

**Sands Township Zoning Board of Appeals
February 9, 2012**

DRAFT

1. Call to Order at 7:05 p.m. Chair Nelson reviewed meeting procedures.
2. Roll Call: R. Nelson, R. Vick, R. Vietzke, D. Walch, J. Winkowski (alternate)
S. Foulks (absent)
3. Approval of Agenda MOTION: Vick/Nelson Move to approve agenda. Motion passed.
4. Approval of the November 10, 2011 minutes – MOTION: Vick/Vietzke To approve the minutes as presented. Motion passed.

R. Yelle reported that the Sands Speedway personnel (represented by Stan Wittler) pulled item #1, the request for the grandstand covering, from 2011-03VAR. If in the future they revive this request and come forth with alternatives for covering the grandstand, the request will come under review, and one of the alternative plans could be approved or all could be denied.

5. Public Comment

Jim Noe (resident on Old 553): Didn't have a good feeling after the last meeting; the township spent money on zoning ordinance, the ultimate goal of non-conforming use is to eventually have the non-conforming use go away; growth or expansion defeats zoning efforts in the township. Why pay for a zoning ordinance if not going to make use of it? Why would ZBA ignore judge's ruling? Residential use in that area is increasing since ruling and it's not the right thing to allow expansion.

Chair R. Nelson – Asked Mr. Noe what constitutes expansion?

Mr. Noe: make the track bigger, add buildings; if you have to get a building permit from the county, that's an expansion unless it's a repair. Last year they raced on Saturday instead of Sunday. The place was cleaner. Besides making it bigger, expansion is doing the activity more than what was allowed. I have no problems with them fixing fence, putting up billboards, but when they want to build and race more days then it's not within bounds.

Barbara Kidder (750 Old 553): At last meeting, she was made to feel they were being unreasonable because they were objecting to more noise; felt feelings were ignored, trivialized; comments dismayed her because they [ZBA] weren't thinking about their side; one member said he could hear it at Silver Creek area; comment about wind changing – don't get good wind days. Race track is going to make noise and we have been living with it since 1996 when they started racing again. We know there is going to be noise but don't want anything that will cause more noise than we already have. The lawsuit was to shut down the track; the judge did decide they could operate, couldn't be closed down, but had restrictions. You can race but there is middle ground. The judge said it wasn't a nuisance, but he also added that it shouldn't be allowed to

become a nuisance, the neighbors' rights should be safeguarded. Racetrack couldn't operate at any time just to make it more profitable. Hate to see variances and tinkering with the ordinance. Put up against other concerns about no more noise, the current requests are not objectionable.

Nancy Olsen (resident on M553) – Wrote a letter (included in ZBA packet) and will refer to it, asking ZBA to respect the history of the issues being raised. Goes back to 1990's. The Township Board was involved. Some joined as intervening plaintiffs and filed a nuisance complaint; there were numerous legal actions – a very contentious relationship between neighbors and previous owners; trust needs to be rebuilt; goal is not to shut down the racetrack but to adhere to non-conforming use. Reviewed minutes from the last meeting – concerned about a few things -- no questions asked about cutting the trees; what is that being used for if it is for ATV training? Mr. Wittler stated no motocross now, but why do these trees need to be cut? Trees help contain noise. This may be brought up again, or if not, hopes the trees will be not be cut. Grandstand is expansion of non-conforming use – definitely expands what is there. I don't have a problem with some of the items requested ...they could make things safer. Additional spectator bleachers could expand use and I would object to that. I considered Mr. Wittler's questions about parameters and have thought about that and is open to discussion. Change in race day to Saturday happened this last year and I would like to discuss things before next race season to help put animosity to rest. There are stipulations in the court order to be followed. The trust is not there now, but I hope it can be worked out.

