

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the June 3, 2016, Special Meeting

APPROVED

The June 3, 2016, special meeting was called to order by Chairman Lee Strohl at 10:00 a.m. with the following regular members present: Lee Strohl, Liz Rettig, Mario Zarantenello, Carol Sizer, and Kathy Sellers. This special meeting was called specifically to hear the following variance request:

CASE 1118: at 10:00 a.m. Steve Chudik, 15780 Lakeshore Road, Union Pier MI 49129 is requesting an interpretation from Section 2.22 (temporary buildings and structures) and Section 15.06 (permitted yard encroachments) of Article 15 of the Chikaming Township Zoning Ordinance No. 87, as amended.

Also in attendance were the following persons (sign in sheet attached): new Zoning Administrator (ZA) Rich Kubsch, Theresa Priest former ZA, Attorney Charles Hilmer (Township attorney), Attorney Charles Ammeson (representing applicant), Michele and Steve Chudik (applicants), Larry Anderson (ZBA alternate), Attorney Laura Genovich (of Foster Swift representing Paul Sidrys), Paul Sidrys, Rich Sullivan (Township Trustee), Jill Underhill, Laru Chapman, Jerry Kohn, Jeremy Bishop, Brad Yetterberg, Sarah Doty, and Tanya Ryskind.

Chairman Strohl advises that there are no letters to enter into the record.

Chairman Strohl opens the meeting and recognizes new ZA Rich Kubsch.

Mr. Kubsch speaks to the Board (regarding the request to ask for a definition) and according to the ruling of Judge Donahue, there is no definition at this point for us to define other than what the Judge has already defined and Mr. Kubsch highly urges the Board not to hear this case at this time and refund the applicant's application fee and proceed forward as the Judge has advised. There are no other options at this time. There is no definition. When a Judge issues an order, this overrides anything that the Township would do. Now it is our job as a Board to recommend to the Township Board that they recommend to the Planning Commission to look at that ordinance and that definition and revisit it and amend it as the Judge has ordered. That is my recommendation to the Board today.

Carol Sizer asks Mr. Kubsch his position. Mr. Kubsch advises that he is the new Zoning Administrator (ZA). Rettig advises that she agrees with Mr. Kubsch's assessment and wonders why we are here trying to overstep our bounds over the Judge's ruling. Why is it the ZBA's job to look at a Judge's order as this Board has no authority over the Judge's ruling. We are not here to make a ruling over the Court.

Rettig makes a motion that his matter not be heard by us, that we refund the applicant's money, not hear the case at this time, and as the ZA has recommended, have the Planning Commission re-look at the zoning ordinance and take it to the Township Board. Motion dies for lack of support.

From the public:

Rich Sullivan asks if there is an agenda for this case. Sullivan asks if there will be an opportunity for the public to speak as posted on line. Strohl feels this is a procedural question and asks Attorney Charles Hilmer (Township attorney) to answer the question. Mr. Hilmer asks if there was a second to the motion. Strohl advises there was not. Hilmer says that motion died for lack of support and goes on to further state that at some time during the public meeting, we do have to take public comment because it is governed by the open meetings act and requires a time for public comment.

ZA asks if Attorney Hilmer would weigh in on his comments.

Attorney Hilmer states he is in agreement with the ZA.

Sellers asks that the motion be remotioned.

Rettig motions that this hearing be not heard because we do not have the authority to override a Circuit court matter, refund the applicant's money, this matter then go to the Planning Commission for further review of the zoning. Second by Sellers and she feels that the ZA is correct and this matter needs to go back to the Planning Commission to have it readdressed and corrections be made by the Planning Commission.

Strohl: time for comments, discussion.

Sullivan: Comments that this matter stems from a lawsuit. At a Special Township Board meeting on March 31, 2016, the Township Board first found out about it. Resents not hearing about this lawsuit before March 31 meeting or having information. Questions if the lawsuit ruled that ZBA exceeded its authority and ex ZA exceeded her authority.

Strohl: Answers yes.

Sullivan: Part of that decision is why we are here today.

