

**Miami Township
Board of Zoning Appeals
Monday, March 6, 2017**

Members of the Board of Zoning Appeals present:

Greg Clatterbuck, Chairman
John Broz
Fred Sinder

Members of Miami Township Staff present:

Christopher Snyder, Director
Kyle Hinkelman, Deputy Director
Robin Palm, Planner

Legal Counsel:

Edward Dowd, Township Legal Counsel
Benjamin Yoder, Legal Counsel for Board of Zoning Appeals
Matthew Bakota, Applicant Legal Counsel
Sam Dowes, Applicant Legal Counsel

Others Present:

Breine McConnell, Sign Dynamics
Rodney Johnson, Connor Group

GENERAL MEETING

Mr. Clatterbuck called the meeting to order at 7:00 PM.

Action on minutes for February 6, 2017

Mr. Clatterbuck tabled the minutes until the next meeting pending review as requested by Mr. Sinder.

THE OATH

Mr. Clatterbuck administered the Oath of Truth to the following people:

Rodney Johnson, Connor Group
Breine McConnell, Sign Dynamics
Kyle Hinkelman, Deputy Director
Robin Palm, Planner

NEW BUSINESS

BZA #811-17 Administrative Appeal

Mr. Clatterbuck announced the case to be heard as BZA #811-17.

Mr. Matthew Bakota came forward representing Mad River Apartments and their management company, the Connor Group.

Mr. Bakota informed the Board that he was requesting an appeal in regards to the decision made by the Miami Township Zoning Inspector on January 19, 2017.

Mr. Bakota called on Mr. Rodney Johnson to testify and proceeded to question him about his professional responsibilities at Mad River Apartments, the cost of improvements made at the property, the current and previous signage present on the property, and the intention of these improvements and signage.

Mr. Dowd came forward to cross-examine Mr. Johnson.

Mr. Dowd questioned Mr. Johnson in regards to the investments made at the property, the purpose of those investments, and Mad River Apartments procedure for obtaining permits for signage.

Mr. Johnson testified that he took photos of the property earlier that afternoon on March 6, 2017 and Mr. Bakota submitted the photos as exhibits for the record.

Mr. Sinder asked what time the photos were taken and Mr. Johnson replied it was taken around 3-4:00pm on March 6, 2017.

Mr. Clatterbuck asked if Mr. Johnson took any photos near Lois Circle and Mr. Johnson replied that he did not.

Mr. Johnson was excused.

Mr. Bakota called on Ms. Brienne McConnell and proceeded to question her about her professional responsibilities with Sign Dynamics and those of a former employee, Anne Karns and Sign Dynamic's experience in dealing with the township and the Connor Group.

Mr. Bakota submitted email correspondence between Sign Dynamics and the Connor Group into the record as an exhibit.

Mr. Bakota asked Ms. McConnell about Ms. Anne Karns correspondence with the Township and Mr. Dowd objected on the grounds that it was third person hearsay. The objection was noted by Mr. Clatterbuck.

Mr. Bakota submitted two emails as exhibits for the record and continued to ask Ms. McConnell about Sign Dynamics dealings with Miami Township.

Mr. Dowd objected that Ms. McConnell could not testify on the source of documents that were sent to Ms. Anne Karns.

Mr. Bakota clarified that he was asking Ms. McConnell to testify as to what Ms. Anne Karns relayed to her as her supervisor at the time.

Mr. Clatterbuck noted the objection and Mr. Bakota continued to question Ms. McConnell.

Mr. Dowd objected that Ms. McConnell cannot testify on the behalf of her other employees.

Mr. Clatterbuck noted the objection and Mr. Bakota proceeded to question Ms. McConnell.

Mr. Bakota submitted another email from Ms. McConnell to the Connor Group as an exhibit and continued to question Ms. McConnell.

Mr. Dowd came forward to cross examine Ms. McConnell.

Mr. Dowd asked Ms. McConnell about the materials that were included with the approved permit, her interactions with Ms. Karns, the Sign Dynamics installation process, and her dealings with Miami Township and the Connor Group.