Stan Wittler (Sands Speedway owner) -- Want to be good neighbors, did try to start a dialog with all people in the lawsuit; but was told nobody could talk to him anymore, so it went downhill from there. Motocross track was unfortunate use of language, that language was used to describe a location. Explained that he has a letter from ATV certified safety trainer, Mr. Ollila, about having used the parking area to teach ATV safety; requested permission for 8 – 10 courses per year; off the parking lot a bit was better for training – Speedway was willing to clear out tree growth to make it better for training; hills and tracks to ride 4-wheeler on it to get on uneven ground, etc. for safety training. He was not pleased by last meeting, felt he was getting beat up by one board member, and lost his temper somewhat for which he apologizes. We need to have a dialog, trust. Good common sense says you don't have your kids out at races at 10:00 p.m.

Chair R. Nelson: Question: -- Was the ATV training operated in the pit area?

Mr. Wittler: They go to the old pit area and the motocross track is at the end of the pit; they don't want to cut down any more trees than necessary, but to cut a few trees to clear area for the safety training. Regarding the use of bleachers: 1 is for radio communication with cars/drivers for the pit crew to see the track because new helmets etc. restrict drivers' communication. Other bleachers, near grandstand, are to accommodate easier access for elderly or handicapped spectators, closer to bathrooms, etc for people who have a hard time walking. There are no more than 16 cars on track at a time; not looking at lots of new bleachers. We had a verbal agreement with people on Saturday racing; but then got called to a halt as far as furthering the agreement. There is already noise on Saturday (coincided with go-kart racing). Trust thing for them, too. Some people told me they preferred Saturday so we went with that to set the race schedule. I understand concerns: again, the beer building – that's what it was called so they continue to call it that; it was the old beer building, there is no intention to sell beer.

Helen Peters (Old County Road 553) – When motocross was built the bank took it back from Mattords and Smith built the motocross track; they had maybe two races on it. We've lived there since 1979 and the speedway was not operating. Also has a comment from what Jim Noe said, when asked interpretation, to add anything that isn't already there, it's expanding. We like the racing on Saturday; then both go-carts and racing on same day; Sunday is quiet. Just them [racetrack] abiding by what the laws are and the zoning things and the judge's statements and the order we have; not to expand and make it larger.

Jane Noe (Old 553) – Concern about the trees being cut, allowing use for ORVs, but that area is not fenced, so what can they do to keep others from using it with motorbikes, etc.?

Chair R. Nelson: They have to control it or Randy [Zoning Administrator] will be on it.

6. Close Public Comment Chair Nelson closed public comment at 7:52 p.m.

7. Unfinished Business
a. 2011-03VAR

R. Nelson reviewed the speedway, original location along M553, and variance requests. Regarding the motocross track, said it clear last time and this time – it's not there and no motorcycles are on it; there's no point in allowing them something that isn't going to be allowed. Randy couldn't see problems with requests. Listening to people there's still a concern, but we've got controls on it and if they don't like it, we'll hear about it.

R. Yelle – Explained his proposed motion for items requested. If called out there as a nuisance complaint, whether motocross or ATVs, the violation falls on the track owner. After two written notices of violation, citations will be issued.

D Walch – Reviewed questions asked by ZBA at November board meeting; it seems that the racetrack owners had responded to the questions.

R Nelson – Still has a few questions. Request to add three portable bleachers for fans: thinks that should be modified; can see adding bleachers for drivers, and maybe one added for fans. How high is concrete wall? A wheel can bounce. Just brought up raising fence height; maybe curling it [fence] over on track end; between bleachers and concession stand, for safety.

Mr. Wittler: Number of bleachers depends on the number of spectators; would congregate and sit on grass closer to track. Expanding fence is for safety only, not more noise; added to same existing posts, curling over is now more common; more people walking in that area.

R. Vietzke – Portable bleachers are not expansion, they are not fixed. Suggestion: would it be possible to leave the area as a concrete area for people in wheelchairs, etc.?

Mr. Wittler: We need to ask permission to do anything, but are not sure what will work. If people needing assistance sit on the concrete platform, then their helpers don't have seats. It's a

mystery about how to go about things; don't want to be snobbish, but not sure what the issues are. The billboards are out of public view. What is the intention of building the billboard only 8 feet high? There's got to be common ground, someplace to make things work, but not sure.