Sellers: What decision are you talking about that you would have to make. The ZBA has already made a decision. I understand that you weren't informed and I understand from being on other boards that sometimes we are not informed, but we are talking about right here and now.

Sullivan: At open public meeting on 3/31/16, Attorney Hilmer made a long presentation to the Board with no paperwork issued to the Board. This was the first time it was presented to the Township Board and this lawsuit goes way back. One of the things that was presented at the public meeting was that we were told that one of the solutions to the lawsuit could possibly be an apology from the ex-ZA and a reprimand by the Township Board – that was presented by Township attorney – because of derogatory comments and derogatory e-mails. What I am asking for is copies of e-mails and allegations of the behavior of ex-ZA. I was told I could not ask for this. Never received anything from Attorney Hilmer. It's very frustrating. So this will come to the Board again.

Chudik: To your question about comments on lawsuit. The reason the Judge had to reverse the decision of the ZBA Board was because he could not find satisfactory evidence to support the decision of the ZA. Appliances were not defined. There was evidence there. That's what the Judge needed. He didn't say that someone acted poorly.

Strohl: We are not here to reopen the Circuit Court case.

Chudik: Local Townships have right to interpret their own ordinance. So if they disagree with you, they can't change it as long as proper procedure is followed and that's why I'm here today.

Strohl: That was not the reason to acknowledge you to go over the Court case. Will open discussion not to go over lawsuit, only for response to Mr. Sullivan.

Laura Genovich: Will there be further opportunity for public comment if the motion fails?

Strohl: Well that's if. So not now. Acknowledges ZA.

ZA: So noted that things will change

Strohl: Time for Board discussion.

Sellers: Just to be clear, there's no changing the Judge's mind. We can't do anything. I'm asking.

Rettig: We can't change Judge's decision.

Attorney Ammeson: We need to address whether or not Board will hear this case. So I will have to talk about the case.

Sellers: How will anything that you have to say, do anything about the Judge's order?

Ammeson: I would like to present you with a DVD of the Court hearing and some documents. Have you read the Judge's order?

All answer yes.

Ammeson goes on and wants to share some quotes of the Judge.

Sellers: At the end of the day, does the Judge say you can take that back to the Board and see if they will change their mind?

Ammeson: Absolutely.

ZA: reminds us there's a motion on the floor and a second on the floor whether to continue with this hearing and all discussion should be related to that motion.

Sellers: To continue with this hearing or not?

ZA: Yes

Rettig: To decide whether or not we have the right to change the Judge's order.

Ammeson: I can address that.

Sellers: Can you be succinct and tell us where the Judge says you can take this back to the ZBA.

Rettig: Kathy, I think you should address this to our attorney.

Sellers: I would like to hear from our attorney. I'm not sure if it should be now or after we decide whether or not to hear this case.

Zarantenello: I believe Ammeson is going to speak as to the basis of the motion and I would like to hear him speak. He's not arguing the case and he is only addressing the motion and we should hear him speak and open the matter for public comment.

Ammeson: I am going to try not to argue the case but it is going to be very difficult without referencing the case, but I would like the opportunity to speak.

Sellers: I would like to hear exactly where this Judge verbally says that this matter should be taken back to this Board.

Ammeson: If you allow me, I have 4 quotes from the Judge and one quote from the attorney.

Sellers: Nothing out of context?

Ammeson: They are quotes from the Judge and I will suggest they are not out of context and I have given you the whole DVD and you will be able to determine if they are out of context.

Laura Genovich: I would like the opportunity to speak on the motion. I represent the Sidrys.

Sellers: Let's have a little Board discussion because I think this is where our attorney should come in. I totally will admit that I don't feel that I have the expertise that Mr. Hilmer has. I think we should vote on whether we are going forward or not. If we don't go forward, we need to speak to our attorney.

Rettig: I think he should comment first.

Zarantenello: Before we vote, I would still like to hear Mr. Ammeson.

Strohl: If we allow Mr. Ammeson to speak, how can we not allow others to speak.

ZA: You have already opened it up for discussion on the motion, I would agree that should consult the Township attorney and by listening to either one of these attorneys, you are now conducting and hearing the case.

