

EATON COUNTY BOARD OF APPEALS MINUTES
September 3, 2019

Call to Order: Chair Nikki Chmielewski, called the meeting to order at 6:00 p.m. in the Board of Commissioners Room at the Eaton County Courthouse, 1045 Independence Blvd, Charlotte, Michigan.

Pledge of Flag: The Pledge of Allegiance was given by all.

Roll Call: Nikki Chmielewski, Donald Chase, April Stopczynski, Charamy Cleary, and Jeremy Whittum.

Absent: Tim Catron

Staff Present: Claudine Williams and Brandy Hatt

Agenda Approval: A motion was made by **Member Cleary** to approve the agenda for the September 3, 2019 meeting. **Member Chase** supported. Motion carried

Minutes Approval: A motion was made by **Member Stopczynski** to approve the minutes from the August 6, 2019, 2019 meeting. **Member Cleary** supported. Motion carried.

Communications: Ms. Williams stated the Zoning Board of Appeals has a communication from Oneida Township regarding updating their Master Plan.

Public Comment: None

BA-9-19-12: Request by Kathryn Brown-Cuff for a variance from Zoning Ordinance Section 6.2.10 C. Accessory Dwelling Unit (maximum square footage 720) to allow an existing 764 square foot accessory building to be converted into an Accessory Dwelling Unit. Variance amount requested is 44 square foot. The property is located at 1028 S. Ainger Road, Sec. 19, Carmel Township.

Staff Report: Ms. Williams read the staff report into record.

Member Chase asked if this request could have been considered with an Administrative Variance. Ms. Williams stated Administrative Variances are required to be within ten percent of the requirement.

Member Cleary asked if the shed is included in the square footage for the building. Ms. Williams stated that would be a question to ask the applicant.

Applicants Statement: Ms. Kathryn Brown-Cuff stated the staff report is correct; she clarified the shed is not included in the square footage of the building. **Member Chmielewski** asked if the proposed accessory dwelling unit is seven-hundred sixty-four square feet. Ms. Brown-Cuff said yes.

Member Chmielewski invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor: None

Speakers in opposition: None
Public hearing closed at 6:08 p.m.

Discussion/Comments: **Member Chase** stated he does not see a problem with the request. **Member Cleary** stated she has an issue coming up with answers for Items A-E. **Member Chmielewski** stated the practical difficulty could be that the property and building were the way they are when they purchased it. **Member Cleary** stated it seems ridiculous to not approve the request, but she is still struggling with answers for Items A-E. **Member Chmielewski** stated she believes the building still meets the intent of the Ordinance, as it is smaller than the primary home. **Member Cleary** stated looking at the interior floor plan of the building, she does not see where they can justify that a portion of the building isn't living space; it's already small, the entire space is needed.

Member Chmielewski stated she believes the applicant did not create the problem. She stated the building was previously used as a rental; pre-construction is the only reason they cannot comply, which means they could comply. **Member Stopczynski** stated she would agree if they were already planning renovations to the building, there are two people living in the building. Ms. Hatt stated there are not renovating the building, but they are required to get a building permit for the work that was already done prior to their purchasing of the property. **Member Stopczynski** stated she is curious as to where the maximum of seven-hundred twenty square feet came from. Ms. Williams stated seven-hundred twenty square feet is the minimum size for a primary home.

Member Cleary stated she likes the fact that the interior site plan shows the square footage for each room. **Member Whittum** asked if the property could be divided. Ms. Williams stated she does not believe the homes would meet the required twenty-foot setback to the side property line. Ms. Williams also stated she does not know if there are splits available for the property. **Member Cleary** clarified, the Board of Appeals cannot grant a variance for something that was not asked for in the application.

Member Cleary stated she cannot come up with justifications for items A-E. **Member Chmielewski** stated she could come up with item A, but she is struggling with item B. **Member Chase** asked if the Board of Appeals remembers the case where they allowed the fifth wheel trailer for medical use; he asked if this could be considered under a Conditional Use Permit.

Member Whittum asked if the existing building could be used as a rental. Ms. Williams said no.

Member Cleary moved to deny BA-9-19-12, Kathryn Brown-Cuff for a variance from Zoning Ordinance Section 6.2.10 C. Accessory Dwelling Unit (maximum square footage 720) to allow an existing 764 square foot accessory building to be converted into an Accessory Dwelling Unit. Variance amount requested is 44 square foot. The property is located at 1028 S. Ainger Road, Sec. 19, Carmel Township. They find that:

- A. There is not a practical difficulty in carrying out the strict letter of the ordinance.
- B. There is not a practical difficulty due to unique circumstances related to this particular property.

