

BEDFORD TOWNSHIP BOARD OF ZONING APPEALS  
REGULAR MEETING MINUTES  
8100 JACKMAN ROAD, TEMPERANCE, MICHIGAN  
September 12, 2017

**PRESENT:**

BRAD GREELEY, CHAIRMAN, CITIZEN AT LARGE  
BOB POTTER, VICE CHAIRMAN, CITIZEN AT LARGE  
RICK STEINER, TOWNSHIP BOARD LIAISON  
ARVIND SHAH, ALTERNATE

**EXCUSED:**

ROBYNE BUSH, PLANNING COMMISSION LIAISON  
GEORGE WELLING, CITIZEN AT LARGE

**ALSO PRESENT:**

PHIL GOLDSMITH, LEGAL COUNSEL, LENNARD, GRAHAM & GOLDSMITH  
MARTY KAMPRATH, LEGAL COUNSEL, LENNARD, GRAHAM & GOLDSMITH  
DENNIS KOLAR, BUILDING OFFICIAL  
KAREN M. KINCAID, PLANNING AND ZONING ADMINISTRATOR  
JODIE L. RECTOR, PLANNING AND ZONING ASSISTANT, RECORDING SECRETARY

Greeley called the Bedford Township Board of Zoning Appeals meeting to order at 7:00 p.m. The Pledge of Allegiance was said. Kincaid called the roll. Quorum present.

***APPROVAL OF THE AGENDA***

*Motion by Shah, supported by Potter, to approve the agenda. Motion carried.*

***APPROVAL OF THE MINUTES OF JUNE 5, 2017***

Motion by Potter, supported by Shah, to approve the minutes of June 5, 2017. Motion carried. Steiner abstained.

***APPROVAL OF THE MINUTES OF JULY 11, 2017***

Motion by Shah, supported by Potter, to approve the minutes of July 11, 2017. Motion carried. Steiner and Greeley abstained.

***PUBLIC COMMENT (LIMIT 3 MINUTES)***

None

***NEW BUSINESS***

***OPEN THE PUBLIC HEARING***

- A. **OPEN THE PUBLIC HEARING REGARDING THE APPEAL OF GREYSTONE HOLDINGS, LLC, 1489 STONEGATE COURT, TEMPERANCE, MI 48182, REQUESTING A VARIANCE TO ALLOW A PRIVATE DRIVEWAY TO SERVE FOUR ONE-FAMILY DWELLINGS, PER SECTION 400.1914, "PRIVATE ROADS, PUBLIC ROADS, DRIVEWAYS AND FRONTAGE", AND TWO 75 +/- FOOT MINIMUM WIDTH VARIANCES PER SECTION 301.009 "STANDARDS FOR APPROVAL OF LAND DIVISIONS, SPLITS AND COMBINATIONS AND SUBDIVISION LOT, OUTLOT OR PARCEL DIVISIONS, SPLITS AND COMBINATIONS", ON VACANT LAND CURRENTLY LOCATED**

**WITHIN AN UNDEVELOPED PUD AND DESCRIBED AS 5802-021-036-00, LOCATED ON THE EAST SIDE OF DOUGLAS ROAD, NORTH OF THE INTERSECTION OF CONSEAR ROAD, LAMBERTVILLE, MI 48144.**

Greeley advised the applicant she would need an affirmative vote of three members to approve if wanting to move forward, or defer to a date when a full board could be present. The applicant waived the right to defer and requested to move forward.

***Motion by Steiner, supported by Potter, to open the public hearing at 7:05 p.m. Motion carried.***

Kincaid reviewed the analysis stating the existing parcel consists of approximately 36 +/- acres with approximately 453.35 feet of frontage on Douglas Road just north of Enfield Village. On April 18, 2006, a PUD was approved for 16 lots on the subject site, and on June 28, 2006, the developer was granted a minor PUD amendment to address the sewage system issue as a result of the bedrock and the depth required to have a forced main. Kincaid said the private road for the PUD development has been installed and the owner has indicated while not all utilities have been installed, the trench for the utilities has been ground out (bedrock), was filled for safety purposes, but can be easily reopened to install the remaining required utilities. No work has taken place on the vacant site for a number of years, and the subject site has been on the market. Recently the owner of the property sought an amendment to the PUD to reduce the number of lots from 16 to 4, which was determined to be a minor amendment and granted by the Planning Commission on April 12, 2017.

Kincaid advised the variance requests are to allow one "driveway" to serve for four one-family dwellings, and to allow two 75-foot minimum width variances for a proposed land division. At this time, the property is PUD zoned with a recorded PUD plan and agreement. The applicant stated in their submitted letter that they are considering revoking the PUD plan and agreement and seeking the property to be rezoned to the original underlying zoning of R-1, Single Family Residential. Kincaid advised the public hearing for the revocation and rezoning is scheduled for a recommendation at the September 13, 2017 Planning Commission meeting. Once the PUD is no longer in place (Township Board decision), the parcel would result in the land becoming one 36 +/- acre parcel and would become eligible for land division.

Kincaid noted while each proposed land divided parcel would meet the minimum requirement of 90' of frontage on Douglas Road, future lots 2 & 4 are proposed to have 136.6 +/- feet of frontage, and future lots 1 & 3 would each have 90' of frontage. Per 301.009, Section 9.B of the Bedford Township General Code Ordinance: *"All the resulting parcels or resulting subdivision lots, outlots or parcels, or portions thereof, to be created shall fully comply with the applicable lot(parcel) yard, and area requirements of the Township of Bedford Zoning Ordinance, including but not limited to, minimum width, minimum road frontage, minimum area, minimum depth to width ration, minimum set-backs, maximum area coverage for buildings and structure....."*, thus requiring the 75' minimum width variance for the proposed layout of parcels 2 & 4, as lots 2 & 4 decrease in width approximately 200' in depth off Douglas Road from 136.6' wide to 15' in width, which is half of the total "driveway" width for each parcel.

Kincaid continued saying, the applicant is requesting the existing private road (Greycliff Lane within the PUD) to be utilized as a private driveway for all four resulting parcels. It should be noted that while the access drive can be a private road within a PUD, per Section 400.1914.1.a., private roads shall not be established after February 5, 1974. In accordance with Section 400.1914.2.a "Driveways or private

driveways”, “a private driveway, which is to be used for no more than one principal building or two one-family dwellings....” is permitted. Therefore, a variance is required to permit a “private driveway” to serve all four resulting parcels. The applicant provided a letter from Scott Assenmacher of the MCRC stating the MCRC would not likely allow an additional curb cut or connection to Douglas Road and all connection would be required off Greycliff Lane. Mr. Assenmacher also stated one single adequately designed with proper geometrics approach is always better than multiple approaches to the mainline road such as Douglas Road to reduce conflict points and provide a generally safer connection to the mainline roadway. Mr. Assenmacher further stated the MCRC will not maintain the roadway in any way, stating an association should be set up to accommodate and fund those needs. It should also be noted that the Township would not accept the now identified Greycliff Lane to have any “road name sign”, as the “road” would no longer exist after the PUD is revoked. Kincaid stated Greycliff Lane would become a private driveway that would provide access to four (4) separate parcels. However, the Township would allow a stop sign to be properly installed where the driveway meets Douglas Road. If the variances are granted and the applicant moves forward with the PUD revocation, it should also be noted the MCRC would require the applicant to obtain a modified permit.

The Bedford Township Fire Department was consulted on the request to utilize one driveway as access to four separate dwellings, and due to the road surface with a cul-de-sac at the east end and the access to municipal water and fire hydrants along the “driveway”, they have no objection to having four homes having access from the “driveway”, asking that the addresses of the four homes that will have access from the “driveway” be properly displayed at the entrance and at the dwelling sites, as each home will have a Douglas Road address.

