

Public Hearing

March 31, 2008

President Baker called the public hearing to order.

Roll call: Shupp, Miller, Landaw, Vance, Aspiras, Corfman, and Leathers were present.

President Baker swore in the following possible speakers:

Dave Handwerk – Mayor
Becky Jewell – Safety-Service Director
Dan Lutz – Law Director
Tim Fuller
William E. Arnold - Applicant

Baker: Would the applicant like to present your proposal or say anything in advance?

Arnold: No.

Baker: Does anyone on council have any questions for the applicant?

Landaw: I would like to ask Mr. Arnold, how much work did you get done out there since we saw you a year ago in here for this review? Did you get half the stuff done you were going to try to have done for us or what percentage would you put on it?

Arnold: I got a lot done.

Baker: Anyone else on council have any questions? Does anyone in the audience have any questions or comments for the applicant? For the staff, Mrs. Jewell or Mr. Lutz, do either of you have any comments or questions?

Lutz: I will just make some comments. Last year when Mr. Arnold's application came before council, council had a memorandum on what the law requires that council has to do to consider renewing, rejecting, or modifying the application to be designated an agricultural district. At that time I think we made it abundantly clear to Mr. Arnold that we would extend it for one year instead of the typical five year length for the designation on the condition that he show substantial progress cleaning up his property that is in the city limits. Mrs. Jewell can speak specifically about whether there has been progress made and I will allow her to address that, but in my memorandum it sets out what the requirements are.

Jewell: I have some items that I would like to present at this public hearing. The first item is what has been marked as Exhibit A and that would be copies of letters that were sent to Mr. Arnold. These were sent to Mr. Arnold beginning last year. The first one was sent May 24th and this letter stated that as of May 10th the inspection was done of Mr. Arnold's property at 951 Back Massillon Road and that there were areas of property there that met the definition of a junk yard according to Orrville's Zoning Code and Mr. Arnold was given until July 1, 2007 to remedy those code violations. The next letter is a follow up and was sent on September 19th. On September 11th a follow up inspection was done and at that inspection it revealed that the accumulation of out-of-use farm equipment, machinery, and debris was still present there and according to our interpretation it still did meet the definition of a junk yard. At that time, Mr. Arnold was given an additional 30 days. The next letter was sent on January 8, 2008 and the follow up inspection was done on December 18, 2007. The inspection revealed that although some progress had been made there were still an accumulation of out-of-use farm equipment, machinery, and debris which would fit the definition of a junk yard. The next item is marked Exhibit B which is a serious of photos taken. The first set were was on 03/31/08 and show the condition of the property today as it stands. The other photos were taken on March 2, 2008 and those were

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taken as a follow up inspection for the zoning violation. There is still an accumulation of items which would be out-of-use farm machinery, equipment, and various other debris. There were several motor vehicles and that is the condition of the property as it is today.

Baker: Does anyone on council have any questions for Staff?

Corfman: What evidence did you see of farm use or what farm use do you see?

Jewell: There were several pieces of equipment there that appeared that there was, I know at least one tractor and some other equipment that has been moved out closer to the roadway now. Those pieces of equipment would be permissible under our zoning code because they did appear to be operable farm equipment, something that was in use. So there is a mixture of both at the property, but there is still those items that would be classified as non-used or unusable farm equipment.

Aspiras: Director Jewell, just looking at these 03/31 photos from Exhibit A dated January 8 from the December 18th inspection, is there much difference from the photos taken today versus the December 18th inspection?

Jewell: There is some difference, but there is not a lot of difference. It is not a remarkable difference.

Aspiras: So if there was going to be an inspection conducted today similar to the December 18th the report would not look much different?

Jewell: That is correct. In terms of what we saw today and whether we would turn this over to the Prosecuting Attorney in terms of a zoning violation we would do that as of what was there today.

Miller: Is the intent to do that?

Jewell: Yes.

Miller: I see we have three letters here. What is going to be the action now?

Jewell: That is our intentions. We have made it clear that there were two separate and distinct issues involved here. Mr. Arnold's application for an agricultural district is separate from the enforcement of our zoning code and yes, as a follow up to those inspections we do intend, at some point in time, and I believe we are prepared to do that now to submit the photos to the Wayne County Prosecuting Attorney's office for them to consider filing charges for violation of the zoning code.

Lutz: I would just add in regards to the question about farming equipment, I think there is a distinction between farming equipment being used for farming and farming equipment that he is keeping on the premises for purposes of fixing it up for resale later. He admitted to me last year that is what he does. He collects this equipment and supposedly, I don't know how much work he puts into it, but then he intends to sell it later. In my opinion that farm equipment does not exempt him from prosecution or from being denying an agricultural district designation. He is operating a salvage yard.