Mr. Bakota objected on the ground that Ms. McConnell had already testified she had done all she could to determine the right of way.

Mr. Clatterbuck overruled the objection.

Mr. Dowd continued to question Ms. McConnell about her understanding of the right of way, the Major Modification process, and her dealings with Miami Township and the Connor Group.

Mr. Bakota came forward once again to question Ms. McConnell about the Major Modification, sign installation process, and her interactions with Ms. Karns.

Mr. Clatterbuck asked Ms. McConnell about the materials contained in the first exhibit and if the materials stated that the sign must be fifteen feet from the right of way when she received them and she confirmed they did.

Mr. Dowd came forward to further ask Ms. McConnell about the materials that were included with the permit.

Ms. McConnell was excused.

Mr. Bakota called on Mr. Kyle Hinkelman to ask him about the public records process and submitted the Connor Group's public record request as an exhibit.

Mr. Bakota submitted additional emails as exhibits.

Mr. Bakota objected for the record to Mr. Sinder using any outside material for the purpose of this hearing.

Mr. Bakota continued to question Mr. Hinkelman about the approved permit, the right of way, the Major Modification process, his interactions with Sign Dynamics, and temporary signage on the Connor Group property.

Mr. Hinkelman was excused.

There was a short recess.

Mr. Yoder noted for the record that Mr. Sinder had viewed the Dayton Mall Master Plan on his phone to view an aerial map of the Mad River Apartments location and Mr. Sinder confirmed.

Mr. Bakota reiterated his objection to Mr. Sinder viewing materials on his phone outside the record and Mr. Yoder noted the objection.

Mr. Clatterbuck asked Mr. Dowd representing the Township to present his case.

Mr. Dowd called on Mr. Robin Palm to question him in regards to his professional responsibilities for the Township, his process for issuing violations, and his knowledge of the right of way as it pertained to Mad River Apartments.

Mr. Dowd submitted certified letters, a staff report from January 19, 2017, and photos as exhibits into the record. Mr. Dowd proceeded to ask Mr. Palm about the monument sign permit issued to Mad River Apartments.

Mr. Bakota objected to Mr. Dowd asking Mr. Palm about the permit since he was not employed by Miami Township at that time.

Mr. Dowd withdrew the question and proceeded to ask Mr. Palm about his professional knowledge of Planned Developments, Major Modifications, and related signage.

Mr. Bakota came forward and questioned Mr. Palm in regards to his process for issuing violations, his process of determining where the right of way is located, the definition of signage, and his knowledge of any previous permits issued to Mad River Apartments.

Mr. Dowd objected to Mr. Bakota's question.

Mr. Clatterbuck sustained the question and Mr. Palm answered voluntarily in spite of Mr. Dowd's objection.

Mr. Bakota continued to ask Mr. Palm about permits, the existing monument sign, his previous interactions with Mad River Apartments, and his process of taking measurements in the right of way.

Mr. Bakota submitted a photo as an exhibit into the record and asked Mr. Palm about a sign located on a different property.

Mr. Dowd came forward and questioned Mr. Palm about other properties owned by the Connor Group and their use of temporary signage and his process for citing Mad River Apartments with a violation.

Mr. Sinder asked Mr. Hinkelman if he ever walked the property with a member of Sign Dynamics and Mr. Hinkelman approached the podium and replied he had not.

Mr. Palm was excused.

Mr. Bakota presented his closing arguments.

Mr. Dowd presented his closing arguments.

Mr. Broz moved to deny the applicants appeal for case #811-17 and to affirm all five of the Zoning Inspector's determinations.

Mr. Sinder seconded the motion and the vote was all ayes.

Mr. Clatterbuck made a motion to continue the hearing until the next regularly scheduled meeting where the final written determination would be presented. Mr. Sinder seconded the motion and the vote was all ayes.

Mr. Clatterbuck made a motion to adjourn the meeting at 10:26 p.m., Mr. Broz, seconded the motion and the vote was all ayes.

Respectfully Submitted,
Nicole Kessel, Recording Secretary


Mr. Clatterbuck, Chairman