In reviewing the approved PUD plan, it should be noted Greycliff Lane was shifted north on the site to avoid encroachment on the Indian Creek floodway, thus creating an entrance that is not centrally located on the subject site.

Kincaid advised should the variance request be granted, the variances required are:

- Allow a private driveway to serve four one-family dwellings
  1. set up a driveway maintenance agreement
  2. properly install a stop sign at the west end of the driveway at Douglas Road
  3. properly display each dwelling address at the entrance and at each dwelling site
  
- Two 75 +/- foot minimum width variances for a proposed land division
  1. where the width shall not be reduced from the minimum 90-foot frontage requirement any nearer to Douglas Road than 200 feet in depth as identified on the submitted plot plan B-1

Lastly, Kincaid noted at this time no letters or calls of objection have been received.

**Donna Hall-1489 Stonegate Court-** Ms. Hall was available to answer any further questions. Potter asked for clarification on the submitted layouts one showing 90’ and the other of 15’ in width. Ms. Hall advised they are proposing the 15’ in width and the 90’ layout is to show the encroachment on parcels 1 & 3 and the request to try and prevent future issues. Ms. Hall gave examples of the issues with the encroachment within the parcel owners that could arise. Ms. Hall advised the existing “private road” which will become a “private driveway” should the variance be granted is 30’ in width and will be divided between parcels 2 & 4 resulting in the 75’ width variance. Shah asked the applicant why the development would not be just changed as a subdivision. Shah advised it is difficult to manage and

maintain the property, even with a maintenance agreement and could not that be done with a development of a subdivision and a public road. Ms. Hall advised they are aware of having a maintenance agreement and an easement agreement drawn up for the shared driveway. Discussion continued on the proposed layout.

Kincaid stated the existing road will not remain as a private road within a PUD development, as the applicant is scheduled for the 9/13/2017 Planning Commission meeting to seek a revocation of the PUD Plan and Agreement. Kincaid advised it would then become a private driveway and each resulting parcel will maintain 90' of frontage on Douglas Road.

Steiner inquired if a private driveway could have a requirement of ¼ of ownership for each resulting parcel. Mr. Kamprath stated that is a concept used in a subdivision with outlots. Mr. Kamprath advised it is a separate parcel owned by all parcel owners within the development. Mr. Kamprath advised he is not in favor of moving in that direction, as there is always a potential for disputes.

**Jason Sheppard- 7235 Bentcreek-** Mr. Sheppard referred to another development similar to the proposed layout with a shared agreement. Mr. Sheppard stated he felt this proposed layout is a great solution to a development which has been problematic and this would allow the applicant to keep moving forward revoking the PUD to allow growth on this parcel.

**Kevin Ruddy-8800 Newcombe Trace-** Mr. Ruddy stated this parcel is directly in his back yard and the vacant property is somewhat of a nuisance. Mr. Ruddy lives in a similar development with a shared driveway within a PUD as his development does not have the frontage for each parcel. Mr. Ruddy spoke in favor of the request; however, stating he would have objection if the property would become anything other than residential.

***Motion by Steiner, supported by Shah, to close the public hearing at 7:40 p.m. Motion carried.***

Greeley stated he has looked into this property several times, however never moved forward due development obstacles. Greeley said he felt this is a beneficial, nice creative way to develop this property. Potter inquired on the development remaining as a PUD. Kincaid said that would be at the discretion of the applicant and the property owners as they are seeking the revocation.

***MOTION BY STEINER, SUPPORTED BY SHAH, TO GRANT THE APPEAL OF GREYSTONE HOLDINGS, LLC, 1489 STONEGATE COURT, TEMPERANCE, MI 48182, REQUESTING A VARIANCE TO ALLOW A PRIVATE DRIVEWAY TO SERVE FOUR ONE-FAMILY DWELLINGS, PER SECTION 400.1914, "PRIVATE ROADS, PUBLIC ROADS, DRIVEWAYS AND FRONTAGE", ON VACANT LAND CURRENTLY LOCATED WITHIN AN UNDEVELOPED PUD AND DESCRIBED AS 5802-021-036-00, LOCATED ON THE EAST SIDE OF DOUGLAS ROAD, NORTH OF THE INTERSECTION OF CONSEAR ROAD, LAMBERTVILLE, MI 48144 CONDITIONED UPON SETTING UP A DRIVEWAY MAINTENANCE AGREEMENT TO INCLUDE ALL FOUR PROPERTIES, PROPERLY INSTALLING A STOP SIGN AT THE WEST END OF THE PRIVATE DRIVEWAY AT DOUGLAS ROAD, PROPERLY DISPLAYING EACH DWELLING ADDRESS AT THE ENTRANCE AND AT EACH DWELLING SITE. PRACTICAL DIFFICULTIES BEING THE PROPERTY IS HEAVILY INFILTRATED WITH BEDROCK MAKING IT DIFFICULT TO DEVELOP, THE TERRAIN AND INDIAN CREEK AT THE ENTRANCE, THE PROPETIES ALL MEET THE 90' FRONTAGE REQUIREMENT AT DOUGLAS ROAD BY THE PROVIDED MAP B-1. THESE VARIANCES WILL NOT BE VALID UNLESS THE PUD PLAN AND PUD AGREEMENT ARE REVOKED AND THE PROPERTY IS REZONED TO THE UNDERLYING ZONING OF R-1, SINGLE FAMILY RESIDENTIAL AND APPROVED BY THE TOWNSHIP BOARD, AND THERE WILL BE NO STREET SIGN***

**PERMITTED, AS WHAT IS NOW A ROAD WILL BE A PRIVATE DRIVE. IN ADDITION, COMMENTS FROM THE MCRC STATED ANOTHER CURB CUT DUE TO SAFETY AND TRAFFIC ISSUES ON DOUGLAS ROAD, WOULD NOT BE PERMITTED, FURTHER STATING THE MCRC WILL NOT MAINTAIN THE PRIVATE DRIVEWAY. AS WELL, THE BEDFORD TOWNSHIP FIRE DEPARTMENT SUPPORTS THE FOUR HOMES OFF ONE DRIVEWAY. THE OWNER/DEVELOPER SHALL CREATE A HOMEOWNERS ASSOCIATION, MAINTENANCE AGREEMENT AND EASEMENT AGREEMENT FOR ALL FOUR LOTS DEVELOPED.**

Roll call as follows:

Voting Aye: Steiner, Shah, Potter and Greeley

Voting Nay: None

Excused: Welling and Bush (Shah alternate for Bush)

Motion carried.

