

Vice-Chairman Hoop called the June 23, 2021 Board of Zoning Appeals Public Hearing to order at 7:03 p.m.

V.Ch. Hoop noted that this meeting is being taped for transcription purposes only and the written minutes and attachments, if any, will serve as the official record of this meeting.

V. Ch. Hoop stated they are short 3 board members so he will bring up alternate Bill Schaefer to fill one of the seats and also alternate Gary Wolny, who is participating virtually, to fill one of the other seats.

V.Ch. Hoop stated to the applicant that because there are only 4 board members present, they can go ahead with the hearing tonight with 4 board members present or postpone until July 28, 2021 when a full board would be present. The applicant stated they want to go forward.

V.Ch. Hoop stated that any Board member that has any monetary interest or has a conflict, including ex parte communication, should disclose at this time.

Roll found: Hoop, Zeleznak, Wolny (virtually), Schaefer (Calabro, Mainzer and Budd had excused absences) In the audience: Trustee Kalina

Mrs. Peterlin read the legal ad and confirmed that the legal notice was mailed to the applicant and adjacent property owners.

V.Ch. Hoop stated that notice of the application was properly given in local newspapers, and the application and supporting documentation has been available for public review and comments. Mrs. Peterlin polled the Board as to whether they received the packet of information and inspected the property.

**Response: Hoop – yes and yes inspected on 6/23/2021, Zeleznak – yes and yes inspected on 6/19/2021, Schaefer– yes and yes inspected on 6/19/2021, Wolny – no inspection**

V.Ch. Hoop noted that each member of the Board of Zoning Appeals has been provided a copy of the application and supporting documentation.

V.Ch. Hoop stated that the Hinckley Township Board of Zoning Appeals acts within the authority of Section 519 of the Ohio Revised Code and exercises its power as provided under Chapters 7 and 13 of the Hinckley Township Zoning Regulations. All public hearings are open to the public. All persons wishing to testify must do so from the podium, must identify themselves and give their address and must be sworn in. Evidence and testimony must be pertinent to the hearing. It is the Chairperson's discretion to limit personal comments, personal attacks, opinions, editorializing, and/or repetitious statements or testimony or evidence previously given. Disruptive persons will lose their right to remain at the hearing. Personal attacks will not be tolerated. Any person may request a schedule or an agenda be mailed to them, providing a self-addressed and stamped envelope be included with request.

V.Ch. Hoop stated that this is a hearing upon the application of AP0254 for an appeal of the Zoning Inspector's decision.

V.Ch. Hoop noted that the applicant has submitted an application to this Board of Zoning Appeals and has also submitted certain documents in support of his application.

V. Ch. Hoop asked the zoning secretary if any correspondence had been received and Mrs. Peterlin stated she had received a letter from Don and Melissa Lehky which was also emailed.

V.Ch. Hoop stated that written communication from persons not present this evening may include communication that are not made by affidavit because these communications are made by persons not under oath they are not accepted by this Board. Written communication may include writing by affidavit by persons not present this evening and therefore cannot be subjected to cross examination These affidavits will not be given much weight, if any, in the decision of the Board on this matter. This Board has the power to grant the applicant's request for an appeal of the zoning inspector's decision.

V.Ch. Hoop asked the applicant to step to the podium and discuss the project.

**Thomas Gentiluomo, attorney for applicant Mrs. Linda F. Sercia, Oberholtzer & Filous, 39 Public Square, Suite 201, Medina**

Mr. Gentiluomo stated he is a lawyer with Oberholtzer & Filous, he represents the applicant, Linda Mills and they are here today appealing a decision made by the Zoning Inspector which rejected their declaration for agricultural use for the metal building on the property of Linda Mills. They believe the evidence supports the declaration and the decision was made in error. Mrs. Mills has an opening statement she would like to read and they would like to conduct an examination.

Mr. Gentiluomo was sworn in accordingly.

**Mrs. Linda Mills – 1230 Oakwood Drive, Hinckley**

Mrs. Mills was sworn in accordingly.