Member Stopczynski supported. A roll call vote was taken with three (3) voting aye and two (2) voting nay. Motion carried.

BA-9-19-13: Request by Robert Moubray for a variance from Zoning Ordinance Sections 6.2.10 B. Detached Accessory Buildings (buildings shall be no closer than 10 feet from other buildings or any lot line), 7.7.3 Minimum Setback from road right-of-way (building shall be a min of 50 feet from a road right-of-way), and 7.7.6 Maximum Lot Coverage (shall not be more than 25%); to allow for construction of a 20' x 40' garage to be located 2 feet from each side property line, 4 feet from the rear property line, 12 feet from the Luella Lane Right-of-Way and lot coverage of more than 25% for a variance in the amount of 703 square feet at 3016 Luella Lane, Sec. 28, Brookfield Township.

Staff Report: Ms. Williams read the staff report into record.

Applicants Statement: Mr. Robert Moubray stated he does not have anything to add to the staff report. **Member Stopczynski** asked Mr. Moubray if there is a reason for the size of his building he is requesting; she stated she is asking because the building he is replacing is much smaller. Mr. Moubray stated he needs a place to store his vehicles and snowmobiles. He stated he could go smaller and construct a 20' x 30' building rather than a 20' x 40' building.

Member Cleary asked if the building would be all enclosed or if a portion would be open. Mr. Moubray said it would all be enclosed with one overhead door. **Member Chmielewski** asked if the square footage of his proposed building includes the carport as shown on the sketch in his application. Mr. Moubray stated he is not going to build a carport at all; he only wants to construct a pole barn. He stated he believes the sketch was included by mistake.

Member Chmielewski invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor: None

Speakers in opposition: None

Public hearing closed at 6:31 p.m.

Discussion/Comments: **Member Chmielewski** stated she is struggling with item E, minimum amount necessary. **Member Cleary** stated she agrees. **Member Chase** stated he visited the site; the trees and shed have been removed from the property. **Member Cleary** stated she is ok with the garage, but she is not sure the size of the building being requested is in the minimum amount necessary; she added twenty feet in width is reasonable, but she is not sure of the forty foot length. **Member Chmielewski** stated if the board approves the request with a different size, the approved setback should be made in the motion as well. **Member Cleary** agreed. **Member Chase** stated he does not believe twenty foot in length is deep enough. He stated he does not have an issue approving the request as written; the building as requested is not going to hinder the surrounding property owners. **Member Chmielewski** stated her concern is not for the surrounding property owners; she is concerned with item E minimum amount necessary.

Discussion was held in reference to the size of building and what was reasonable.

Member Whittum asked if the garage could be attached to the house. Ms. Williams said no, the house is located across the street. **Member Whittum** stated property owners run into this

problem often; he would be comfortable approving a twenty-foot wide by thirty foot in length building. **Member Chmielewski** stated she is comfortable with that as well.

Member Cleary moved to approve BA-9-19-13, Robert Moubray for a variance from Zoning Ordinance Section Zoning Ordinance Sections 6.2.10 B. Detached Accessory Buildings (buildings shall be no closer than 10 feet from other buildings or any lot line), 7.7.3 Minimum Setback from road right-of-way (building shall be a min of 50 feet from a road right-of-way), and 7.7.6 Maximum Lot Coverage (shall not be more than 25%); to allow for construction of a 20' x 30' garage to be located 2 feet from each side property line, 4 feet from the rear property line, 22 feet from the Luella Lane Right-of-Way and lot coverage of more than 25% for a variance in the amount of 503 square feet at 3016 Luella Lane, Sec. 28, Brookfield Township. They find that;

- A. There is a practical difficulty in carrying out the strict letter of the ordinance due to the small size of the property and the fact the property is divided by Luella Lane.
- B. There is a practical difficulty that is due to unique circumstances related to this particular property due to the small size of the property and the fact the property is divided by Luella Lane.
- C. The applicant did not create the problem.
- D. Granting the variance will not alter the essential character of the district or neighborhood.
- E. This variance is in the minimum amount necessary.

Member Whittum supported. A roll call vote was taken with four (4) voting aye and one (1) voting nay. Motion carried.