Strohl: Please assist us Mr. Hilmer.

Hilmer: I think that it would be beneficial for the Board to allow Mr. Ammeson to speak and allow Ms. Genovich to speak so that you hear the context of this before you act on the motion. Mr. Ammeson and Ms. Genovich may have something to add as to whether or not this is the appropriate course of action.

Strohl: Provided that we do that, do we then have the further responsibility to open it up for further comments beyond their comments. For example, how do we limit it to 2 attorneys and not allow others.

Hilmer: You should at least hear the 2 attorneys speak and then act on your motion and then let the public speak. But you should at least hear from the attorney for the application and the attorney for the next door neighbor.

Zarantenello: Would it be fair to say that they should only speak to the motion.

Hilmer: They should speak as to why they feel the motion is inappropriate based upon the decision of the Judge and why you should in fact go forward and hear this.

Zarantenello: That's what I was thinking.

Strohl: Then we will proceed as advised. Mr. Ammeson you may continue.

Ammeson: This is not about the lawsuit. This is a request for an interpretation of the ordinance. I think the ZBA should hear requests for interpretations. Although you may want to change it or have it clarified, you need to interpret what it means now. The Judge did not interpret the ordinance. I would like to present the DVD for the record and a packet of materials for the members and Attorney Hilmer and Attorney Genovich. If you look at the Judgment and review of the transcript, the Judge clearly anticipates that this case is coming back as a request for a variance or otherwise. "(13:22) Court: I'm just going to comment to you that even if I should grant you relief, in the real world do you really think there's once chance in a thousand that the variance, perhaps hereafter sought by the Chudiks, would not be granted. In the big picture." So the Judge saw that this was coming back. So the reason we need an interpretation is because we intend to ask for a variance and the Judge anticipated a variance. We need to know what the rules are. We went to the ZA beforehand and asked what the rules are. The Chudiks have always asked before doing anything and were told, this was the interpretation, that these appliances could go in the side yard. There are appliances in side yards everywhere. Even the Sidrys' have appliances in the side yard. We are asking you to tell us as we craft for a variance to tell us what the rules are. Can you have appliances in the side yard or can't you. Second, the Judge says we are making a mountain out of a molehill. "41.39 Court: I would say that there are not probably all that many neighbors who would pitch a fit over something that was arguably a bit minuscule in nature, however, I don't live there in fairness to them and I don't know of the noise levels or anything, I have my suspicions, but I don't know." He didn't make a ruling on anything except that the Zoning Administrator can't make the decision. He intended this fully to come back. "12:45 Court: Arguably, if you look at compressors, air conditioners and generators there's a little gray area about that, but I see your point." The Court recognizes that there are appliances in side yards. We just want to make sure that if we come back for a variance, do we need a variance for appliances. We need someone in the Township with the proper authority to tell us what the rules are. We thought we received the proper information from Ms. Priest. And I think she's right. Sometimes things are so obvious, you can't see them. It's obvious that Chikaming Township has appliances everywhere in side yards. It's obvious that Chikaming Township says there are no structures in side yards. It was obvious to us that we thought we could have appliances in the side yard because they are not a structure. I have talked with other Zoning Administrations and it has been the interpretation of Chikaming Township for a long, long time. We need to know that. We think our request for interpretation is very legitimate and a year later this is still unresolved. If you tell me that appliances in side yards are permitted, then we can craft the variance appropriately. Maybe we don't need to ask for a variance, maybe we can reconfigure things, but we need to know the rules. Chudiks and Sidrys are both victims. "14.20: Dienes: The Chudiks are as much victims as Sidrys are." There is disagreement within the Township about many things and we need clarification and need an interpretation: Can you have appliances in side yards? If no, there are hundreds of others and we ask everyone in the township to remove theirs. I believe that structures have been interpreted to have footings. We are not here to disagree with the Judge. We disagree that the Judge said you have no authority to do anything. If you look at the DVD, I think you will find that the Judge is looking for your guidance. He is not going to make the decision. "42.19: Court: It may well be that the placement of this pool equipment at this location was a best solution after the fact, again I have a hard time and was not asked to rule on that matter." He didn't rule