**MOTION BY STEINER, SUPPORTED BY SHAH, TO GRANT THE APPEAL OF GREYSTONE HOLDINGS, LLC, 1489 STONEGATE COURT, TEMPERANCE, MI 48182, REQUESTING A VARIANCE TO ALLOW TWO 75 +/- FOOT MINIMUM WIDTH VARIANCES PER SECTION 301.009 "STANDARDS FOR APPROVAL OF LAND DIVISIONS, SPLITS AND COMBINATIONS AND SUBDIVISION LOT, OUTLOT OR PARCEL DIVISIONS, SPLITS AND COMBINATIONS", ON VACANT LAND CURRENTLY LOCATED WITHIN AN UNDEVELOPED PUD AND DESCRIBED AS 5802-021-036-00, LOCATED ON THE EAST SIDE OF DOUGLAS ROAD, NORTH OF THE INTERSECTION OF CONSEAR ROAD, LAMBERTVILLE, MI 48144 CONDITIONED UPON WHERE THE WIDTH SHALL NOT BE REDUCED FROM THE MINIMUM 90-FOOT FRONTAGE REQUIREMENT ANY NEARER TO DOUGLAS ROAD THAN 200 FEET IN DEPTH AS IDENTIFIED ON THE SUBMITTED PLOT PLAN TITLED B-1. PRACTICAL DIFFICULTIES BEING THE PROPERTY IS HEAVILY INFILTRATED WITH BEDROCK MAKING IT DIFFICULT TO DEVELOP, THE TERRAIN AND INDIAN CREEK AT THE ENTRANCE, THE PROPETIES ALL MEET THE 90' FRONTAGE REQUIREMENT AT DOUGLAS ROAD AS SHOWN ON THE PROVIDED MAP B-1 WHERE THE PRIVATE DRIVE IS 30' IN WIDTH. THESE VARIANCES WILL NOT BE VAILID UNLESS THE PUD PLAN AND PUD AGREEMENT ARE REVOKED AND THE PROPERTY IS REZONED TO THE UNDERLYING ZONING OF R-1, SINGLE FAMILY RESIDENTIAL AND APPROVED BY THE TOWNSHIP BOARD. THERE WILL BE NO STREET SIGN PERMITTED, AS THE ACCESS WILL BE A PRIVATE DRIVE. ALSO, COMMENTS BY THE MCRC STATING THERE SHOULD NOT AND WOULD NOT BE ALLOWED ANOTHER CURB CUT DUE TO SAFETY AND TRAFFIC ISSUES ON DOUGLAS ROAD, NOR WILL THE MCRC MAINTAIN THE PRIVATE DRIVEWAY. BEDFORD TOWNSHIP FIRE DEPARTMENT SUPPORTS THE FOUR HOMES OFF ONE DRIVEWAY. OWNER/DEVELOPER SHALL CREATE A HOMEOWNERS ASSOCIATION, MAINTENANCE AGREEMENT AND EASEMENT AGREEMENT FOR ALL FOUR LOTS DEVELOPED.**

Roll call as follows:

Voting Aye: Steiner, Shah and Greeley

Voting Nay: Potter

Excused: Welling, Bush (Shah was the alternate for Bush)

Motion carried.

Greeley advised the applicant's representative he would need a majority vote to approve if wanting to move forward, or reschedule with a full board. The applicant's representative waived the right to defer and requested to move forward.

**Motion by Shah, supported by Potter, to open the public hearing at 7:57 p.m. Motion carried.**

**B. OPEN THE PUBLIC HEARING REGARDING THE APPEAL OF JOHANNA ARMENTROUT, 4099 SCHOOL ROAD, TEMPERANCE, MI 48182, REQUESTING A 137 +/- FOOT FRONTAGE VARIANCE, A 280 +/- FOOT FRONTAGE VARIANCE AND A 2.3 +/- ACRE AREA VARIANCE PER SECTION 400.1800, "SCHEDULE OF REGULATIONS" AND A VARIANCE TO ALLOW TWO EXISTING ACCESSORY STRUCTURES TO BE MAINTAINED IN THE FRONT YARD OF A NEW RESIDENTIAL DWELLING PER SECTION 400.1903, "ACCESSORY BUILDINGS" IN AN AG, AGRICULTURAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-006-026-50, OTHERWISE KNOWN AS, 4099 SCHOOL ROAD TEMPERANCE, MI 48182.**

Kincaid reviewed the analysis stating the existing parcel consists of approximately 10.49 +/- acres with 243.28 feet of frontage on School Road and widening to approximately 348.6 feet at the rear property line. The existing parcel is a prior legal non-conforming lot of record with an existing single family residential home and is the current location of "Jacob's Supply", a non-conforming use on the property. The applicant is seeking to split the 10.49 +/- acre parcel into two parcels in an AG, Agricultural Zoning District. Per Section 400.1800 "Schedule of Regulations" a minimum of 5 acres and 330' frontage is required.

Kincaid said the applicant has submitted a letter stating one resulting parcel with the existing home will have 193' of frontage on School Road with 2.7 +/- acres, while the remaining portion of 7.8 +/- acres will maintain the remaining 50' of frontage on School Road. The applicant has shown the proposed layout of the parcels is due to the topography of the land and location of the creek. The applicant has indicated should the variances be granted, the intent is to relocate the entire existing non-conforming use to a recently purchased location on Lewis Avenue (formerly Whitman Ford), allow his mother to maintain a portion of the property, and build a new more manageable home for her. Per Section 400.1903.4 "Accessory Buildings", in an AG, Agricultural Zoning District, accessory buildings shall not be erected in any minimum side yard setback nor in any front yard setback. Currently, with the non-conforming use, there are several existing accessory buildings on the parcel and the applicant has stated in his letter the intent is to construct a single-family dwelling to the rear of the property and the variance request is to allow two of the existing structures to be maintained in the front yard.

Kincaid advised should the variance request be granted, the variances required are:

- Parcel A: A 137' Frontage Variance
- Parcel A: A 2.3 Acreage Variance
- Parcel B: A 280' Frontage Variance
- Parcel B: Variance to allow two existing accessory structures to be maintained in the front yard

At this time, no letters or calls of objection have been received, however the applicant has supplied the Planning Department with 12 letters of no objection.

**Jacob Armentrout-4099 School Road-** Mr. Armentrout stated he will be moving the non-conforming use to the old Whitman Ford property. Shah ask if all the building were going to be removed from the property, and why the request to maintain two buildings on site. Mr. Armentrout stated all but the two buildings would be removed as they are used for his business. Potter inquired on the 50' frontage. Mr. Armentrout stated the existing home is on an angle and wanted to utilize as much of the property as possible. Steiner asked on the depth to width. Kincaid stated when the applicant goes through the land division process it will have to be presented to the Township Board for approval on the 4:1 ratio.

***Motion by Shah, supported by Steiner, to close the public hearing at 8:05 p.m. Motion carried.***

Greeley spoke in favor of the proposed layout adding the resolution to move the non-conforming use existing on the property. Greeley inquired on a condition of the variance being granted on the non-conforming use must be removed from the location in its entirety. Mr. Kamprath stated there can be any reasonable conditions placed on granting a variance. Mr. Kamprath added the non-conforming use is not relevant to the dimensional variances being requested. Mr. Kamprath continued saying that business is non-conforming whether or not the board grants the variance and denies the request. Mr. Kamprath advised that should not be a practical difficulty considered as a reason for granting the variances. Shah voiced concern on maintaining the two accessory buildings and the size. Mr. Armentrout stated they are used to store vehicles and his brother does some wood working. Mr. Armentrout advised the board he would agree to the condition of the non-conforming use completely being removed from the location and one building is older and would not have an issue removing that one, however would appreciate to maintain them both. Greeley asked if the parcel is permitted on the size and number of the buildings. Mr. Armentrout explained the submitted letter on the difficulty and why the proposed layout came up for the request. Kolar said there is no issue with having two accessory structures as it will comply with the ordinance. Potter agreed with maintaining the buildings. Shah stated he was not against maintaining the two accessory buildings, he was seeking clarification that if they were to remain, there is no intent to use the structures for any type of commercial business.