BA-9-19-14: Request by Kevin Haley for a review of the Planning Commission's decision regarding CU-6-18-8 Change of Conditions submitted by Darrell Vanderstelt for an Open Air Storage Business (Ball Septic Tank Service) which is located at 2910 Hubbard Road (parcels 060-034-200-011-00 & 060-034-200-020-00), Section 34, Chester Township.

Staff Report: Ms. Williams read the staff report into record.

Applicants Statement: Mr. Ronald Redick of Mika Meyers Law Firm, attorney for Mr. Kevin Haley and Mr. Kevin Haley will both speak regarding the application.

Mr. Redick stated he would like to add to the staff. He stated Mr. Haley owns the seventy-five acre parcel located to the north the property where Ball Septic is operated. He stated he would like to discuss hazardous waste, the proposed buildings ability to comply with the general conditions for conditional approval of the Planning Commission, and timing of the appeal on the original application.

Mr. Redick stated Section 9.6 of the Zoning Ordinance does not have a time line for an appeal. He stated the Zoning Ordinance states an application will be heard at the next Board of Appeals regular meeting; if there were a time line it would be listed in the Zoning Ordinance. Mr. Redick stated he would like to hand out a document put together by Mr. Haley to the Board of Appeals (Exhibit 15 received at the meeting is attached). He stated as the Board of Appeals can see, the applicant's (Ball Septic) attorney did not believe there was a deadline for appealing the decision of the Planning Commission; it also appears county staff did not know if there was a deadline. Mr. Redick stated if no one here can determine if a deadline existed, the appeals should be considered.

Mr. Redick stated the reason for the appeals is due to the fact false information was given in the application, specifically in regards to water bodies and trucks. He stated this is evidence of fraud. He stated the property is surrounded by water and has a drain on the property, none of which was included in the applications. Mr. Redick stated the applicant has committed fraud twice. He stated the county's application states the application is void if the information is not correct. He stated it is important to understand the difference between void and voidable. Mr. Redick stated someone committed fraud on an application, therefore the application is void, which is contrary to what staff suggested in the report given this evening. He stated it is not the board's job to guess what the Planning Commission may have done; the application form states the application should be void. Mr. Redick stated compounding this issue is the lack of notice to the neighboring property owners. He stated four of the six surrounding property owners who were legally entitled to receive notice did not receive notice of the application; the newspaper notice does not cure the lack of notice. He stated the lack of notice does not mean the surrounding property owners cannot protect their right; the lack of notice is also a reason for the appeal.

Mr. Redick stated the definition of hazardous material is where the Planning Commission made their biggest mistake; they used the definition of hazardous waste. Mr. Redick gave the Board of Appeals an e-mail communication between Mr. Kevin Haley and Mr. Jeremy Hoeh of EGLE (e-mail communication received at meeting is attached). He stated it is impermissible to utilize a definition from another source in conflict with the intended definition. Mr. Redick gave examples of hazardous waste and hazardous materials; he stated septage meets the Zoning Ordinance Definition of hazardous materials. He read Zoning Ordinance Section 14.33 G out loud. He stated the Zoning Ordinance is clear, business or storage is required to meet these requirements; it would be silly to interpret to only apply the standards to business and not storage. Mr. Redick stated the business is required to be located on a paved road; storage raises a greater problem than business. He stated it does not make sense to apply the regulation to a business and not storage and the Zoning Ordinance was not written to call out a distinction between storage and business. Mr. Redick stated the business is located on an unpaved, non-primary road; therefore, the Planning Commission should not have approved the business or allowed for the expansion.

Mr. Redick stated the business does not comply with the general standards for the basis of the Planning Commission decision, it is not located on a paved road, it is not compatible with the surrounding uses, and has a history of complaints and violations, some of which have occurred since the new owners have taken the business over. Mr. Redick stated he has video evidence of what has occurred on the property as recently as May 3, 2019. Mr. Redick showed the Board of Appeals a video. **Member Stopczynski** asked Mr. Redick when the video was taken. Mr. Redick stated the video was taken on May 3, 2019. **Member Chase** asked where the dumping took place, on Mr. Haley's or Ball Septic's property. Mr. Redick stated the dumping occurred on Ball Septic's property and said they were dumping raw sewage. **Member Chase** asked if this was done while under the original permit or the newest one. Mr. Redick stated this was done under the original permit. **Member Stopczynski** asked which property line the area in violation is closest to. Mr. Redick stated it is closest to the property to the north. Mr. Redick showed a second video showing the tanks overflowing; he stated the video was taken on May 21, 2019.