on it. He only said that the ZA cannot make that decision. He is asking you to tell him what the rules are. Hopefully we never have to go back to him. I don't know whether you are telling us if we can't have appliances in side yards, are they structures under your ordinance, if they are, then we have an answer, if they are not then we have an answer, but to not hear this, leaves us in limbo. Do we have to ask for a variance for the appliance? Do we have to ask for a variance for screening? Are we entitled to a variance? I don't expect an answer today. I am only telling you to take the opportunity today to look at this. It will come back one way or another. We have two questions: Not to rule on this motion (not to hear today) because eventually you will hear it one way or the other.

Zarantenello: So the Judge ruled that the ZA overstepped her bounds by allowing the Chudiks to put the pool filter in the setback.

Ammeson: No. This Court therefore cannot find that the decision is supported by competent, material, and substantial evidence on the record. He says I don't have enough. I'm not saying she was wrong. He's saying, you just didn't give me enough. The Court goes on, "although certainly well intentioned by both the Zoning Administrator and the Zoning Board of Appeals."

Zarantenello: So then the Judge did not rule that the pool equipment was in a faulty location, he just ruled that he doesn't have enough information, so therefore, he ruled that our zoning language was vague. Is the pool filter a structure or an appliance, am I right?

Ammeson: I wish he would have said it that succinctly.

Zarantenello to ZA: Is that basically what the Judge said?

ZA: If I could interject, the decision is in front of you. "This Court, based on the evidence in this record, cannot find that the structure at issue is a temporary structure, an architectural feature, or that the structure is otherwise....."

Zarantenello: So they are here for an interpretation from the Zoning Board is a pool filter an appliance or the pool filter a structure....and that's what's in front of us right now. Yes or no.

ZA: I would say that the Judge has determined and I've been in front of Judge Donahue before and Judge Donahue would have remanded it back to you if he thought that you improperly handled this. I think he's asking you to fix your ordinance and that's what I'm recommending you do. I agree with this gentleman. What is the definition. Because the Judge has now said, it is not a structure in his opinion.

Zarantenello: So, if the original variance request was in front of us now, and one of their original arguments was we need a variance for this simply because you as the zoning board told us you need to stay 10 feet away from the retaining wall and we approved the pool because it has 2 front yards, but if I recall correctly, the pool filter was not on that plan. I don't know if that was intentional or an oversight, simply because they didn't realize that the pool equipment should have been part of the original variance. So, therefore, I believe what they need to do is come back to the zoning board for a variance for that pool filter.

Rettig: I totally agree, but the interpretation is not the right place now. My feeling again is that yes, it should come back to us as a variance request, and this interpretation thing is not for us because it has to come back as a variance.

Zarantenello: And I agree with that

Sellers: I have the minutes from July 21, and we had a discussion.

Theresa Priest: Is that the original pool equipment from 2013?

Sellers: Actually it's from 2015 and I discussed with the Board a possibility of decision reversal and making Dr. Chudik make an application and pay the fee for a variance to allow equipment to stay where it is, and here it is "ZA affirms that it is the Dr.'s intention to apply for a variance request if necessary" and we go on to say that that we all think that's what's going to happen. Why didn't you come back right away for a variance?

Ammeson: I can answer that. A variance is ruled by a different standard. Mr. Dienes argued that the Judge has the right to intervene in a variance. An interpretation he cannot second guess. This Board has already

determined that the pool appliances is a temporary structure. It's in your final decision. "The pool equipment is temporary in nature." You have already made that ruling. So if you would simply tell us that appliances are temporary in nature, they are permitted in the side yard, they are not a structure at all. Then we could come in and ask for a variance as to screening, as to the structure that's built around it, but we don't know what to ask for right now. Can I ask you, do I need to ask for a variance? Do you consider appliances structures in side yards.

Genovich: That the substance of the interpretation right there. So I would like an opportunity to address your motion.