***MOTION BY POTTER, SUPPORTED BY STEINER, TO GRANT THE APPEAL OF JOHANNA ARMENTROUT, 4099 SCHOOL ROAD, TEMPERANCE, MI 48182, REQUESTING A 137 +/- FOOT FRONTAGE VARIANCE, A 280 +/- FOOT FRONTAGE VARIANCE AND A 2.3 +/- ACRE AREA VARIANCE PER SECTION 400.1800, "SCHEDULE OF REGULATIONS" AND A VARIANCE TO ALLOW TWO EXISTING ACCESSORY STRUCTURES TO BE MAINTAINED IN THE FRONT YARD OF A NEW RESIDENTIAL DWELLING PER SECTION 400.1903, "ACCESSORY BUILDINGS" IN AN AG, AGRICULTURAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-006-026-50, OTHERWISE KNOWN AS, 4099 SCHOOL ROAD TEMPERANCE, MI 48182 CONDITIONED UPON ALL BUILDINGS TO BE REMOVED, EXCEPT THE TWO (56 X 100 & 60 X 74) SHOWN ON THE SUBMITTED LAYOUT WHICH WILL NOT BE USED FOR JACOB'S SUPPLY PER THE APPLICANT. ALSO, THERE WILL BE NO OTHER NON-CONFORMING USE CREATED ON THE PROPERTY. PRACTICAL DIFFICULTY BEING TOPOGRAPHY OF THE LAND, LOCATION OF THE CREEK AND FAMILY HARDSHIP. THIS APPROVAL IS SUBJECT TO THE BEDFORD TOWNSHIP BOARD GRANTING APPROVAL OF THE 4:1 DEPTH TO WIDTH RATIO. THE APPLICANT IS GRANTED A TOTAL OF 6 MONTHS TO REMOVE ENTIRE COMMERCIAL USE AND BUILDINGS FROM PROPERTY, EXCLUDING THE TWO APPROVED ACCESSORY BUILDINGS TO BE MAINTAINED IN THE FRONT YARD AND NO OTHER COMMERCIAL USE BE PERMITTED ON THE PROPERTY. THE APPLICANT IS TO SUBMIT A LAND DIVISION APPLICATION AND ONCE APPROVED GO THROUGH THE LAND DIVISION PROCESS.***

Roll call as follows:

Voting Aye: Potter, Steiner, Shah and Greeley

Voting Nay: None

Excused: Welling, Bush (Shah filled in for Bush)

Motion carried.

Greeley advised the applicant's representative, Jim Jacobs, he would need a majority vote to approve if wanting to move forward, or reschedule with a full board. The applicant's representative waived the right to defer and requested to move forward.

***Motion by Potter, supported by Shah, to open the public hearing at 8:20 p.m. Motion carried.***

***C. OPEN THE PUBLIC HEARING REGARDING THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUESTING VARIANCES 1) A 200 FOOT SETBACK VARIANCE FROM THE WEST PROPERTY LINE, 2) A 200 FOOT SETBACK VARIANCE FROM A NATURAL OR MAN-MADE WETLAND, 3) A VARIANCE TO ALLOW A PREVIOUS LEVEL 3 WETLAND REVIEW CONDUCTED BY THE MDEQ IN JULY OF 2006 AND THE UPDATED REDELINEATION REPORT, 4) A VARIANCE TO ELIMINATE THE REQUIRED INSTALLATION OF GROUND WATER MONITORING WELLS, 5) A VARIANCE TO ELIMINATE GROUND WATER MONITORING WELLS, 6) A VARIANCE TO ELIMINATE THE SURFACE WATER MONITORING, 7) A VARIANCE TO ELIMINATE THE 50 FOOT WIDE VEGETATION FILTRATION PERIMETER STRIP OF GRASS, 8) A VARIANCE TO ELIMINATE THE DOUBLE ROW OF EVERGREEN SCREENING AND BUFFERING AROUND THE PERIMETER OF THE SITE, 9) A VARIANCE TO ELIMINATE THE PERIMETER FENCING REQUIREMENT, 10) A VARIANCE FROM POSSIBLE ON-SITE EMERGENCY AND FIRE FIGHTING EQUIPMENT REQUIREMENTS, AND 11) A VARIANCE FROM REQUIRING DIRECT ACCESS TO A PAVED PUBLIC ROADWAY DESIGNATED AS A MAJOR THOROUGHFARE CAPABLE OF CARRYING CLASS A LOADING ON A YEAR ROUND BASIS, PER SECTIONS 400.1502.5.e.1, 400.1502.5.e.5, 400.1502.5.m, 400.1502.5.r, 400.1502.5.u, 400.1502.5.w, 400.1502.5.y, 400.1502.5.bb, 400.1502.5.cc, 400.1502.5.ee, 400.1502.5.gg, "COMMERCIAL COMPOSTING FACILITIES IN I-2" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182.***

Kincaid reviewed the analysis saying the applicant is seeking several variances relative to the newly adopted "Commercial Composting Facilities in I-2" zoning ordinance as it is being applied to a proposed site plan submittal for a composting operation. The ordinance language was drafted and reviewed by the Planning Commission, the Township Board, the Fire Department, and the applicant. Language amendments were made and the public hearing was held on June 28, 2017, where a recommendation was made to adopt the ordinance as presented. The Monroe County Planning Commission recommended approval the ordinance as written on July 12, 2017, the Township Board approved the ordinance on July 18, 2017, and the ordinance went into effect on August 4, 2017. The applicant is applying the ordinance to a composting site plan located at 110 W. Smith Road, on the northwest corner of Smith Road and Telegraph Road. Kincaid reviewed the requested variances:

1. Variance 1502.5.e.1 – The ordinance requires a 250-foot setback from all adjacent property lines for all management or storage of yard clippings, compost, and residual occurs in an area that is not in the 100-year flood plain. The applicant is asking for a 200-foot setback variance from the west property line (RM-2 zoned adjacent parcel) and to allow the installation of a retention facility/detention swale within the 50-foot setback. This also requires a variance (1502.5.y) that will be identified later in this analysis, as a vegetation filtration in all buffer areas shall be accomplished by use of a 50-foot wide perimeter strip of grass, or similar measure. MDEQ states setbacks from sensitive receptors and other factors should be observed whenever possible, but does offer an alternative buffer option such as berms, walls, and rows of trees. This also requires a variance (1502.5.bb and 1502.5.cc) that will be identified later in this analysis, as the ordinance requires the perimeter of the entire site utilized for composting operations to be screened and buffered by means of planting a double row of evergreens and to be fences a minimum of six feet in height. It should be noted that the multi-family residentially zoned property to the west is undeveloped and the Mannik & Smith Group (MSG) will further

comment on the proposed retention/detention area within the required 50-foot wide perimeter strip. Comments are not available from the MCDC at this time.

2. Variance 1502.5.e.5 – The ordinance requires a 200-foot setback from a natural or artificial wetland. The applicant is asking for a 200-foot setback variance to provide a zero setback from a wetland, stating in the NRM letter included in the packet no encroachment into the wetland is proposed that would require a permit or mitigation. MDEQ requires a 200-foot setback from natural or artificial wetlands whenever possible, but does offer an alternative buffer option such as berms, walls, and rows of trees. MSG will further comment on this.
3. Variance 1502.5.m – The ordinance requires a level 3 wetland assessment shall be made prior to site plan and special land use approval. The applicant is asking for a variance from this section and that the requirement be satisfied by a previous Level 3 wetland review conducted by the MDEQ in July of 2006, and an updated re-delineation report. The Planning Department has a copy of the MDEQ report referenced, and the Mannik & Smith Group is reviewing the report and the updated report prepared by NRM to provide further comment on this variance request.
4. Variance 1502.5.r – The ordinance requires monitoring wells be installed on site prior to construction of the composting facility to ensure that ground or surface waters are not contaminated. The applicant is requesting a variance from the monitoring well requirement. The Mannik & Smith Group will further comment on this issue.
5. Variance 1502.5.u – The ordinance requires sampling of ground water monitoring wells must start before operations begin, continue quarterly during the active life of operations, and quarterly for a two-year period after operations cease for compliance with Act 255 of Public Acts of 1929, as amended. The applicant is requesting a variance from this section for the same reasons outlined in Variance 4. The Mannik & Smith Group will further comment on this issue.
6. Variance 1502.5.w – The ordinance requires surface water monitoring also be required in addition to ground water monitoring to assess the adequacy of leachate contaminate and run off control and for compliance with Act 255 of Public Acts of 1929, which shall be required quarterly. The applicant is requesting a variance to not require collection of surface water samples because the surface water will be contained on site and the storm water plan will retain storm water in a retention facility on-site. The Mannik & Smith Group will further comment on this issue.
7. Variance 1502.5.y – This section of the ordinance regulates site grading, slope limits, controlled drains for water run-off, detention, and vegetation filtration, which shall be reviewed and approved by the MCDC and the MDEQ, also requiring a vegetation filtration in all buffer areas of a fifty-foot wide perimeter strip of grass, or similar measure. The applicant is requesting to vary from this requirement and eliminate the 50-foot wide perimeter strip of grass, stating all sides of the property will have a natural vegetation buffer or berm that is vegetated. When referring to the plot plan, it should be noted that there may be a sufficient buffer zone along the north and east of the site, and there is a proposed berm along the south property line; however, the detention/retention area along the west side is located within the 50-foot strip and ALL existing buffering is located off-site within the parcel to the west (RM-2 zoned) of the subject site.