Mrs. Mills stated she owns the property at 1230 Oakwood Lane in Hinckley and she is here today to appeal to the Board to grant her permission to leave her metal building where erected because the property is agricultural and she does not have the funds to move the building. Her property is under CAUV and has been for decades. She raises timber and cares for her woods and follows a 10 year plan that was created by a Forester. She has a tractor with many attachments, an ATV, a log splitter, chipper, stump grinder and a chain saw and she needs some place to keep her equipment other than her pole barn where the groundhogs are digging up the floor or the basement of her house. She would like to briefly share her hardship with the Board. She purchased this building from Future Buildings Canada and hired a renowned award winning contractor from Seven Hills to erect it on her property and unbeknownst to her the contractor did not obtain any permits or call 811 before he started. In May of

2017 she found this out when she received a letter from Zoning Inspector Wilson, who had driven by and noticed a new building that had not been approved to be there. Zoning Inspector Wilson asked her to come to his office to discuss. Zoning Inspector helped her to start the procedure to obtain a variance. She wanted to take care of it right away but her time was limited so she had to hurry and get a plat map and paperwork together for the next BZA meeting in July 2017. A neighbor and local businessman volunteered to help her plead her case before the BZA and her variance was successfully granted. Her neighbor also helped her to discuss the situation with the contractor who erected the building and got him to admit that he did not attempt to get any permits because it was an unusual building. This esteemed contractor refused to help her financially or otherwise with the building so she hired attorney Ray Jones from Medina to litigate this in Medina County Court of Common Pleas. A jury trial was scheduled for last July but couldn't go on because of COVID and now it has been rescheduled for December of this year. Meanwhile her neighbor convinced her he could move the building in 1 or 2 pieces by bracing it and moving it with a crane to the approved site. He told me that he was experienced in this and received a government contract to move several post offices. Since he was so busy with his work he needed a \$50,000 financial commitment in advance to do this. She sealed the deal by giving him 2 checks one in the amount of \$30,000 and a couple weeks later one for \$20,000 and wrote a notation on the line "driveway building drainage" and he was going to begin as soon as weather permitted, but he let this go on and on and on and he wouldn't give a timeline for the project and refused to return the money. She has begun litigation against this neighbor contractor and hired Mr. Thomas Gentiluomo who is with her today to plead for permission to keep the building where currently located.

Mr. Gentiluomo asked to conduct a brief examination of Mrs. Linda Mills and that request was granted by the Board. For this examination Mr. Gentiluomo provided exhibits he referred to which were submitted.

Mr. Gentiluomo asked Mrs. Mills to state her name for the record.

Mrs. Mills stated Linda Sercia Mills

Mr. Gentiluomo asked Mrs. Mills to state her address and Mrs. Mills stated 1230 Oakwood Lane, Hinckley, Ohio

Mr. Gentiluomo asked Mrs. Mills if she owns the property commonly known as 1230 Oakwood Lane, Hinckley, Ohio and Mrs. Mills stated yes she is the sole Owner.

Mr. Gentiluomo asked how long Mrs. Mills has owned this property and Mrs. Mills stated she has owned it since 2014 when Larry Safas died.

Mr. Gentiluomo asked Mrs. Mills if she is married and Mrs. Mills stated yes she is married to James Mills.

Mr. Gentiluomo asked if Mr. James Mills is a co-owner of the property and Mrs. Mills stated no, she is the sole owner.

Mr. Gentiluomo stated that turning to the evidence in support of the Declaration he will be going through some documents with Mrs. Mills and Mr. Gentiluomo asked Mrs. Mills if she recognized the document marked as Exhibit A and Mrs. Mills stated, yes, this is an affidavit that she signed.

Mr. Gentiluomo asked Mrs. Mills if that is her signature on page 2 and if she filed the affidavit in support of her Declaration for Agricultural Use and Mrs. Mills stated yes.

Mr. Gentiluomo then showed Mrs. Mills Exhibit B and asked her what it is. Mrs. Mills stated it is her Forest Management Plan prepared by Frank Lupino.

Mr. Gentiluomo asked Mrs. Mills to state the name and address at the top of the document and Mrs. Mills stated Linda F. Sercia 1230 Oakwood Lane, Hinckley, OH 44233.

Mr. Gentiluomo asked according to this document how many acres are there on the property and how many acres are woodlands?

Mrs. Mills stated there are 30.5 acres on the property, 28 acres of which are woodlands.