Ammeson: That's a fair request. I need an answer. She needs an answer. I think your Township Board needs an answer. If you think that appliances are structures and are not exempt under one of the exemptions for being in the side yards and you have this condition out there, and it is the experience of ZA's permitting them left and right for decades... in fact there was another zoning administrator who told Sidrys' that they could not have appliances in the side yard. Those are the types of things we need answered.

Strohl to Sellers: Did you get your question answered?

Sellers: Yes. So it's because the variance could go to Court.

Ammeson: The variance will go to Court. The interpretation can go to Court, but under completely different standards. And I think the Judge will ask what are structures. He doesn't get to decide what a structure is. You interpret your own zoning ordinance. The Michigan legislature interprets its statutes. Every statute has ambiguities. It's not for the Judge to decide. All you would have to do is pass a new statute. Why are we letting a Judge dictate your ordinance. Punting this back to them, is wrong. The ordinance says what it says today and you are charged with interpreting. If they change it against Sidrys, it's grossly unfair or change it against us and apply it backwards, you can't apply statutes retroactively. That would be for the future. And I can see that's the smart and prudent thing.

Genovich: I think that the Judge would be surprised to hear that he doesn't have authority here. He does, he has already entered an order. The motion as I understand it is to not move forward with the public hearing, refund the fee, and kick this back to the planning commission to define the terms. That's a motion that is very well founded. Your attorney recommended that you do that, your ZA recommended that you do that. It's a very smart decision for you to do that and here's why. Another reason to do this is because the notice of this meeting was not proper. Michigan Zoning Enabling act says that when a motion relates to a specific property, the notice has to be mailed to the owners within 300 feet. It's very clear that this is about their property. First their application for interpretation talks about the unique features of their property, talks about 2 front yards and no back yard, then you read the content of their letter attached to their application and it talks about the Circuit Court decision and it talks about their property, but then at the end it says, I don't want to get my neighbors involved, so let's treat it like it's for the whole township and not my property and then you don't have to give notice. That's not right. To give you further proof that it's about their property, you were handed a portion of the transcript. So, my point, you run the risk that if you do go forward and issue an interpretation, either way, whoever doesn't like it can say the whole thing is invalid because you didn't provide proper notice. The reasons you have articulated, your attorney and your ZA are valid. This is an attempt to get around a Circuit Court order. I realize you have the DVD, but you only got excerpts in writing and you should be cautious. So the written decision of the Court, and the Court speaks through its orders, says: "This Court, based on the evidence in this record cannot find that the structure at issue is a temporary structure, an architectural feature, or that the structure is otherwise exempt from the side yard setback requirement." The Court could not find it was exempt from the side yard setback requirement, that means that it did violate, there was no variance, there is no legitimate question here that the structure violates the setback requirements. The setback requirements are there for a reason. Your role as public servants is to follow the ordinance. We all know what the rules are and we all want to play by the same rules. I heard a lot about how many properties are going to be subject to this. Then

your ZA is going to be really busy. Just because things have been done incorrectly in the past does not mean you have to do them incorrectly going forward. All this is, as we all know, is an attempt to get around the Circuit Court order. He said we want to do an interpretation instead of a variance because we like the standard for when it goes back to Court better because we don't think that the Judge can challenge your interpretation. That's not correct. The Judge can reverse your interpretation because you don't have anything to interpret here. The word appliance is not used in your zoning ordinance in this context. It is used in your definition of junk, but there is nothing that talks about appliances. If you had a zoning ordinance that said, structures have to follow this, but appliances don't and this is what an appliance is, and there's a question of whether this fell within a particular definition of appliance, maybe you have an interpretation issue. You don't have that here. You are not the ones who write the zoning ordinance and you know that and you respected that by making the motion that this ought to be sent back to the planning commission. This is not properly before you for interpretation. This is an attempt because they don't want to do a variance request because they don't want the Judge to reverse it and the Judge made clear that that's what he's going to do. If this goes back to the Court like this, the Judge is not going to be impressed. Nobody really wants to go to Court. Don't set it up to go to Court where the Judge has already said what he is going to do if it goes back there. You are not punting the decision by not hearing it today. You are recognizing the Circuit Court's authority. You are reading the order, you are following the order. Judge's like to have their orders followed. You are following the recommendation of the Township attorney, you are following the recommendation of the ZA. Those are good recommendations, I would ask that you follow them.