8. Variance 1502.5.bb – This section of the ordinance requires the perimeter of the entire site utilized for composting operations to be screened and buffered by means of planting a double row of evergreens six to eight feet in height at planting, with no more than a 15-foot spacing and offset by 8 feet. The applicant is seeking a variance on the buffering requiring, stating the existing site is surrounded on 3 sides (north, east and west) by dense brush and trees and they are proposing a landscaping berm along the south line. It should be noted that the entire buffering along the west property line is not located within the subject parcel and is entirely located within the parcel located to the west of the subject site. The south side has been cleared of vegetation; however, and a landscaping berm is being proposed.
9. Variance 1502.5.cc – This section of the ordinance requires the perimeter of the entire site be fenced at a minimum of six feet in height with a vinyl coated decorative fence or the equivalent. The applicant is seeking a variance on the fence requirement, stating the existing site is surrounded on three sides (north, east & west) by dense brush and trees, and a three-foot tall landscaped berm and locked gated entrance along the south property line is proposed. It should be noted that the entire buffering along the west property line is not located within the subject parcel and is entirely located within the parcel located to the west of the subject site. The south side has been cleared of vegetation; however, and a landscaping berm is proposed with a locking gate.
10. Variance 1502.5.ee – This section of the ordinance references requirements of the Fire Department after review and approval of the site plan by the Fire Chief. The applicant is seeking a variance of this ordinance. At a meeting held on August 1, 2017, with the Fire Department, Planning Department, Lennard, Graham & Goldsmith, MSG, MCDC, the applicant and his engineers, and Elected Officials, the Fire Chief stated no on-site fire equipment would be required for this particular site other than two (2) 5-pound dry chemical fire extinguishers to be kept in the guard shack. Should a variance be granted, it should be stipulated that two (2) 5-pound dry chemical fire extinguishers shall be on site and kept in the guard shack as requested by the Fire Chief. The Fire Chief provided an email stating his requirements would be that of what was previously discussed.
11. Variance 1502.5.gg – This section of the ordinance requires direct access to a paved public roadway designated as a major thoroughfare in the Township capable of carrying Class A loadings on a year-round basis. The applicant is seeking a variance to this requirement, stating the most common vehicle traffic for this site will be pedestrian cars and trucks with possible small trailers. Large commercial trucks with trailers is not anticipated.

It should be noted that although variances may be granted on zoning ordinance requirements, all County, State and/or Federal requirements must be adhered to, including all reviews and permit requirements. Therefore, should a variance be granted that does not meet the minimum County, State and/or Federal requirements for site plan approval, the plan would have to be amended to meet the requirements of the reviewing agency(ies).

**Jim Jacobs-Jacobs Architect- representative for the applicant Andrew Nycz-** Mr. Jacobs stated in his conversations with the applicant they are requesting eleven variances, however based on the MSG comments they have decided to withdraw #7, 50' vegetation buffer, since there appears to be no concern regarding that space for drainage purposes. Mr. Jacobs spoke regarding the first and second request of a 200' setback variance and a 0' setback from a wetland, stating the hardship for that request is due to the topography, wetlands, flood plain aspects, and the required property setback requirement

would leave less than an acre of the cleared area, basically leaving this property undevelopable for the composting use. Mr. Jacobs stated these two variances are key to the success to move forward with this development process. Mr. Jacobs referred to the MSG report and being on track with the applicants' intent.

**Barry Buschmann-The Mannik and Smith Group-Township Engineer**-Mr. Buschmann referred to the natural buffer already existing to the north and east. Mr. Buschmann continued to say in regards to the westerly buffer abutting a residential zoning district, it should be addressed further as we go through the variances on the buffer/screening on the westerly portion of the property.

Mr. Jacobs advised the applicant currently has a purchase proposal on the west property, which will then be under his control and ownership, should there be successful movement of the development. Mr. Jacobs stated the applicant would like to proceed as proposed with the existing buffer, however they do have other options to consider, should the board require additional screening. Mr. Jacobs stated, Mr. Nycz is not interested in combining the two parcels, should that be a requirement. Mr. Jacobs stated they would seek to redesign the plan to accommodate the board's requirements on screening/buffering. Mr. Buschmann stated the westerly boundary is heavily wooded, however it is on the adjacent property. Mr. Buschmann advised should the applicant end up not purchasing the property or a future property owner, there would be no buffer/screening. Mr. Buschmann stated he did not see an issue with allowing the 50' setback variance but the applicant should provide some reasonable buffer in accordance with the normal requirements on his site. Lengthy discussion continued on the requirements of additional buffer/screening on the westerly and southern portion of the property, however allowing the north and easterly existing buffer to suffice. Mr. Buschmann clarified the number of the variance request and decision to use the number system the Planning Department supplied moving forward with the request. Potter asked for explanation on the 250' setback requirement. Kincaid reviewed the process and how the decision on 250' setback was decided upon and approved by the Township Board. Mr. Jacobs stated the request is based on the MDEQ requirements. Potter spoke in favor of the use within the township, however there should be a requirement of a buffer, especially next to a residentially zoned property. Kincaid stated MDEQ requirement of 200' setback is from a residency. Greeley spoke regarding the westerly property is not yet developed. Shah asked if the right site for this property has been chosen, due to a new business and asking for eleven variances.

**Jason Sheppard-7235 Bentcreek**- Mr. Sheppard reiterated the process regarding the development of the ordinance, as the township did not permit a composting operation. Mr. Sheppard spoke on several changes that were made to the proposed language of the ordinance. Mr. Sheppard spoke on the lack of vacant industrial properties within the township to even present a composting operation to be developed. Mr. Sheppard spoke on the location of the proposed site and it being the perfect spot for this type of facility. Mr. Sheppard stated the Planning Commission wanted to maintain some more restrictive requirements as to not have several composting facilities within the community. Mr. Sheppard spoke on the setback requirements and the misunderstanding of the composting material ordinance required setback and not a 250' setback around the perimeter of the entire property. Mr. Sheppard stated MDEQ's requirement is a 50' setback. Mr. Sheppard advised the board the applicant intends to purchase both properties. Mr. Sheppard agreed to the buffering of trees to the west and advised the site plan would be amended to keep a buffer separation.

**Stephan Spradlin-2077 Fountain Circle**-Mr. Spradlin spoke in favor of the variance request. Mr. Spradlin wished the township's process was easier for the applicant. Mr. Spradlin did say he did not realize this was a new ordinance and can understand some of the precaution but it appears to over kill. Mr.

Spradlin felt the process should have moved along faster as so costly to the applicant. Mr. Spradlin spoke on the new platform being “business friendly”, however he is not seeing that.

