stated that notice requirements had been satisfied.

McMekin let it be known that an objector would be represented by an attorney.

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Attorney Stuart Ours stated that he would be representing Michael and Rhonda Tilley, Tony and Lennie Lalite, Charles Wichern, Brian Johns, Douglas Medina, Lisa Infnitis and the Harper family.

Ours asked for an indication of which board members owned ATVs. Smith, Hight, McMekin, Aaroe, Rosenblum, and McGuinness all indicated that they owned a multi-wheeler, a motorcycle, or an ATV. Ours asked if they would have difficulty acting impartially on the application. All of the members indicated that they could act impartially on the application.

Entered as Exhibit O-1 – exhibit showing the location of the objectors homes

Aaroe explained the history behind the case, and indicated that the application was the result of a complaint being made.

Aaroe asked questions of Gilmore, and Gilmore explained that he had partially cleared his two-acre property to allow his sons to ride their ATVs. Gilmore further explained that the police had visited the property as a result of a complaint made by Mrs. Tilley, and that no action was taken by the police. Mr. Lee, the Township Attorney, suggested that the matter be the subject of an interpretation of the Zoning Board. Gilmore stated that he has used the land as such for seven months, and just recently the Zoning Officer issued a Cease and Desist Order.

Aaroe indicated that the application was for an interpretation, and not an appeal of the Zoning Officer. Aaroe explained that the applicant would have to make an affirmative case, and suggested that the applicant might want to consider being represented by counsel. Aaroe explained that if a sufficient case isn't made, and the board makes a negative decision, the applicant couldn't come back and try again.

H. Gilmore explained that he is a retired professional engineer, and explained his credentials. Aaroe stated that his opinion would be a lay opinion.

Entered as Exhibit A-1 – tax map exhibit showing the types of uses surrounding the property.

Entered as Exhibit A-2 – an enhanced survey of the property.

Entered as Exhibit A-3 – enhanced enlarged tax map showing properties within 200'.

Gilmore explained that they were not asking for a variance of any sort, but were being accused of doing something illegal. Gilmore stated that the Ordinance does not prohibit the use, and the only place that one can ride those types of vehicles is on ones own property.

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Aaroe indicated that any use not specifically permitted is prohibited. Aaroe read from Section 22-4.1 from the Ordinance.

H. Gilmore showed photographs of the existing conditions. Gilmore further explained the question is whether or not the children are allowed to ride ATV's, and if a practice track has been created. Gilmore explained further what had been done by his son on his property. Gilmore stated that the boys have other activities as well, and don't ride continuously.

Aaroe stated that the applicant should give factual information, and not summarize his case at this point.

Gilmore explained the hours of operation of the vehicles, the age of his grandsons, the use by the neighborhood children, etc.

Laszlo Huebscher of 15 Ryan Way was sworn in, and stated that he has two children who ride, but they do not have their own vehicles.

Sonny Pham of 17 Ryan Way was sworn in, and stated that his daughter sometimes rides the vehicles.

Other vehicles were mentioned, and D. Gilmore attested to the number and type of vehicles on the premises. Gilmore also attested as to how many vehicles, and how often, they were used at any one time. Gilmore explained that no more than three vehicles could be used safely at one time. Gilmore also explained that the neighborhood children ride maybe once per month, and never without his children being present. Gilmore stated that there is one path of concentration, which he would like to grass once the weather breaks. Gilmore attested that the duration of uninterrupted ride time was ½ hour.

McMekin asked if it would matter if the use was limited to just the Gilmore children. D. Gilmore stated that it would be a shame. H. Gilmore stated that the children race go karts in the Poconos during the summer season, and don't even ride in Mansfield during those times.

The Chairman called for a brief recess at 9:00 PM.

Upon reconvening at 9:12 PM, the roll call was called.

Present: McMekin, Hight, O'Kane, Creedon, Harris, Smith, Rosenblum, Jewell, McGuinness.

Absent: None.

O'Kane continued to be recused from the case.

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McMekin stated that this case probably wouldn't conclude with this meeting. The hearing would be closed at 10:30 PM.

Smith asked why the homes on Route 57 were omitted from the diagram presented by Gilmore. Gilmore replied that only those opposing the vehicles were shown. Smith asked if the neighbors had been spoken to, and also asked if the boys raced on the property. Gilmore replied that he had spoken with the neighbors after he became aware of the petition, and no, the boys don't race on the property. Gilmore further stated that the neighbors expressed concern with a race track being created, not the actual ATV riding. The noise and the hours of operation were not an issue.

Creedon asked if Gilmore worked on his go karts in the pole barn. Gilmore replied that he stored them in the go karts, but it wasn't necessary to run the motors for maintenance.

Aaroe suggested that a site inspection take place for the board members, and if possible, visit Mrs. Tilley's property as well.

McMekin asked if a precedent wasn't being set if the use is found to be a customary, incidental use. Aaroe replied that would only apply if the same number of vehicles were being used, etc.

Ours asked questions of D. Gilmore such as when he took possession of the property, when the vehicles arrived, and when they were operated. He also asked questions regarding the observation time by H. Gilmore. Ours asked questions regarding the property; the number and type of vehicles used there, number of children and adults riding the vehicles, etc.

The Chairman opened the hearing to the public for questions only.

Mike Benbrook, who sold the vehicles to the applicant, asked if the hours of operation where specified would the applicant agree to the limited use. Gilmore stated that he would comply with the findings.

Joe Farino of Blau Road asked if he could question the objectors, and the answer was no.

Cate Oakley, acting as a private citizen and residing at 1805 Route 57, asked if trees were going to be replanted. Aaroe stated that the number of trees, the species, the caliper, and the time table for planting should be provided.

Bill McGarry of Hazen Road asked a question regarding the use of the vehicles.

William McGarry of 167 Hazen Road asked if a decision on this matter would effect the other users in the Township

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Ours asked questions regarding the testimony given about the hours of use by the applicant's children.

Antoinette Lalite of 1 Ryan Way was sworn in by Aaroe. Ours asked questions of the Lalite regarding the use of the vehicles as she witnessed it from her home.

Entered as Exhibit O-2 – photographs of track taken by Lalite January 2005

Lalite testified that she has witnessed the boys ride the vehicles for hours, can smell the exhaust of the vehicles, and use upsets her dogs. Lalite testified that there were two areas used as riding tracks, and there is a dust problem in the drier months. Lalite mentioned that an adult bike was used on the tract as well.

Aaroe indicated that a determination couldn't be made by the board with the information given. Aaroe indicated that the applicant could withdraw the application and return at a later date.

McMekin closed the public portion of the meeting, and prepared to set a date for the site visit. Aaroe stated that the visit should be closed to only the board members, and limited interaction should be allowed between home owners and board members. The case should not be discussed, but only given the opportunity to view the use.

Ours indicated that several objector properties would also be available: Tilley, White, Infinito, etc.

Saturday, March 26, 2005 at 10:00 AM was set as the site visit date, with Sunday, April 3, 2005 as the alternate date.

The matter was carried to the April 4, 2005 meeting without further notice.

Under old business, McMekin stated that Zotti would write a letter to the Zoning Official regarding the use at Magnum Enterprises.

Aaroe would supply the revised annual report at the next meeting.

**MOTION** was made by **SMITH** to adjourn the meeting at 10:30 PM.  
**SECONDED: HIGHT.**

Voice vote: ALL IN FAVOR.

Respectfully submitted,

Patricia D. Zotti, Clerk

