



**SPECIAL MEETING  
ADA TOWNSHIP ZONING BOARD OF APPEALS MINUTES  
TUESDAY OCTOBER 20, 2009, 4:30 P.M.  
ADA TOWNSHIP OFFICES  
7330 THORNAPPLE RIVER DR. SE, ADA, MICHIGAN**

**Meeting was called to order by Chairman Richard Boman at 4:30 p.m. Members present: Chairman Boman, Vice Chairperson Geoffrey Fields, Township Clerk Susan Burton, and members Robert Lowry and Jack Hartley. Also present: Zoning Administrator Steve Kushion, Planning Director Jim Ferro, and Certified Recorder Bonnie L. Rozema. Members absent: none.**

**1. APPROVAL OF AGENDA**

Motion to approve the agenda as presented. Moved by Member Lowry, supported by Member Burton, to approve the agenda as presented. Yes-5, No-0; Motion carried.

**II. OLD BUSINESS**

There was no old business.

**III. NEW BUSINESS**

- 1. Request for interpretation whether a parcel which is crossed by a public road easement is one "lot" for purposes of zoning, or whether the portion of the parcel on each side of the public road easement is considered a separate "lot" for zoning purposes; alternatively, appeal of the Planning Director's determination that the portion of the parcel on each side of the public road easement is a separate "lot" for zoning purposes, Richard M. DeVos, Jr. and Elisabeth D. DeVos, 1170 Fox Hollow Ave. SE. 41-15-33-300-053.**

Doug Wagner, attorney for Richard DeVos, Jr., is present for the applicant. Mr. Wagner stated Mr. DeVos asked him to make a few comments on his behalf. Mr. Wagner stated they were aware a number of people in attendance had views and opinions regarding the accessory use question, whether or not a helicopter is safe, whether or not it makes too much noise and did not think it's relevant to the determination. Mr. Wagner stated Mr. Jeff Nelson, who was present at this hearing, is an expert in those areas and has also commissioned and over saw a noise study here. Wagner stated the lot is defined and accessory uses are permitted on a lot that contains a principal residence. It's clear from the record that from a land use perspective and safety perspective and a noise perspective the helistop on the west side of the property is preferable to that on the east side. These are not separate parcels but a single tax parcel.

Co-Chair Fields stated he looked through the application and could not find anything that indicated what created the public right-of-way and questioned is it a highway by user, is there an ancient easement, does the County own that road in fee simple and what is the nature of that right?

Chris Meyer, law partner of Mr. Wagner stated it's not deeded, it's an easement. The DeVos's own the entirety of the property underneath, and they believe it's a McNitt Act road and it's a public easement, it doesn't divide the property at all.

Dick DeVos, applicant, stated he believed his private property rights are being wrongfully restricted. Mr. DeVos asked to simply be treated the same as everyone else in the township who may have public or private easements dividing their property. Mr. DeVos stated he would like to keep using the west side of his property, as opposed to the east side, to land his helicopter and felt it was better for the neighbors because it's farthest from most homes and he flies solely over his own property. Mr. DeVos stated he and his wife respectfully request the Township grant them the same consideration that they have already granted others, to fully use their property despite the existence of a public or private easement across their property.

Co-Chair Fields stated "Typically we're asked to do one of two things; either to interpret the ordinance that the Township Board has adopted, or to grant a variance from that ordinance, because you can't always write a perfect ordinance that will fit every situation."

#### Open to Public Comment

Eric Richards, 1315 Buttrick, attorney and pilot, also a neighbor, stated he supported general aviation operations in our community and Mr. DeVos's right to use his private property.

Kathleen Richter, 6301 Hall, stated her neighbors on the west side of the street could not attend the meeting, but would like to think her opinion and theirs which she stated was on the record, are opposed to the use.

Roger Nicely, 6270 Hall St., stated he was opposed to helicopters in residential areas.

Co-Chair Fields stated "We're always supposed to keep in mind whether to recommend to the Township Board the potential need to rewrite the laws or write a new law, because it's a situation that keeps repeating itself, for example, or we're tired of dealing with it here at the Zoning Board." Mr. Fields stated he found all the comments to be very helpful.

Lloyd Paul, 1268 Pettis, stated to deny this would be denying the rights of a lot of Ada citizens and asked the board to look favorably upon it.

John Postma, stated he lived adjacent to the Richter's and the Nicelys. Mr. Postma stated he was in favor of the helipad and it would not affect the value of his property whatsoever, but would probably enhance the value because of the much looked at green space on Fox Hollow.

Ray Kisor, 254 Greentree Lane, stated to the board the issue before them was to be taken seriously and it was a concern that needed to be addressed and addressed in a consistent fashion. Mr. Kisor encouraged the ZBA to move forward with the decision that has been requested.

#### Close Public Comment

Chairman Boman offered to Jim Ferro, Planning Director, an opportunity to speak. Mr. Ferro discussed his decision on the Kolehuse situation two years ago and since this issue arose, could only think of two other cases where a parcel was divided by a public road easement. Mr. Ferro stated he did point out to the Zoning Board in a memo there are a lot of situations in the township where we have private road easements that divide parcels, and in those cases we have consistently treated them as one lot for lot area purposes, where the area of the lot is considered to be the land that's on either side of the private road easement.

#### Open to Board Discussion.

Member Hartley stated the property should be considered as one piece of property and not two separate parcels of property.

Chairman Boman stated the applicant by virtue of doing a reverse split of the property and creating a single lot, has by his own actions restricted the use that he can have across that easement. Chairman Boman stated from his perspective, the applicant's decision to create one permanent parcel number really provides for the ZBA board to interpret that as one lot.

Co-Chair Fields stated "When you take real property in your first year of law school, you learn that a real property interest is a bundle of rights. One of them is ownership. The key fact here is that that road does not bisect the fee ownership. The rule we come up with here has got to apply to all of us on a going-forward basis. Another concern, if we were to adopt the other rule, that an easement creates two lots, then that means that people can start putting principal uses on either side, and that would open a worse can of worms." Mr. Fields stated he appreciated the fact that Mr. Ferro brought this to the Zoning Board of Appeals attention.

Co-Chair Fields moved that the Zoning Board of Appeals make a determination that a parcel crossed by a public road easement is one lot as defined by Section 78-51 of our ordinance, supported by Member Lowry. Co-Chair Fields also suggested that the ZBA board set forth its determination in writing.

Chairman Boman stated he would open up discussion on the motion and would like to add for clarification that there is, on a future agenda, a request for interpretation of an accessory use, and that item is more pertinent to whether or not a helicopter could land on this parcel across the street.

Chairman Boman asked if there was any discussion items on the motion. No discussion.  
Yes: 5 No: 0 Absent: None Motion Carried

2. **Request for a variance to permit a private use heliport as an accessory use on a lot which is on the opposite side of the public road easement from a lot in the same ownership which is occupied by the principal single-family dwelling use, Richard M. DeVos, Jr. and Elisabeth D. DeVos, 1170 Fox Hollow Ave. SE. 41-15-33-300-053**  
Request was withdrawn due to the passing of the motion and determined unnecessary.

**V. CORRESPONDENCE-** Chairman Boman stated for the record the Zoning Board of Appeals had received quite a bit of correspondance that has been included in the packet to all Board members, including some videos that have been provided.

**VI. PUBLIC COMMENT-**None

**VII. ADJOURNMENT-**Co-chairman Fields moved to adjourn at 5 :25 pm, supported By Member Lowry. Yes : 5 No : 0 Absent : None Motion to Adjourn Carried.

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Susan Burton  
Ada Township Clerk

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Date

RS/dt