Steiner commented on the Planning Department within the last year trying to update current and create new ordinances. Steiner added that when creating an ordinance, the township needs to make sure they are not setting a poor precedent. Steiner concluded saying the township is working hard with business within the community and also working to bring in new businesses. Steiner commended the Planning Department on the department working hard for the township.

**Jane Morrin- 6790 Crabb-**Ms. Morrin owns the land just north of the subject location. Ms. Morrin voice concern on the elimination of ground monitoring wells, eliminating surface water monitoring, Indian Creek, wetlands and worried what will happen if the site is not secured.

**Frank Cousino- 6800 Crabb-**Mr. Cousino voiced concern on product, hours, noise, odor, fencing, screening and the setback requirement from Indian Creek.

***Motion by Steiner, supported by Shah, to close the public hearing at 8:55 p.m. Motion carried.***

Greeley spoke highly of the review letter from MSG and suggested moving forward with discussion using the determinations of the Township Engineer’s review. Greeley spoke on the review process. Kincaid stated the site plan and special approval is reviewed by the Planning Commission for a decision. Kincaid also stated the MCRC and MCDC will also be conducting a review letter. Shah asked about the DEQ review. Kincaid stated the MDEQ will review as well. Greeley asked Mr. Jacobs if there has been contact with the MCDC. Mr. Jacobs stated, yes with all the agencies except MDEQ. Mr. Jacobs anticipates approval letters within the week or so. Mr. Jacobs stated the MCDC spoke favorably on the submitted site plan and they were continuing to work on resolving the concerns to amend the plan and resubmit for approval. Mr. Jacobs stated there is a test point system on site for the MCDC for access for testing. Mr. Jacobs stated the MCRC is further conducting their final review and asked Mr. Sheppard if he has acquired his MDEQ permit yet for the operation. Mr. Sheppard stated he has to own the property, but has followed all their guidelines. Mr. Sheppard stated this is the initial step of approval to be able for him to get started and begin MDEQ’s permitting process for this operation. Mr. Sheppard also reiterated the site is only permitted per ordinance to collect yard waste.

Mr. Steiner asked on the turning process and maintaining a temperature of 140- 180 degrees to continue the compost process. Mr. Sheppard advised, the applicant Mr. Nycz, is on the phone and since he is the expert maybe he could address that question. Mr. Nycz stated it is not possible to keep at that temperature, it is at that temperature to maximize the breakdown of the process of the debris. Mr. Nycz stated the only material that actually gets composted is grass, and everything else is ground up. Mr. Nycz clarified when the grass is brought in as a green state, that is nitrogen and brown is carbon, so the more it turns brown you would want to keep it compacted and turning. Mr. Nycz continued to explain the process.

Steiner requested to move forward with the request. Board Members agreed.

Greeley spoke regarding variance requests 1 & 2 and with the review letter from MSG to allow both of those requests. Potter voiced concern on reducing the setback distance from adjacent properties and wetland areas. Potter continued with the algae and condition of Lake Erie and felt protecting the water way from nitrogen and phosphorus should be a concern. Mr. Buschmann stated initially it was his

concern also, however once the site plan was submitted, which is slightly different than the plan submitted for the variances, it shows a substantial distance which is taken up by their detention pond and sedimentation basin, so there will be larger set back. Mr. Buschmann spoke on the site layout and stated a wetland is designed to clean and polish the water and is a natural purifying type of area. Mr. Buschmann spoke on the ground underneath the site being of clay about 46 feet, and he did not feel a concern with the ground water itself, however there is concern regarding the surface water being released. Mr. Buschmann spoke on the final engineer design on the having a first flush basin, then detention pond as well as that point release that will be shown on site at the north-east corner of the detention pond, will be sampled, and be required to be sampled by the applicant, at the direction and frequency determined by the MCDC, to guarantee there is not high levels of nitrogen, phosphorous, etc. coming off the site. Greeley added the applicant said the process of the composting area is going to 250' from the adjacent parcel. Steiner spoke on the permitting process and obtaining approval from MDEQ, which will cover some of the boards concern with surface water and protecting the area. Mr. Jacobs advised the applicant's intent is to keep the composting area in the boundary area to meet the ordinance requirement, however the way the ordinance is worded the setback requirement is the entire composting operation. Mr. Sheppard advised there had been an independent third party hired, an environmental assessment company, NRM, who supplied additional information. Mr. Sheppard advised the wetland delineation area is along the creek line and there is no intent to clear that area.

***MOTION BY SHAH, SUPPORTED BY STEINER, TO GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUES A 1) 200 FOOT SETBACK VARIANCE FROM THE WEST PROPERTY LINE PER SECTION 400.1502.5.e.1, "COMMERCIAL COMPOSTING FACILITIES " IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 AS SHOWN ON THE SITE PLAN OF 50', WITH THE FOLLOWING STIPULATIONS THE APPLICANT HAS INDICATED THE DESIRE TO PROTECT THE WESTERLY PROPERTY ZONED RM-2 AND WILL MAINTAIN THE EXISTING BUFFER ZONE OR PLANT ADDITIONAL TREES AS REQUIRED. PRACTICAL DIFFICULTY BEING THE SITE IS NOT ADEQUATELY LARGE ENOUGH WITH THE AREA OF WETLANDS ON THE NORTHERN SIDE AND THE ORDINANCE REQUIREMENT OF 250' SETBACK OF THE ENTIRE PERIMETER OF THE PROPERTY REDUCED THE USABLE ACREAGE, AND CONDITIONED UPON THE ACTIVE COMPOSTING AREA IS TO BE LOCATED TO THE EASTERN PORTION OF THE PARCEL AS PROPOSED ON THE SITE PLAN.***

Roll call as follows:

Voting Aye: Shah, Steiner and Greeley

Voting Nay: Potter

Excused: Welling and Bush (Shah as alternate for Bush)

Motion carried.

***MOTION BY SHAH, SUPPORTED BY STEINER, TO GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 2) A 200 FOOT SETBACK VARIANCE FROM A NATURAL MAN-MADE WETLAND, PER SECTION 400.1502.5.E.5, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182, PRACTICLE DIFFICULTY BEING THE SITE IS NOT ADEQUATELY LARGE ENOUGH WITH THE AREA OF WETLANDS ON THE NORTHERN SIDE, THE SUBMITTED SITE PLAN HAS INCORPORATED AN AREA SETBACK WITHIN THE DETENTION BASIN, AND SUBJECT TO MEETING THE REQUIREMENTS OF MDEQ.***

**Roll call as follows:**

**Voting Aye: Shah, Steiner and Greeley**

**Voting Nay: Potter**

**Excused: Welling and Bush (Shah served as alternate for Bush)**

**Motion carried.**

Greeley stated they are going to have to meet the MDEQ requirements so he sees no issues with allowing this variance. Mr. Jacobs stated the ordinance requires a level 3, and the request to allow the previous level 3 done to suffice with the updated re-delineation report. Kincaid stated the Planning Department does have a copy of the report. Shah asked if the MDEQ will be updating the 2006 assessment. Mr. Jacobs stated they will be confirming the findings of their consultant. Mr. Buschmann said any of their consultant's findings that deviate from MDEQ's finding will have to be modified. Mr. Goldsmith stated in any motion made should incorporate Mr. Buschmann's observation as just stated.