Chudik: I would like to address the claim about addressing a single property, that this is not an appropriate way to ask for it to be heard. So, the zoning ordinance clearly spells out that someone who was aggrieved can request a zoning interpretation. I had to have a grievance, I had a grievance, I felt it was appropriate to spell it out in the letter, but the question that I was asking was not specific to my property and that was very clear, the question involves all the properties in the Township, how we interpret the zoning ordinance. That's why it was decided to be sent to all the homes not just the ones involved. There's nothing wrong with the process.

Strohl: If you requested that, why wasn't it done.

Chudik: It was published in the newspaper.

Genovich: Not when it relates to a specific property.

Chudik: It doesn't relate to a specific property. You can disagree. The zoning ordinance clearly spells out that if it affects all properties then it needs to be sent out to all properties. This issue involved many properties. Many people have this issue. That's how I asked the question, so it is very appropriate that it disbursed this way. The other issue, what she read from the Circuit Court order is taking it out of context. It was very clear that he was missing the evidence to make a decision. So therefore he had to make the decision he made. He didn't disagree with it. My attorney provided the transcript and it would be very helpful. Again, if you look at the testimony, they even said that they corrected and removed their violation of their generator of the 10 foot set back. If you look at my letter, there are pictures of their thing in the setback. We did everything possible by asking permission, put it in a safe place, you said it was ok, too. Conscientiously, for my neighbors we closed it off so there would be no sound issues, no sight issues, it didn't add to any projection into the side issue, it's tightly tucked against the house. Everything we did here was very well intentioned. I don't know why this has become such a big issue and I'm sorry for everyone involved. If you look at the transcript, there are a lot of misstatements of facts. We applied for an interpretation because it was appropriate, we've done everything in the appropriate way from the beginning. A variance is something a Judge can, if he doesn't see that we have some unique thing, and we don't have a unique thing. We are just like everyone else in the township that wants to have a heater or filter or an air conditioner in our side set back. So I felt that a request for an interpretation would be appropriate. What the Judge exactly says he doesn't have the evidence. The evidence isn't there, that's why he didn't make a decision. It's been common practice in this township to allow this. Over the years,

it has not been interpreted to be a structure. Putting this off will continue to allow people to sue. I'm hoping we can press forward. The attorney that represented the township did a great job of all the legal precedence that the Court cannot tell the Township how to interpret their ordinance. He just said, it wasn't in the record, so I cannot rule. This applies to all people. I cannot make this request for interpretation unless I was aggrieved. I was aggrieved. It was done by the proper pathway.

Ammeson: 2 points. One you did give instances of other appliances. Two they can hear the very effective job the Township attorney did who endorsed our position on the DVD.

Sellers addressing the ZA: Has anything you have heard over the last hour changed your mind.

ZA: Absolutely not.

Sizer: If we should move ahead today and if we should give an interpretation, it stands only as long as the Planning Commission doesn't change it. It could still go through the process you are recommending, which is going back to have that definition determined by the Planning Commission and then adding to the ordinance.

ZA: I believe you would be in violation of the Judge's order at this point. Because the Judge is telling you in his statement that you didn't have evidence enough to call it a structure. So that means you have to go back and define what we are talking about, and the only way, if you want to define it today, I think you are making an error. It has to be considered, because we have these all over the township, it can go either way. I'm asking you to look at the Judge's decision. He's saying you didn't have, nor was there any competent evidence on record to support such findings by the ZBA. So, he's telling you that you didn't have enough evidence to call that a temporary structure. So, he goes on to say that said decision is supported by competent material and substantial evidence on the record or that it represents the reasonable exercise of discretion granted by law.

Sizer: I understand, but moving forward, if I read our responsibilities, what I thought I understood was the process could start with us with us issuing an understanding of what we think it is and that becomes part of the ordinance until it gets changed by the Planning Commission.

ZA: I believe that would be your decision. My only recommendation is that you try to seek to get this thing straightened out.