Mr. Redick stated given the nature of the violations, this appeal is warranted. He stated the business has operated from the property from 1992 to 2018 without approvals; this may be an embarrassment to the county officials. He asked the Board of Appeals to void the permit.

Member Chase asked Mr. Redick to explain the problem with the notices. **Member Chmielewski** stated the information was included in the packet. Ms. Williams stated when the original application was heard in 2018 there were five applications before the Planning Commission. She noted public comment was heard on other cases that evening. Ms. Williams stated there is a check sheet in the front of the Conditional Use Permit File that has the date the notices were mailed with staff initials. She also stated while we are not required have a notice on the property, all applicants are required to post a notice on their properties. **Member Cleary** asked if there is anything else in the file that indicates who the notices were sent to. Ms. Williams stated there is a map that identifies the applicant's property and the properties within three-hundred feet and a copy of the mailing labels for the properties located within three-hundred feet.

Mr. Kevin Haley stated he did not receive the notice of the original Conditional Use Permit. He stated the Planning Commission is aware he did not receive the notice due to the fact that there was no one there or any letters sent regarding the application; during the second application, there were written statements and public present. Mr. Haley stated they viewed the video of the dumping near his property line; there is an additional area of concern where the septage has flowed onto his property as shown in the photos included in his application, and they saw the video of the existing tanks overflowing. Mr. Haley stated his concerns are not hypothetical. He stated as he and other neighbors discussed the errors in fact of the Planning Commission after the meeting, Mr. Mulder stated the decision of the Planning Commission was based on EGLE not including the definition of septage in their definition of hazardous waste, however he stated has given e-mail communication from EGLE clarifying that.

Member Chmielewski invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor: Ms. Nancy Shaver, 3050 Lamie Highway, stated she wanted to read her comments from the May 7, 2019 Planning Commission Meeting Minutes so the board is aware they are not correct. She read her comments and stated it was omitted that they have owned their property since 1976; after the Planning Commission Meeting Mr. Mulder, while in the hall way informed her she knew the business was there when they bought their property, but that is not correct as they purchased their property before the business was started. Ms. Shaver stated in eight years her property will qualify as a bicentennial farm. She stated the meeting minutes referenced twenty-two years, what she said was a quarter of a century. Ms. Shaver stated water traveling is not correct, once it overflows from the south side of Lamie Highway it makes the road unpassable; when there is seasonal flooding the water comes onto her property. Ms. Shaver stated her son is also affected, but is not a surrounding property owner. She stated she would like the permit voided. **Member Chase** asked Ms. Shaver if she has made a comment, phone call or written complaint regarding the business. Ms. Shaver stated she has previously contact the DEQ, now EGLE, and spoke with someone by the name of Scott who no longer works there. She stated she was informed they did not have the staff to inspect the properties and said she has gotten the run around between the township, county, and state. Ms. Shaver asked that the original application be void.

Mr. Brian Droscha, Eaton County Commissioner for District 9, stated he appreciates the information presented. Mr. Droscha read the definition of hazardous material from waste environment and compliance with the federal government into record. He stated the definition prevails and according to Part 117 and Part 503 septage is controlled by state and federal regulations. Mr. Droscha stated DEQ has waste programs, but the federal regulations state we can make the federal regulations stricter, but we cannot reduce the requirements.

Speakers in opposition: Mr. Brian Ross, Chairman of the Planning Commission, stated he does not have a problem with Ball Septic; he is only here to speak regarding the facts. He stated the Planning Commission was aware of all of the information. He said everyone knows landfills are bad, but they are also necessary; people just do not want them in their backyard. He stated the Planning Commission does not pretend to be professionals on the matter, so they sought the guidance of EGLE. An employee of EGLE attended the Planning Commission Meeting and answered questions; land application of the materials can be done with approval from EGLE, but does not require the approval of the Planning Commission. Mr. Ross stated the Planning Commission was informed EGLE did not consider the materials handled by Ball Septic to be hazardous waste. He stated the Planning Commission did consider the water around the property; they sought the advice of the Drain Commissioner and surveyor, and in technical terms the water is not a waterway. Mr. Ross stated he would like to discuss the dumping that occurred on May 3rd, he is not here to defend Ball Septic, but the Planning Commission was aware the dumping was done by an employee of the previous owner. He stated EGLE informed the Planning Commission Ball Septic self reported the incident to EGLE, who was there right away, and cleaned up the site. Mr. Ross stated the proposed system is safer than the current system due to the multiple safe guards required to be designed into the system; and the system would be designed and guaranteed by an engineer. He stated the Planning Commission put a lot of time into this application; they understood all of the information.