***MOTION BY POTTER, SUPPORTED BY STEINER, GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 3) A VARIANCE TO ALLOW A PREVIOUS LEVEL 3 WETLAND REVIEW CONDUCTED BY THE MDEQ IN JULY OF 2006 AND THE UPDATED RE-DELINEATION REPORT, PER SECTION 400.1502.5.m, "COMMERCIAL COMPOSTING FACILITIES", IN AN I-2 LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 SUBJECT TO VERIFICATION AND APPROVAL FROM THE MDEQ THAT THE CURENT WETLAND DELINIATION FROM 2006 IS SUBSTANTIATED AND ANY DEVIATION FROM MDEQ'S REQUIREMENTS WOULD NEED MODIFIED.***

**Roll call as follows:**

**Voting Aye: Potter, Steiner, Shah and Greeley**

**Voting Nay: None**

**Excused: Welling and Bush (Shah served as an alternate for Bush)**

**Motion carried.**

Mr. Buschmann stated the applicant has provided from their consultant, as there is a clay layer approximately 46-47 feet down, over the bedrock. Mr. Buschmann stated this was discussed with the MCDC and due to the heavy clay layer and the depth of it, there are less concerns than previously stated. Mr. Buschmann said in his opinion this variance to eliminate this requirement for ground water well testing for this particular site. Shah asked on the review of the engineer of the site. Mr. Buschmann stated both the MCDC and MSG. Potter said ground water and surface water monitoring should always be a concern, as it gives protection for the environment and the property owner. Potter stated when testing is done before the operation begins and during the process, one would know, what if any impacts, especially if there is a concern from a neighboring property. Mr. Sheppard stated there is a surface water monitor due to the drain. Mr. Sheppard stated everything will drain off the site. Mr. Sheppard stated this would be no more of an impact than what is already surrounding the site. Mr. Goldsmith spoke on different ground areas within the township that could impact ground water, but at this site because of the clay and millings, scientifically is less of a concern due to the geological conditions of this site.

***MOTION BY STEINER, SUPPORTED BY SHAH, TO GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 4) A VARIANCE TO ELIMINATE THE REQUIRED INSTALLATION OF GROUND WATER MONITORING WELLS, PER SECTION, 400.1502.5.r, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND***

**DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 DUE TO THE OBSERVATIONS AND THE REVIEW LETTER FROM MSG THAT THE GROUND IS PRIMARILY A CLAY LAYER OVER SOIL CONDITIONS, AS WELL AS THE MILLINGS ON SITE, THERE WILL BE OTHER WATER THAT WILL BE CONTAINED ON SITE FROM THE RUN OFF, THIS WILL FOLLOW THE STANDARDS OF MCDC AND THE MDEQ.**

Roll call as follows:

Voting Aye: Steiner, Shah, Potter and Greeley

Voting Nay: None

Excused: Welling and Bush (Shah served as an alternate for Bush)

Motion carried.

Mr. Buschmann stated as the previous granted request was to eliminate monitor wells, there cannot be a requirement of sampling.

**MOTIN BY STEINER, SUPPORTED BY POTTER TO GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 5) A VARIANCE TO ELIMINATE GROUND WATER MONITORING WELLS, PER SECTION, 400.1502.5.u, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 AS PER THE GRANTING OF VARIANCE #4 THERE WILL BE NO MONITORING WELLS AND THERE WILL BE SURFACE WATER MONITORING.**

Roll call as follows:

Voting Aye: Steiner, Potter, Shah and Greeley

Voting Nay: None

Excused: Welling and Bush (Shah served as an alternate for Bush)

Motion carried.

**PER THE REQUEST OF THE APPLICANT VARIANCE 6) A VARIANCE TO ELIMINATE THE SURFACE WATER MONITORING, PER SECTIONS 400.1502.5.w, "COMMERCIAL COMPOSTING FACILITIES IN I-2" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182, HAS BEEN WITHDRAWN AND THE APPLICANT WILL COMPLY WITH THE ORDINANCE.**

**PER THE REQUEST OF THE APPLICANT VARIANCE 7) A VARIANCE TO ELIMINATE THE 50-FOOT-WIDE VEGETATION FILTRATION PERIMETER STRIP OF GRASS, PER SECTIONS 400.1502.5.y, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182, HAS BEEN WITHDRAWN AND THE APPLICANT WILL COMPLY WITH THE ORDINANCE.**

Greeley spoke on the screening requirements. Mr. Buschmann reiterated the north and easterly portions of the site being heavily tree and brush covered, saying in his opinion that complies and satisfies the ordinance requirements. Mr. Buschmann spoke on the westerly and southern portions of the site should meet the requirements of the ordinance. Mr. Buschmann believed the applicant was satisfied with his response. Mr. Jacobs stated yes, that is correct. Mr. Jacobs asked if what is being proposed for screening of a 3' berm and the mixing of trees would be an appropriate substitution for the

two rows of evergreens. Mr. Jacobs stated this would more of a solid barrier. Mr. Jacobs stated they are seeking an alternative to the requirements just on the south and west side. Greeley inquired if that could be included in the motion. Mr. Goldsmith stated everything is subject to Planning Commission approval when you take into consideration the Planning Commission is required to review and approve the site plan. Mr. Goldsmith stated this board needs to act on the variance request as stated. Mr. Goldsmith concurred with Mr. Buschmann's opinion on the requirements of site specific conditions. Mr. Goldsmith stated the board could state to the Planning Commission for this site only a request to seek other screening that would meet or exceed the requirement stated within the ordinance. There was a lengthy discussion on the screening requirement and the 3' berm and mix of plantings. Mr. Goldsmith stated so the record is clear, if the board is inclined to follow Mr. Buschmann recommendation to the wooded area along Indian Creek and along Telegraph Road to make specific to those two elevations being granted and to note to the Planning Commission what the board intends to weigh in on. Mr. Jacobs suggested looking at the south and westerly property for screening.

***MOTION BY SHAH, SUPPORTED BY STEINER, REGARDING THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 8) A VARIANCE TO ELIMINATE THE DOUBLE ROW OF EVERGREEN SCREENING AND BUFFERING AROUND THE PERIMETER OF THE SITE, PER SECTION 400.1502.5.bb, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 TO GRANT THE REQUEST ON THE NORTHERN AND EASTERLY PROPERTY LINE AS THERE IS EXISTING VEGETATION AND A LARGE TREE LINE, HOWEVER ON THE SOUTH AND WESTERLY SIDE OF THE PROPERTY THE BOARD SUGGESTS TO THE PLANNING COMMISSION A SCREENING OF A 3' BERM AND A MIX OF TREE LINE BE INSTALLED AND MEET THE HEIGHT STANDARDS OF THE SUBMITTED PLAN.***

**Roll call as follows:**

**Voting Aye: Shah, Steiner, Potter and Greeley**

**Voting Nay: None**

**Excused: Welling and Bush (Shah served as an alternate for Bush)**

**Motion carried.**

Greeley read the requirements of the ordinance. Mr. Buschmann again spoke on the existing buffers on the north and east of the site. Mr. Buschmann stated proposed on the site plan is a locked gate. Mr. Buschmann referred to the west and south of the property with the applicants proposed 3' berm with a mix of tree planting will be addressed and determined during site plan approval. Potter said he felt the site should require a fence. Potter referred to the concern from the public having access to the location. Potter did not feel the entire perimeter should have to be fenced, however he felt vegetation alone would not protect the site from people accessing. Mr. Jacobs asked if the purpose of this requirement to keep people out or for screening. Mr. Jacobs stated his understanding was the requirement of a fence is for screening and not necessarily to keep out trespassers. Mr. Jacobs again stated that it is their intent of the berm and mix of trees to supply a buffer and screening to the site. Mr. Sheppard asked for clarification on the Township requiring screening or requiring to avoid trespassing. Mr. Goldsmith stated the Township does have the authority to require commercial sites to be fenced as well as residential sites. Mr. Goldsmith used a pond or a swimming pool as examples for safety purposes. Mr. Goldsmith continued to say the fence is for dual purposes, primarily it is for buffering/screening as you have competing land uses, to the west RM-2. Mr. Goldsmith stated a secondary purpose is for security for the township of public health, safety and welfare can require it. Mr. Goldsmith stated this site is being proposed to be gated. Mr. Goldsmith advised the board they do have authorization to attach

reasonable conditions to the granting of any variance and if the board believes that vegetation, natural buffering and the like and compatible to a fence, given the specific conditions at this site that is within your purview to do.