Mr. Gentiluomo asked Mrs. Mills to go over what is stated under Forest Management History and Mrs. Mills read that section of the document. Additionally, Mr. Gentiluomo asked Mrs. Mills to read the description of the Forest stated in the document which Mrs. Mills read.

Mr. Gentiluomo asked according to the document what is the time table for the Forest Management Plan?

Mrs. Mills stated that it started in 2015 and ends in 2025. In 2015 to 2020 selective harvest of mature trees, 2015-2025 harvest as needed, in 2025 update the management plan. Mr. Gentiluomo Mrs. Mills to confirm this is her Forest Management Plan and Mrs. Mills stated it is.

Mr. Gentiluomo asked Mrs. Mills how many years her property has been under this plan and Mrs. Mills stated since 2015.

Mr. Gentiluomo asked Mrs. Mills if she does selective harvest and how many times per year does she do this and Mrs. Mills stated yes, we only do that once every 10 years.

Mr. Gentiluomo asked Mrs. Mills if she specifically harvest timber and what does she do with it and Mrs. Mills stated she sells the timber.

Mr. Gentiluomo asked Mrs. Mills if she cleans up the woods and if she obtains assistance with her Forest Conservation Plan and Mrs. Mills stated yes.

Mr. Gentiluomo showed Mrs. Mills a document marked as Exhibit C, and asked Mrs. Mills if she recognizes this document and, if so, what is it?

Mrs. Mills stated yes, she recognizes it. It is a letter she received from Frank Lupino her Forester.

Mr. Gentiluomo asked who Frank Lupino works for.

Mrs. Mills stated that Mr. Lupino works for himself, but has worked for the Department of Natural Resources from 1980 to 1989. He is currently a consulting forester.

Mr. Gentiluomo asked Mrs. Mills to briefly explain the contents of the letter.

Mrs. Mills explained that the letter discussed how the trees were marked and why they were marked. Also, he is putting this out for bids and he has started advertising and people have come out to look at the timber and the bid process. Mr. Gentiluomo asked the date of the letter and Mrs. Mills stated the letter is dated June 3.

Mr. Gentiluomo asked how many times a year Mrs. Mills meets with Frank and Mrs. Mills stated she talked with him several times this year and last year.

Mr. Gentiluomo asked what page 2 of the exhibit is and Mrs. Mills stated that is the trees that he has marked for her. Mr. Gentiluomo asked if Frank sent the document and Mrs. Mills stated yes.

Mr. Gentiluomo asked Mrs. Mills to state what was on page 2 under Totals which Mrs. Mills did.

Mr. Gentiluomo asked Mrs. Mills if equipment is used to harvest the trees and, if so, what kind of equipment is used. Mrs. Mills stated they are hiring someone to come in. Mrs. Mills stated they have to clean up after those people so they will use a chipper and stump grinder and Mrs. Mills stated she does need a place to keep that equipment.

Mr. Gentiluomo stated he is going to turn to Exhibit D and E and he asked Mrs. Mills what they show. Mrs. Mills discussed the equipment shown on Exhibit D and E and described what they are used for.

Mr. Gentiluomo asked where this equipment was stored prior to the erection of the metal building. Mrs. Mills stated some was stored in her basement and some in the pole barn which the ground hogs were digging up so she needed to find somewhere else to keep the equipment.

Mr. Gentiluomo asked if in 2015 Mrs. Mills decided she needed additional room to store equipment and if she hired a contractor to build the metal building. Mrs. Mills stated yes.

Mr. Gentiluomo asked where the metal building is on the property and what it is used for. Mrs. Mills stated it is in front of the property and it is used to store the tree care equipment. Mrs. Mills stated occasionally she stores a trailer in the building.

Mr. Gentiluomo asked if Mrs. Mills' husband owns a business and what is the nature of the business.

Mrs. Mills stated her husband owns a tree removal and trimming business based in Wadsworth, Ohio.

Mr. Gentiluomo asked if Mrs. Mills' husband brings his business equipment to Mrs. Mills' property to help facilitate the Forest Conservation Plan and, if so, what kind of equipment does he bring.

Mrs. Mills stated yes, he does, he brings his bucket truck and crane to help remove dead trees.

Mr. Gentiluomo asked if Mrs. Mills' husband brings his equipment to the property for the needs of his business and Mrs. Mills stated no. Mr. Gentiluomo asked Mrs. Mills if her husband's equipment is brought to the property to help with the Forest Conservation Plan and Mrs. Mills stated yes.

