

WEST BLOOMFIELD ZONING BOARD OF APPEALS MEETING

December 7, 2005

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PRESENT: Chrmn. Larry Houck, James Foote, Dean Huff, Debbie Hastings,
Bob Swain & Scott Storke, CEO

ALSO PRESENT: Art Brokaw, Mrs. Brokaw, Andrew F. Emborsky, Esq., (Art's Attorney) Rennie & Kathy Bloom, Jack Prinzing, Hazen Gilbert, Bill & Paula Harvey, Tom & Jean Witzel, Brad Toles (Fineline Landscaping), Barry Quinn, David Gripe, Mark Wheeler and Dean French

7:35PM: Chrmn. Houck called the meeting to order and asked that all cell phones be turned off so there would not be any interruptions during tonight's Public Hearings. He noted that there were many new faces in the crowd and thought it would be a good idea to explain to all those present a little bit of an "overview" of how the Zoning Board of Appeals operates and what types of Appeals they are asked to consider. He also encouraged those present to ask any questions they may have during the first part of the Public Hearing and noted that once this portion of the meeting was closed, the ZBA could not accept any more input from the audience. The Chrmn. also advised those present that the Zoning Board does not make or change the (Town) laws, they only try to interpret them.

Chrmn. Houck read the Legal Notice for Art Brokaw and noted that, if the Board was unable to make a decision tonight, they will table the matter until their next meeting, which would be the first Wednesday in January.

7:45PM – Chrmn. Houck read the Legal Notice for Art Brokaw and asked who would like to speak first. Mr. Brokaw's attorney (Andrew F. Emborsky) was present and got up and spoke. He passed out a Memorandum dated 12/7/05 to the Planning Board members that basically outlined the activity of Mr. Brokaw's business from 1965 to present. Mr. Emborsky stated that Mr. Brokaw had been using the Quonset hut for his excavating business. He also stated that someone from the Town had advised Mr. Brokaw that he definitely was pre-existing non-conforming but, for some reason, a Certificate was never issued. Mr. Emborsky noted that Art has been in business and, although the business may have been slow at times, it never ceased to exist. Mr. Brokaw currently has an informal business relationship with Fineline Landscaping, which began in 2002. Chrmn. Houck noted that the current Zoning went into effect in 1970. He asked Mr. Brokaw what type of Business he has been operating from 1969 to present? Mr. Brokaw replied that he has always been in the excavating business, which consists of excavating, grading, seeding, septic tanks, equipment rental and storage. Mr. Emborsky agreed with Art's comments and again noted that Mr. Brokaw has operated his business continually since 1965.

Chrmn. Houck asked Mr. Brokaw how slow the business was at the “slow” times and if he continued to work during those times? Yes, everyday, replied Mr. Brokaw, but noted that he doesn’t leave his backhoe there anymore. Dean Huff asked Mr. Brokaw if his business was a Construction Business or a Landscaping Business? Before Mr. Brokaw could answer, Mr. Emborsky asked him if the Landscaping Business had always been a part of his Construction Business? Mr. Brokaw replied yes. Bob Swain asked Art if he has filed a Tax Return as an ongoing Business since 1965? He again replied yes. Chrmn. Houck asked if there were any other questions?

- **Rennie Bloom** introduced himself and noted that, in a copy of the Planning Board’s minutes from 2001, Mr. Brokaw referred to his business as a Construction Business. Rennie asked when or, at what point, did it turn into a Construction/Lawn Care Business? Besides, he noted, I haven’t seen any Lawn Care equipment there in years. Rennie also stated that he has mowed the grass around the Quonset hut, as have other people, in order to try and clean up the area. He questioned the fact that, if there was a Landscaping Business operating on the premises, why didn’t they mow the grass? Rennie stated that Mr. Brokaw held an Auction sometime around March of 2000 and he believes that’s when Mr. Brokaw’s Business was dissolved. He also contended that Mr. Brokaw has not been operating a Business continually since 1965, much less the same type of Business, and he does not believe Mr. Brokaw is involved in the day-to-day operation of the current Business.