***MOTION BY POTTER, SUPPORTED BY, TO DENY THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 9) A VARIANCE TO ELIMINATE THE PERIMETER FENCING REQUIREMENT, PER SECTION 400.1502.5.cc, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182.***

***Potter withdrew the motion.***

Discussion on the pervious variance request on the screening and allowing the vegetation and natural buffer on the north and east of the site and the applicants request of the 3' berm with a mix of tree plantings to be determined by the Planning Commission to suffice.

***MOTION BY STEINER, SUPPORTED BY POTTER, TO EXTEND THE MEETING UNTIL 10:30 P.M.***

**Roll call as follows:**

**Voting Aye: Steiner, Potter, Shah and Greeley**

**Voting Nay: None**

**Excused: Welling and Bush (Shah served as an alternate for Bush)**

**Motion carried.**

***MOTION BY POTTER, SUPPORTED BY SHAH, REGARDING THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 9) A VARIANCE TO ELIMINATE THE PERIMETER FENCING REQUIREMENT, PER SECTION 400.1502.5.cc, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 TO GRANT THE REQUEST ON THE NORTH AND EAST OF THE PROPERTY, HOWEVER A MINIMUM 6' HIGH VINYL COATED DECORATIVE FENCE ON THE SOUTH BOUNDARY TREE LINE TO THE SOUTH WEST CORNER, THEN NORTH TO THE TREE LINE JUST NORTH OF THE FIRST FLUSH SWALE AND DETENTION BASIN.***

Greeley asked for clarification on the location as there is already the requirement of the 3' berm with a mix of trees. Greeley stated if it is required either going to look at the fence or the trees. Discussion continued on the location and if there is a need to require. Mr. Buschmann advised it would be approximately 625' of fence on the westerly side of the site. Mr. Sheppard was confused of requiring two types of screening. Steiner agreed with that comment. Mr. Sheppard stated the board should eliminate one or the other requirements, as there is no need for both. Mr. Goldsmith stated one is intended to be a buffer of trees to be between competition land uses and the other is for security purposes depending on the site-specific characteristics.

**Roll call as follows:**

**Voting Aye: Potter and Shah**

**Voting Nay: Steiner and Greeley**

**Excused: Welling and Bush (Shah served as an alternate for Bush)**

**Motion Failed**

Kincaid advised the berm planting design has been included in your packet for review.

***MOTION BY STEINER, SUPPORTED BY POTTER, GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 9) A VARIANCE TO ELIMINATE THE PERIMETER FENCING REQUIREMENT, PER SECTION 400.1502.5.cc, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 AS IT WAS ADDRESSED PREVIOUSLY THERE IS A PROPOSED VEGETATION, MIX TREES AND A BERM ON THE SOUTH SIDE, ALSO IN THE DESIGN PLAN SUBMITTED IT DEFINES THE TYPES OF SHRUBBERY AND VEGETATION THAT WILL BE PLANTED (VARIATIONS OF 2', 6' & 8' IN HEIGHT) ALONG THE BERM, THE WESTERN SIDE OF THE PROPERTY WILL REQUIRE THE SAME TYPE OF BERM AS THE SOUTH, TO INCLUDE SHRUBBERY, TREES AND VEGETATION, AS THE APPLICANT HAS STATED THE BERM WILL BE BROUGHT IN 15' MORE THAN SHOWN ON THE PLAN, THE SOUTHERN PORTION AS SHOWN ON THE SITE PLAN, THE WESTERN PORTION WILL START ON THE SOUTHWEST POINT OF THE PROPERTY LINE CONTINUING TO THE DETENTION AREA. ELIMINATION OF THE FENCE REQUIREMENT ON THE NORTH AND EAST SIDE REASON BEING EXISTING HEAVILY WOODED.***

Roll call as follows:

Voting Aye: Steiner, Potter, Shah and Greeley

Voting Nay: None

Excused: Welling and Bush (Shah served as an alternate for Bush)

Motion carried.

Kincaid said the Planning Department consulted with the Fire Chief and he indicated he will be reviewing on a case-by-case basis what would be the Fire Departments requirements for each individual site.

***MOTION BY STEINER, SUPPORTED BY SHAH, TO GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 10) A VARIANCE FROM POSSIBLE ON-SITE EMERGENCY AND FIRE FIGHTING EQUIPMENT REQUIREMENTS, PER SECTION 400.1502.5.ee, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 AS THIS WILL BE LEFT UNDER THE DESCRETION OF THE FIRE CHIEF AS THERE IS A REIVEW PROCESS. CONDITION UPON THE FIRE CHEIFS INITIAL REVIEW TO REQUIRE 2 5-LB DRY CHEMICAL FIRE EXTINGISHERS BE AVAILABLE ON SITE AND A HYDRANT LOCATED AT THE ROAD.***

Roll call as follows:

Voting Aye: Steiner, Shah, Potter and Greeley

Voting Nay: None

Excused: Welling and Bush (Shah served as an alternate for Bush)

Motion carried.

Mr. Buschmann spoke on this request saying Telegraph Road is the only roadway adjacent to the site which is a Class A, all weather road, however the geometrics of Telegraph in this vicinity is not particularly conducive due to the curves in the road, elevation and the like, not to mention the distance across the wooded area. Mr. Buschmann spoke in support of Smith Road which is in good structural condition and given the fact this is more of a smaller local type of business, the access off Smith Road is safer and more conducive to access. Mr. Buschmann noted subject to the MCRC approval. Mr.

Goldsmith concurred and added for the health, safety and welfare of the community he would request to grant the variance.

***MOTION BY STEINER, SUPPORTED BY SHAH, GRANT THE APPEAL OF TELEGRAPH PARTNERS, LLC, ONE SEAGATE 24<sup>TH</sup> FLOOR, TOLEDO, OH 43604, REQUEST 11) A VARIANCE FROM REQUIRING DIRECT ACCESS TO A PAVED PUBLIC ROADWAY DESIGNATED AS A MAJOR THOROUGHFARE CAPABLE OF CARRYING CLASS A LOADING ON A YEAR ROUND BASIS, PER SECTION 400.1502.5.gg, "COMMERCIAL COMPOSTING FACILITIES" IN AN I-2, LIGHT INDUSTRIAL ZONING DISTRICT ON LAND DESCRIBED AS 5802-035-075-00, OTHERWISE KNOWN AS, 110 W. SMITH ROAD, TEMPERANCE, MI 48182 CONTRARY TO THE ORDINANCE, TO ALLOW ACCESS FROM SMITH ROAD NOT BEING A CLASS A ROADWAY, BUT THE ROAD DOES SUPPORT THE PROPOSED USE OF THIS BUSINESS, BEING A NON-COMMERCIAL BUSINESS MORE OF A RESIDENTIAL BUSINESS, AND ALLOWING ACCESS FROM SMITH ROAD PROMOTES THE HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.***

Roll call as follows:

Voting Aye: Steiner, Shah, Potter and Greeley.

Voting Nay: None

Excused: Welling and Bush (Shah served as an alternate for Bush)

Motion carried.

**PUBLIC COMMENT-**

Mr. Jacobs thanked the staff and Board for being very helpful and professional through this process.

**COMMISSION / STAFF COMMENT –**

Kincaid noted there is already an item scheduled for next month which will be October 2.

**ADJOURNMENT** – The meeting was duly adjourned at 10:30 p.m.

*Respectfully submitted,  
Jodie L. Rector  
Recording Secretary*