Mr. Gentiluomo stated through the Medina County Auditor Mrs. Mills was granted the CAUV program for utilizing the land for agricultural use. Mr. Gentiluomo showed Mrs. Mills Exhibit F and asked her if she knew what it was and Mrs. Mills stated yes it was her tax bill.

Mr. Gentiluomo asked Mrs. Mills to state what it shows on Exhibit F under property class and Mrs. Mills stated it states Agricultural.

Mr. Gentiluomo stated that page 2 and 3 of Exhibit F is the initial application for the CAUV program and Mrs. Mills confirmed that. Mr. Gentiluomo asked Mrs. Mills to read what is on page 3 of the Exhibit F. Mrs. Mills stated it asks if she has a written woodlands management plan on file with Medina County and Mrs. Mills stated it says yes. Mr. Gentiluomo asked about page 3, number 5, Mrs. Mills the answer to that question was marked yes.

Mr. Gentiluomo asked Mrs. Mills why she filed the Declaration. Mrs. Mills stated it gives her a reduced tax rate so she can keep the woods. Mr. Gentiluomo asked why she waited over 5 years after the construction of the metal building to file a declaration. Mrs. Mills stated she didn't understand that agricultural property was given a more lenient view by the Zoning Board.

Mr. Gentiluomo asked if Mrs. Mills was aware that the contractor did not file for permits and Mrs. Mills stated yes. Mr. Gentiluomo asked if that's when Mrs. Mills filed an application for a variance for the metal building and was the application successful. Mrs. Mills stated yes she filed an application for a variance and it was successful.

Mr. Gentiluomo asked in general what is an estimate of the cost to move the metal building to new location and Mrs. Mills stated she believes it would be about \$150,000. Mr. Gentiluomo asked how Mrs. Mills would do this and Mrs. Mills stated it would have to be taken down piece by piece, a new concrete pad poured and then put up piece by piece and Mrs. Mills stated there could be damaged during the transport. It would be expensive and additional trees would have to be taken down, this would be detrimental.

Mr. Gentiluomo asked Mrs. Mills how it would affect her Forest Conservation Plan and Mrs. Mills stated it would hinder her plan and efforts.

Mr. Gentiluomo thanked Mrs. Mills and stated that is all he has and he would like to admit all the Exhibits he discussed. Additionally, Mr. Gentiluomo asked to call 2 additional witnesses.

Mr. Gentiluomo asked to call Eric Gross.

**Eric Gross – 1160 Oakwood Lane, Hinckley, Ohio**

V. Ch. Hoop swore Mr. Gross in accordingly.

Mr. Gentiluomo asked Mr. Gross if he knows Mr. and Mrs. Mills and how long he has known them. Mr. Gross stated he has known them for about 8 years. Mr. Gentiluomo asked Mr. Gross if he is familiar with the property located at 1230 Oakwood Lane, Hinckley, OH 44233 and if the property is close to Mr. Gross residence. Mr. Gross stated yes he knows the property and the property is approximately ¼ mile from his residence.

Mr. Gentiluomo asked how often Mr. Gross encounters Mr. and Mrs. Mills' property and if he is familiar with the metal building on the property. Mr. Gross stated he walks by daily and he is familiar with the metal building on the property. Mr. Gentiluomo asked Mr. Gross if he feels the metal building is too close to the road and if he has a problem with it staying where it is currently and Mr. Gross stated no.

Mr. Gentiluomo stated he has no further questions.

**Hinckley Township Zoning Inspector Tom Wilson**

V. Ch. Hoop swore in Zoning Inspector Wilson accordingly.

Zoning Inspector Wilson stated that he would like to emphasize it is a pretty large building and if his decision is overturned the building should be used strictly for the agricultural use. Most of the machinery described could easily fit into the building with a lot of extra building and Mrs. Mills should know that if overturned and becomes an agricultural building, not a building for her husband's business or for personal use. Zoning Inspector Wilson stated he turned this down based on the information in the variance application and there was no talk of an agricultural use at that time, but they have done a good job tonight presenting the agricultural use. Zoning Inspector Wilson asked if anyone had any questions for him and no one did.