Member Cleary asked Mr. Ross if the Planning Commission was aware of the May 3rd dumping violation when they were discussing the application. Mr. Ross said yes.

Member Chase asked why the business was not shut down when it was discovered to be in violation. Ms. Williams stated it is office practice to work with people to help them gain compliance for non-compliant businesses or property.

Member Stopczynski asked why the Eaton County Road Commission requirements have not been completed with yet. Mr. Ross stated he is not sure, but all applicants are required to be compliance with other agencies, so they would have to have been to compliant with those requirements.

Member Whittum asked Mr. Ross if the difference between hazardous waste and hazardous material was clearly explained to the Planning Commission. Mr. Ross said yes. **Member Whittum** asked if we have anything showing the violation on May 3rd was rectified. Ms. Hatt stated she believes there is an e-mail in the file from EGLE, which stated Ball Septic self reported the dumping and had cleaned the property up.

Member Whittum asked if the water near the property is a county drain. **Member Cleary** stated it is identified on the survey as water. **Member Cleary** asked Mr. Ross if the Planning Commission was aware the water was there when they approved the application. Mr. Ross said yes.

Mr. Brandon Eldridge, employee of Ball Septic introduced himself and stated the Board of Appeals has a lot of questions he could answer. He stated the water way that goes through the middle of the property is a drainage ditch. It is sloped inward and it is seasonally wet, but mostly dry. Mr. Eldridge gave a letter to the Board of Appeals that he read into record (copy of letter attached).

Member Stopczynski asked Mr. Eldridge if Mr. Vanderstelt is present. Mr. Eldridge said no. **Member Stopczynski** asked if Mr. Vanderstelt was an employee of Ball Septic prior to owning the business. Mr. Eldridge said no. **Member Stopczynski** asked Mr. Eldridge why they have not complied with the requirements of the Eaton County Road Commission. Mr. Eldridge stated they are working with the Eaton County Road Commission to come up with an alternative plan of correction. **Member Stopczynski** asked Mr. Eldridge if he is aware of the sinkhole on the property. Mr. Eldridge said no. **Member Stopczynski** stated she took photos of a sinkhole.

Member Chase asked Mr. Eldridge what he does for Ball Septic. Mr. Eldridge stated he is the manager. **Member Chase** asked Mr. Eldridge if he was aware of the open dumping on the property. Mr. Eldridge said yes; after the dumping occurred, they made changes. **Member Chase** asked if the employee was authorized to dump on the property. Mr. Eldridge no and added they have all new staff since the dumping. **Member Chase** asked if a record is kept of the weight of the trucks that go in and out. Mr. Eldridge said no, but they keep records for the amount of waste. Mr. Eldridge stated all of the liquid goes to the Dimondale Waste Treatment Plant or Clean Rivers in Lansing. **Member Chase** asked Mr. Eldridge if they utilize a filter press. Mr. Eldridge said no, they use a belt press; he added the solid materials are separated from the liquid. He explained the solids are taken to Granger and the liquids go to Dimondale. **Member Chase** asked why the waste was dumped in the field. Mr. Eldridge stated the dumping occurred on a Sunday, someone's system needed to be emergency pumped, when the employee arrived all of the trucks were full, the employee took it upon himself to dump a truck in the field.

Public hearing closed at 7:47 p.m.

Discussion/Comments: **Member Cleary** reminded everyone the Board of Appeals is here to see if the decision of the Planning Commission is inconsistent with the Zoning Ordinance or if an error in fact was made.

Member Stopczynski stated the Conditional Use Permit does state it is for Open Air Business and Storage. Ms. Williams stated that is the section of the Ordinance the Business is regulated from; further down the Conditional Use Permit under limitations and regulations it gives the definition for open air storage. **Member Stopczynski** stated she reads it to allow for Open Air Business and Open Air Storage. Ms. Williams stated under the regulations and conditions of the Conditional Use Permit only the definition of Open Air Storage is listed meaning that is all they are allowed to do.

Member Cleary stated she reviewed the application and did not find any evidence of the Planning Commission acting outside of the preview of the Zoning Ordinance. She stated she finds issue with the definition of hazardous materials; the definition is vague. **Member Cleary** stated she does not think the Planning Commission did anything wrong; they had Regina Young from the Barry-Eaton District Health Department and DEQ come in for guidance, they

tried to get further clarification. She stated she does not find the Planning Commission has violated the Zoning Ordinance. She added, she believes a lot of this hinges on the definitions.