- **Jack Prinzing** introduced himself and stated that he also believes Mr. Brokaw went out of Business in 2000. He noted that the only activity on the property since then was when Mr. Brokaw came out to dig up the Fuel Tanks and dug up the yard. He wanted to know, if Fineline was a brand new Landscaping Business, who asked the Town for a Special Use Permit? He asked if it would be the Owner of the property or the person leasing the Quonset hut? Jim Foote asked Jack for dates when there was no activity? Jack replied there was no activity from February or March of 2000 to February or March of 2002. Jim Foote asked Jack what source he obtained this information from? Jack replied that he had witnessed the inactivity at Mr. Brokaw’s property.

- **Attorney Emborsky** handed the ZBA members some pictures showing repair work that Mr. Brokaw had done on the property in 2001, along with a log or book of Invoices from May of 2000 to May of 2002, as evidence that he was operating a Business at that time.

-Bob Swain asked the Attorney exactly what type of business Mr. Brokaw would like a Certificate of Pre-Existing, Non-Conforming Use issued for, as the letter was very vague? The Attorney responded that Art Brokaw has a working agreement with Fineline; nothing legal, and further noted that Art does not rent space to Fineline.

Bob Swain inquired as to what specifically was the use of the Property in 1969 and now? Art Brokaw responded that the business was Excavating. Bob Swain then asked, is it Construction or Excavating noting there is a difference. Attorney Emborsky responded that the business could not be defined as any one type.

- **Hazen Gilbert** stated the following; The Quonset hut has been there for a long time and the property is probably full of contamination, but, if it is used for any kind of business, so be it; it's your building and you pay the taxes. He also noted that the Quonset hut was on the property when Art Brokaw bought the property, and questioned what better use is there for the property?

- **Bill Harvey** stated he does not like the wool being pulled over anyone's eyes and offered these observations; I remember when the business shut down at some point and I can't quote the dates, the business ceased to exist. I heard there was an auction and then all the equipment was gone. Mr. Brokaw may have maintained his truck in the Quonset hut, the same as I would if I had a building like that. There is a new business there now, the guys are nice, but my bone of contention is that the use has changed, and the board needs to know that. He further stated that he has been living there for 20 years.

- **Jim Foote** noted that we are receiving contradictory information. We are being shown Invoices for a time span when visibly, the business is not being conducted. This raises the question of whether the business was being conducted from a different location (possibly the address shown on the invoices?) Jim asked Mr. Brokaw if he was keeping the equipment at his house? Again, before Mr. Brokaw could answer the question, the Attorney noted that they do not contend that the business hasn't changed, however, it has slowed down.

Bob Swain was still confused about exactly what type of business Mr. Brokaw was operating and when? He asked, was it an excavation business? Did he do Septic installations? Was landscaping part of the business? Art Brokaw responded we do grading and seeding. Bob wanted to know what percentage of Art's business was devoted to various activities? At this point, Brad Toles from Fineline landscaping stood up and introduced himself. He indicated that, based on his profits, lawn mowing accounted for 20%, hydro seeding 80%, and landscaping was not very much.

- **Jean Witzel** has lived in the neighborhood since 1961, before zoning was in place. When she first moved there she used to keep horses on her property. Sometime later, she ceased that use of her property. During that time, zoning was enacted, and she found out she could not renew that use due to the size of her lot. She pointed out that Art Brokaw's property is in a residential area and that it needs to be well maintained, referring to a picture passed around showing the front of the Quonset hut.

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- **Rennie Bloom** spoke again, making the following assertions;

#1. Art recently put in a Septic system and Driveway

#2. He has taken it upon himself to do a lot of things without going through the proper channels.

#3. Again, I contend that Mr. Brokaw has not continuously engaged in a business operation; the business was closed for over a year.

- **Barry Quinn** wanted to know if Art were granted a Certificate, would it be for him or for successors too? Chrmn. Houck was not sure of the answer and asked Scott Storke if he could answer the question. Scott noted the use would have to remain the same as it was prior to zoning and, in his opinion, the Certificate runs with the land only if the use remains the same.