R. Yelle: In a non-conforming use, ZBA can modify requests.

Chair R. Nelson – Draft recommendation says signs not over 8 foot from grade; track owners requested 12 feet; original signs are maybe 14 feet high, but ones in center couldn't be that high or spectators' view would be blocked.

R. Vietzke: Is it possible to stipulate that signs should be wood, not metal, so as to absorb noise and blend in with what's there?

J. Winkowski: Suggested that if there is a present height, limit additional signs to the existing height. *Language in draft motion regarding request item # 4 was amended to add "wooden" and "not to exceed existing height."* *Language in the draft motion was also amended for request #5 to add "wooden" to describe those billboards.*

Discussion then turned to the request for bleachers. J. Winkowski said that if they are portable, they aren't adding to noise, and are not a permanent structure. R. Nelson recalled that when Northern bought Memorial Field the bleachers kept getting bigger. D. Walch pointed to the site plan which specifies the size of the portable bleachers, and the proposed recommendation is to allow bleachers per the site plan, so there is a limit.

R. Vietzke: Suggested maybe should specify adding "up to" three portable bleachers. That way, if three weren't needed, because track owners aren't sure what's needed, then fewer could be used. If we specify three, then technically they would not be compliant if they added less than three. *Language in the draft recommendation regarding request #1 was changed to "Add up to three portable bleachers..."*

R. Vick: Stated that motocross can be prevented from coming back by telling them [motorcycle drivers] to leave and then calling police if they come back.

MOTION: Nelson/Vick Adopt proposed motion regarding 2011-03VAR requests with amendments as presented. Aye: 5 Nay 0

8. New Business
 - a. Review and address Rules of Procedure

Reviewed the Rules of Procedure -- D. Walch said the proposed wording for the conflict of interest seemed confusing and proposed alternate wording. The first part would stay as proposed, but after the AG language, "Conflict of interest:...(AG) 5681 of 1980," substitute the following: *If a member of the ZBA feels that another member may have, or may give the impression of having, a conflict of interest, a vote may be called on the question. If a majority of members, including the alternate, agree by vote that a conflict of interest exists, the affected*

member shall be excused from participating. The remaining parenthetical language would stay in place “(Excuse him/herself from the proceeding....)”.

MOTION: Vick/Nelson Adopt the Rules of Procedure as presented with proposed amended language. Aye: 5 Nay: 0

9. Public Comment – Chair Nelson opened public comment at 8:46 p.m.

Barbara Kidder: Don’t know whether track owners are withdrawing the grandstand roof forever, and if it does come up again, that ZBA consider ordinance and judge’s ruling. Glad that Mr.Wittler explained the beer building; appreciate that. Time for cutoff of activity – went to court about request to extend to 10:00 pm and that request was denied twice; there is a noise ordinance. Question: What is the fence made of? [answer – wood]. Understood that track had a successful season and think it was run in a more businesslike manner than former owners; did observe noise ordinance; hope that sooner rather than later they can sit down and talk about things.

Jim Noe: They say the track is fenced, but can drive right to it; think it should be fenced, blocked off; thinks there should be a gate that can’t be driven through; never saw anybody on track who shouldn’t be there, but it’s not securely fenced.

Stan Wittler: Appreciate all the effort put in and comments of neighbors; track insurance carrier covers while racing; are working toward making it better; it all needs to be upgraded and that all takes money; those things that need to be done take money; the insurance carrier walked the track and was impressed with the safety features; we are insured while racing, other insurance is just standard; would hope that if someone sees something odd, they’d call the track owners or police because that’s what neighbors are for. Thank you.

10. Close Public Comment – Chair Nelson closed public comment at 9:52 p.m.

11. Adjournment -- Chair Nelson adjourned the meeting at 9:53 p.m.

Minutes respectfully submitted,

D. Walch, ZBA Secretary

R. Nelson, ZBA Chair