Jewell: The zoning code is written under the health and safety aspects of municipal codes and as such a violation of that code is in violation here.

Corfman: I guess what I am after is how much agriculture, how much farming is going on there?

Jewell: We can ask that question specifically. I was out there for one trip today and then I specifically went back for a second trip to look at the land to see if I could tell if any crops had been on that land during this past year. It was difficult for me to see that, so that would be something that we would need to ask Mr. Arnold specifically. It appears as if one of the fields may have had beans on it, but the rest appeared that it may be used for hay. There were also sheep on the land.

Corfman: Sheep generally don't take much agricultural equipment. Grazing is grazing.

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Baker: Mr. Arnold do you have any questions for the staff? Does anyone else in the audience have any questions for the staff? Would anyone in the audience like to comment for or against the proposal?

Arnold: Things were froze that I couldn't get them loose and then it has been extremely wet and it is hard for me to get around there, but I am working at it sincerely.

Baker: Mr. Arnold, if I remember right, last year that was pretty much the same reason that you gave then and you had a whole year and in the summer and the fall there may have been some wet days, but it wasn't froze all that time.

Arnold: I had farming to do then.

Baker: I just want to remind you it hasn't been frozen and wet the whole time.

Miller: Just to follow up on what you said. It appears from my notes that we granted this March 5th of last year which would certainly been plenty of time to have done something.

Baker: Anyone else wish to make any comments?

Handwerk: I think the biggest concern we have is the fact that there is very little noticeable change in the area that was cluttered before, but now we have equipment right up on the front of the property on both sides of Back Massillon Road. What we specifically asked not to happen last year was that you would move it farther out on the other side of 57 and I have never seen such a mess as there is out there now. I don't know what your reason is for moving that out close to the road now. Why are you moving the equipment out there.

Arnold: It is dry there.

Lutz: What the law requires, just so we know what we are talking about here, is the Ohio Revised Code Section discusses says in rejecting or modifying the application and place land in an agricultural district council shall demonstrate rejection of modification is necessary to prevent substantial adverse affect on the provision of municipal services within the municipal corporation; efficient use of land within the municipal corporation; orderly growth and development of the municipal corporation; or the public health, safety, or welfare. I think, my opinion would be, our zoning code deals with public health and safety. That is why we have violation of the zoning code because of the adverse public health, safety, and welfare which are violations. At the very least, the condition of Mr. Arnold's property fall under that, that there is a substantial adverse affect on the public health, safety, and welfare. Additionally, I don't think it is a very efficient use of the land within the municipal corporation. Certainly, since we believe there is a clear violation of the zoning code the application could be denied as use of the land as it is currently used is creating a substantial adverse affect on the public health, safety, and welfare.

Baker: Does council have any further discussion?

Leathers: I would just like a clarification from Mr. Lutz. Tonight is just a public hearing, correct? We can't really act upon this tonight. We would have to do it at our next regular council meeting and we do have thirty days from tonight to make that happen.

Jewell: You have thirty days from tonight.

Lutz: Yes, thirty days from tonight.

Jewell: I just want to mention one other thing. One of the requirements of the revised code also is that council make every effort to modify the application if it is not acceptable. I believe council did that last year in granting the one year extension in order to give Mr. Arnold an opportunity to bring the property into compliance. I think this council has worked with Mr. Arnold to try to do that.

Baker: Any further discussion from council? Anyone from the audience have any further comments to make?

Aspiras: I just want to make a comment in addition to Becky. On February 20th, during that council meeting, I was here as part of the public, and I remember walking away thinking wow I

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think these guys did a pretty good job in agreement to take care of each other's needs. I think that opportunity was definitely there. It was agreed upon and just sitting here today it just doesn't look too much better than what was discussed a year ago.

Corfman: Mr. Arnold can you just sort of make it clear to me how much farming went on and how much agricultural use. You said that because of all the farming you did is why we couldn't move the equipment and get equipment cleaned up. There had to be some substantial amount of farming. Can you give us some sort of time or dollar figure or amount that was done that would keep you away from pulling the equipment and take care of the equipment you agreed to do a year ago?

Arnold: We have 150-180 acres of hay a year. Close to 70 acres of soy beans. And there was corn. (Note: Mr. Arnold is hard to hear as he was not standing at the podium.)

Lutz: When you say "we" who all is involved with that? Is that just you or is there other people involved in the farming of the 180 acres and everything you just described.

Arnold: Mostly me and my daughters.

Aspiras: I have a question for Mr. Arnold and Director Jewell. Mr. Arnold you had mentioned that things were frozen which prevented you from moving equipment. Director Jewell had sent a letter out three times last year according to Exhibit A – May 10th, September 19th, and January 8th. Was there any feedback at that point in time to what the restrictions were and not getting this done?