Member Chmielewski stated even with the e-mail from Mr. Jeremy Hoeh, just because his intention was one way, does not mean that is how it was interpreted; the Planning Commission took information from an expert.

Member Chase stated he does not fault the Planning Commission, he believes some information was not supplied. He does not believe the Planning Commission had enough information to make a decision. **Member Stopczynski** stated the Planning Commission was not given the information either time they requested it from the applicant. She stated she could find the water on the property and the watershed can be seen on the GIS maps. **Member Cleary** stated the Planning Commission was aware the ditch was there, but does that constitute an error in fact. **Member Chmielewski** stated the Planning Commission was aware of the water as indicated by Mr. Ross; it was not listed on the application.

Member Whittum stated he does not believe it was the intent of the Planning Commission to deceive, they do not know the thought process of the applicant. He stated what he believes is causing angst is the definition of hazardous waste and materials; has the state definition changed since the adoption of the Ordinance. **Member Whittum** stated in a letter received by Mr. Reddick, there are questions about the wetland, do we have the definition of a wetland. He stated the only way to determine wetlands is to have two-foot contours surveyed on the property. **Member Whittum** asked Mr. Redick if he has brought any information in his application to the Board of Appeals that was not submitted to the Planning Commission. Mr. Redick said yes, his legal comments, the e-mail from EGLE with definitions and clarifications and exhibit fifteen showing no time bound limit for an appeal. He also stated the Planning Commission was not presented with the distinction between hazardous waste and hazardous material; hazardous material is what is defined in the Ordinance. Mr. Redick stated the Planning Commission also did not have the EPA comparison to water; he read the definition and stated there is nothing vague about it being dangerous. **Member Cleary** stated she believes the only thing the Planning Commission may not have was the clarification between the definition of hazardous waste and hazardous material. Mr. Haley stated the other items the Planning Commission did not have was the list of violations of this business. He stated the Planning Commission asked if staff was aware of any violations and they said no, but they did because of their FOIA request submitted to the Barry-Eaton District Health Department. **Member Whittum** asked if there was information that should have been provided to the Planning Commission, but was not. Mr. Haley said yes.

Member Stopczynski stated the burden goes back to the business owner; the Conditional Use Permit Application asks if the property is within five-hundred feet of water, the property is, but the question was not answered correctly, therefore the permit is void due to false information. **Member Whittum** agreed. **Member Cleary** stated the Planning Commission was aware of the water, per Mr. Ross statements this evening. She added there is evidence in the meeting minutes the Planning Commission was aware of the water. She stated the application may be inaccurate, but the Planning Commission had the information.

Member Cleary stated the options before the Board of Appeals are to remand the Conditional Use Permit back to the Planning Commission to hear information they were not privy to, or void the permit. **Member Stopczynski** stated both applications contain the same misinformation. She stated she does not believe it is the intent of the Planning Commission to

not comply with the Zoning Ordinance, but it is written to be applied a certain way; the definition of hazardous material needs to be followed. **Member Cleary** asked Member Stopczynski what she would like to do. **Member Stopczynski** stated she believes misrepresentation was done multiple times and the business has not corrected the issues with other agencies, so that does not show willingness to comply. She stated her wish would be to void the permit. **Member Chase** stated that would be his vote as well.

Member Whittum stated the Board of Appeals does not have the information to determine material representation without having Mr. Vanderstelt present; he stated the Board of Appeals is assuming. **Member Stopczynski** stated the business was directed by the Eaton County Road Commission to make changes; there is a sinkhole present now because the rocks were not removed. **Member Chmielewski** stated the rocks are not a sticking point. **Member Stopczynski** stated the application was completed and states as a fact that there is no water within five-hundred feet of the property and that is not accurate.

Member Stopczynski moved Conditional Use Permit CU-6-18-8 be voided based on incorrect information listed on both the original permit application and the change of conditions application based on misrepresentation of facts for question number eight of the Conditional Use Permit application.

Member Chase supported. A roll call vote was taken with three (3) voting aye and two (2) voting nay. Motion carried.

Old Business: None

New Business: None

Public Comments: None

Upcoming Cases: Ms. Williams informed the Board of Appeals there is one application to be heard at their October 1, 2019 meeting.

A motion was made by **Member Cleary** to adjourn the September 3, 2019 Board of Appeals meeting. **Member Chase** supported. Meeting adjourned at 8:15 p.m.