Mr. Zeleznak stated the building is the important item here and it has to be strictly for agricultural use. It can't be for storage for personal use it has to be strictly used for agriculture and that is the part they have to determine. If they overturn the decision, it can also be taken away if they find out it's not being used for agricultural. Mr. Zeleznak stated that if they find out it's not being used for agriculture Mrs. Mills will have to apply for a normal use, they will have to move the building based on decisions that

were made in 2017. Mr. Zeleznak stated he wants to make sure they understand that if the building is not being used for agriculture and they find out, not only can they take the agriculture use away, Mrs. Mills would have to move the building or get rid of it.

Mr. Zeleznak asked Mrs. Mills, based on what he said, are they still asking for the decision to be overturned and are they still saying it will be used strictly for an agricultural use. Mrs. Mills stated yes.

V. Ch. Hoop asked if anyone in the audience has anything.

**Gary Wolny – 2505 Laurel Road, Hinckley**

Mr. Wolny asked for what purpose was the variance granted.

Mrs. Mills stated the variance was granted to move the building.

Mr. Schaefer stated the variance was that it was going to be in front of the home, it would be 90 feet away from the street, she just needed a front yard variance.

Mr. Wolny asked if the building needed to be moved with the variance.

Mr. Schaefer stated the variance was that the building was going to be in front of the house and an accessory building can't be closer to the street than the main structure, so because of a ravine there is no way it would be equal or behind the house. It was just going to be farther from the street.

Mr. Wolny asked if she is awarded an agricultural use does that eliminate the need for the variance. Mr. Schaefer stated yes.

Mrs. Peterlin read into record a letter written and submitted by Mr. and Mrs. Don Lehky, 1250 Oakwood Lane, Hinckley, OH 44233 dated June 11, 2021 to Hinckley Township Zoning Board of Appeals.

Mr. Schaefer stated that as an alternate, he did visit the site in 2021 and 2017. Mr. Schaefer stated that the Ohio Revised Code regulates Townships and in that section it states that if a person is granted an agricultural exemption, that person is exempt from all zoning regulations. Mr. Schaefer further discussed agriculture use.

Mr. Zeleznak stated if there are vehicles on the property sitting for a long period of time the Zoning Inspector will look into that to determine if a business is being run out of the barn and if the barn is being used for something other than for agriculture, they will take the agriculture use away.

Mrs. Mills stated that her husband is not using the barn to run his business, he has a place of his own that he uses for his business.

Mr. Zeleznak stated that the person in the audience alluded that the business equipment was on the property for a long period of time – is there that much work that has to be done on the property that

the equipment would be there for so long and Mrs. Mills stated yes there was a lot of work that had to be done on the trees.

V. Ch. Hoop asked if there were any more comments and there were none.

Mr. Zeleznak made a motion to reverse the decision of the Hinckley Zoning Inspector denying the declaration of agricultural exemption form submitted by property owner Linda F. Sercia aka Linda S. Mills on February 2, 2021 for an existing metal building/barn to be utilized for agricultural purposes at 1230 Oakwood Lane, Hinckley, OH, Permanent Parcel No. 01603B02006.

The motion was seconded by Mr. Schaefer.

V. Ch. Hoop explained the voting process to the applicant as follows: Yes, simple majority with a quorum present is in favor of the applicant and a No, simple majority, or a tie vote denies the applicant's request. If the vote is favorable to the applicant, the applicant has one year from the date of the hearing to begin construction or to act on the approved request.

Vote: Wolny – yes; Schaefer – yes; Zeleznak – yes; V. Ch. Hoop – yes

V. Ch. Hoop stated that any person adversely affected by a decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas of Medina County on the grounds the decision was unreasonable or unlawful and will have 30 days from the date of the approval of the minutes of this hearing to appeal.

V. Ch. Hoop adjourned the June 23, 2021 Board of Zoning Appeals Public Hearing at 7:55 p.m.

Minutes by: Judi Stupka, Recording Secretary

Minutes Approved: \_\_\_\_\_, 2021

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Josephine Calabro, Chairperson (absent)

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Jeff Hoop, Vice-Chairperson

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Dave Zeleznak, Member

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Julie Mainzer, Member (absent)

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Bill Budd, Member (absent)

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Bill Schaefer, Alternate

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Gary Wolny, Alternate