Jewell: I do know that Mr. Ron Cross is our inspector and he was the person in contact with Mr. Arnold. I do know that on at least one occasion Mr. Arnold was in my office and that was back on March 5, 2008 when he dropped off this application. Throughout this process Mr. Arnold always made contact with Ron Cross and requested to be notified of the times when Ron Cross would be out there for these inspections and I believe Mr. Cross did honor that and that is why sometimes there is a lapse of time from the deadline to the time we actually got out there because Mr. Cross was trying to accommodate Mr. Arnold's schedule. I have not had any conversation with Mr. Arnold relative to the fact that this was farm equipment that was in use. There does not seem to be any dispute about the fact that this is out-of-use farm equipment and therefore he said he was going to be removing it and it just hasn't developed.

Baker: Any further discussion this evening?

Shupp: Mr. Arnold, are you a full time farmer?

Arnold: I don't have another job.

Shupp: That doesn't necessarily mean it is full time.

Arnold: Yes.

Shupp: Are you retired also.

Arnold: I don't consider it that way.

Lutz: I just wanted to make sure Mr. Arnold didn't have any exhibits he wanted to council to consider.

Arnold: Who is the one to say that the equipment isn't?

Lutz: Isn't what?

Arnold: Isn't operable.

Lutz: Are you going to tell the council that all that equipment out there that you call equipment that appears to be junk is operable.

Arnold: I won't say that it is all, there is some there.

Lutz: What percentage?

Arnold: A lot of it is operable that is there.

Lutz: What percentage would you guess is operable or if you know exactly what percentage is operable?

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Arnold: I got some there that I have been moving out.

Lutz: Are you operating them for your farm?

Arnold: Like plows, I don't usually plow, but there are still times when I have to hook to the plow and use it.

Lutz: How much are you keeping to sell later to people who might want equipment of that sort?

Arnold: Not too much that is there.

Lutz: So if you are not using it or going to sell why is it just sitting there?

Arnold: Because I might need it. If I need to plow some sod up I got to have a plow to do it.

Lutz: Of all that junk that is out there, how many plows are there?

Arnold: Probably six. There are some for my old tractors. We have some antique tractors.

Handwerk: When you say you have stuff down at the end of the land ready to move, where were you planning to move it to?

Arnold: I didn't say down at the end of the lane.

Handwerk: Well where ever you said you were going to move it, where were you planning to move it to?

Arnold: Why does that make a difference?

Handwerk: I think you know why it makes a difference. I think the answer is pretty obvious.

Lutz: You say you have six plows. Do you mean without blades or do you mean actual mechanical plows? How many of them are operable?

Arnold: They all are.

Lutz: Why do you need six of them? When was the last time the plows were started up and moved.

Arnold: It has been a number of years.

Lutz: So you don't really know if they are operable or not.

Arnold: Unless something breaks on it, you walk to it, it is ready to go. A plow doesn't have...

Lutz: Forgive me for being ignorant, but that is what I meant. Are these mechanized plows? Do they have their own motors or are they just blades that you hook up to?

Arnold: They all have to be pulled with a tractor.

Jewell: Maybe I can clarify too. In terms of our zoning code, when we are out there doing an inspection. What we look for in terms of being operable is the fact that it is capable of being moved, that it could be used if it would be moved. Mr. Arnold has said that most of this couldn't be moved because it was frozen into the ground and that by definition would be considered inoperable because of the amount of items that were there and could not have been moved because they were buried, busted, and out of use. Certainly anything that is part of the farming operation is permitted to remain there, but multiple multiples, semi trailers need to be moved out. That is not considered by our code to be permissible. We look for flat tires, whether is can be operated, whether it is buried to its axles. If it hasn't been moved in years, that is considered part of a junk yard.

Arnold: Anything that doesn't have rubber or something on...wood, metal, anything, if it is setting on the ground and it freezes, it freezes fast. Freezing has tremendous force.

Shupp: If it is froze fast, how can you use it?

Arnold: I can't plow when the ground is frozen. It would just go over the top. When it thaws and dries out you can use it.

Shupp: You just said earlier you could use this plow if you needed to. What if you needed it? Can you move it?

Arnold: I can move it.

Shupp: Then why didn't you move since last year when we asked you to.

Arnold: I had farming and other things to do. I am working on it now.

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Jewell: For the record I would like to indicate there is more there than just the plows that need to be moved.

Arnold: For the record my ground is CAUV.

Jewell: That is correct and that is a separate issue. The CAUV is related to the taxing status of the property and it is taxed at its agricultural use. This is a agricultural district and the CAUV and the agricultural district are separate and distinct.

Arnold: I did ask the question who is to classify this usable or unusable.

Jewell: I do believe I did answer that. That would be classified by our inspector Mr. Ron Cross as to whether it is usable farm equipment or whether it is something that would constitute a junk yard.

Lutz: Ultimately it will be the judge. It will be a judge if it is in violation. Separately from the agricultural designation in the city, gives the Wayne County Prosecutor to prosecute before the judge to determine whether you are in violation of the zoning codes. The judge will determine if this is operable farm equipment that you are using or junk based on the testimony of Mr. Cross, Mrs. Jewell, and yourself.

Arnold: Now we are getting a whole different opinion on this equipment then what I thought. You are saying if it isn't used in a certain amount of time I can't have it. I understood that if it was operable machinery it can be there.

Lutz: It is what it is. There is going to be more evidence presented in a criminal case for violation of zoning codes. I think everybody in here is aware of what the property looks like and what it looked like last year.

Vance: Mr. Arnold, to me I think the fact that technically something could be pulled out and plowed, but the fact that it has been sitting there for years with weeds growing through it, really no real plans to be used, it is an eye sore, we have been receiving complaints about it. Even though there are no real moving parts that would prevent from hooking up and using it, the fact is it is out of use. Yes, technically it could be pulled out and used, but the reality is it is not being used. The complaints that are being received about it and it goes to the stuff that it is in our code as far as being detrimental to the public health, safety, and welfare of the community. I don't know if a lot of dwelling on the fact that since this one has no moveable parts that means it is usable, really is getting to the heart of what we are trying to get to here. The fact is it is out of use. There is weeds growing through it; it is an eye sore. I think what the community would like and what we would like is for you to have some kind of a plan, approach to make this a presentable area if you want to be part of the city. The difference here of "well I can hook up and use it" versus what we are saying here "well if it is not in use then it is junk" I think that is the heart of what we are trying to talk about.

Lutz: Do you recall last year sitting in my office telling me that your intent was to resell it to other people? I told you at that time that is operating a junk yard. You tried to back peddle a little bit at that point, but you did say that. Is that still your intent to do that? What you told me last year, resell it?

Arnold: To resell all the machinery?

Lutz: Or any of it? Do you recall telling me last year? That was one of the arguments why you should be allowed to have it there because you either use parts off it to sell to others or fix it up and resell it to others. Do you recall that statement?

Arnold: Well, sometimes I sell some stuff.

Lutz: Well one of the reasons you told me you were keeping that "equipment" was for that reason, to sell to others?

Arnold: I moved a lot of that off. (tape inaudible)

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Baker: Part of the difference of opinion may be the wording that is used; whether it is operable or actually being used are two different things. You can have operable equipment there that is not being used and what we would like to see would be the equipment that is not being used moved off the property to make it presentable looking. Whether it is operable or not, we are looking for what is not being used to be stored somewhere else or gotten rid of.

Arnold: That is a little different then we was talking about last year.

Baker: Last year that was my opinion for what it was supposed to be. You may have understood differently, but what I understood to be was that if you weren't going to be using what was there, that it needed to be cleaned off that property. Within the past year some of it has gone, but there is still an awful lot there.

Vance: I think the word inoperable may have been used around here because with the condition of it not being moved for years, weeds growing through it, and so forth, people assume that it is inoperable because it has not been used for a long time. I think that is where people get the idea this is inoperable. I understand your contention that while some of this doesn't have moving parts, a plow or whatever, you could hook up at any time. It could sit there for fifty years and then hook up to it doesn't mean that it is not getting to the heart of what we are trying to discuss here. The inoperable part I think comes from the fact that because of its condition it appears to most people that it is inoperable because it appears to be junk. It fits the definition of junk.

Jewell: I might also add that in the letter of January 8, 2008 regarding the inspection on December 18, 2007 there was reference in this letter that Mr. Arnold had agreed previously to store all usable in less conspicuous areas of the property. I do know this was a subject of discussion between Mr. Arnold and our inspector. There was an agreement that the usable farm equipment would not be stored scattered about the property as it is right now.

Lutz: I even had a discussion with Mr. Arnold even the stuff that was not usable, if he wanted to keep it, get it out of sight and he can keep it. That is the problem, it hasn't been put out of sight.

Handwerk: What about the barns? What do you have in those?

Arnold: Machines, hay.

Baker: Anyone else have any questions or comments? Anything else for us Mr. Arnold?

Miller moved and Landaw seconded that the public hearing be adjourned. Ayes all. Motion carried. Council was adjourned at 7:47 p.m.

Tamra Peppard, Clerk of Council

Date

Lyle Baker, President of Council