Sizer: I have some sympathy for how long this has gone on. If this group would choose to give some resolution today, then in its grander wisdom and the ordinance got changed, would that not be an acceptable process?

ZA: I would ask the attorney on that one.

Ammeson: Point of order. I want to make note that the Township Zoning Administrator commented that there are appliances throughout the township in setbacks.

Sizer: We all know that.

Ammeson: But the Judge didn't know that.

Rettig: Most all of them have come as zoning variance requests.

Sellers: It's a shame that this was not in the initial plan.

Sizer: Could we finish and ask the question.

Zarantenello: Ask him the question.

Hilmer: State the question.

Sizer: Would it not be legal if we were to move forward today with an interpretation as requested and then that stands as part of the ordinance until such time, if and when, the planning commission decides to honor it.

Hilmer: I think that if you move forward with the interpretation you run the risk of not complying with the Judge's decision.

Sizer: But his whole point was that he didn't have definition.

Hilmer: The Zoning Ordinance does not have a definition of appliances in it. I don't know if what we have been talking about would fit within the common definition of what an appliance is. I don't think that you have sufficient evidence in front of you to interpret how you can locate an appliance when the zoning ordinance

doesn't define the term but the zoning ordinance does define what a structure is. The Judge does say that what the applicant should have done in this situation is to request a variance. That is in the opinion.

Zarantenello: Just to be clear, we have no legal definition in our zoning for the word appliance.

Hilmer: The zoning ordinance is silent on what an appliance is.

Zarantenello: So, therefore, appliance doesn't exist. If it is not defined it doesn't exist. So when people start throwing the word appliance out in some legal context, I cannot make any decision where someone's asking about putting an appliance somewhere if an appliance is not a legal definition in our zoning.

Sizer: I think we are being asked to rule on what is a temporary building.

Zarantenello: Correct. Ok. Here's my comment. There are generators and things sitting in side yards setbacks that make noise. We have already turned down variance requests for people to put outdoor kitchens in the 10 foot setbacks. They have never come to us to say well, your allowing a generator, so why can't I have my outdoor kitchen. My problem in this unique case is that a pool filter is no longer a temporary structure because it's attached to the house and it's enclosed by siding and it is now part of the actual structure and that structure is in the 10-foot setback.

Ammeson: That's not what we're asking today.

Zarantenello: I know.

Ammeson: We want an interpretation on appliance, the word appliance what we call pool filter, generators, whatever, the reason we were told and the reason that it's argued before the judge that they are not allowed is that they are a structure. In your Township, these have not been considered structures. And that's what we're asking, if they are not structures, what are they. That's what the ambiguity is. In the past they have been told that they can put air conditioners, pool filters, all types of things in the side yard and now you're being told you can't. What's the rule, what's the interpretation?

Genovich: Saying something is obvious doesn't make it right. If the Township wants to define appliances and say that they are exempt from the setback requirement, then the township needs to amend its zoning ordinance by the Planning Commission. That is not an interpretation question. Going back to Ms. Sizer's question about expediency and can't we just do an interpretation in the meantime, whichever way you interpret this, one of us is going to wind up back in Court.

Rettig: Interpretation of a temporary structure is at issue, but more so, back to my motion, we don't have the authority to change what the Judge has ruled. The Judge has ruled at this point in time. Our original ruling was that the ZA did not overstep her bounds. The Judge ruled that she did. They did not get a variance – that was never at issue. My point is that we do not have the authority at this point in time. All procedures have to be followed and we don't have the authority to overrule the Court's decision. Interpretation or otherwise. This is not for us to rule at this time.

Zarantenello: Just to be clear, if we all vote Aye on your motion and we refund the \$500 to the application, the Chudiks could apply for a variance to put their pool filter in the side yard set back.

Rettig: Of course.

Sellers: We said that already.

Rettig: In fact, you read it, didn't you, Kathy?

Sellers: We said that July 21.

Rettig: That's correct.

Zarantenello: So a year ago we said get a variance for your pool filter.

Sellers: He's explained why they didn't, but I agree with her, no matter what happens here, it's going back to Court. Now you say that it will be subject to a higher standard as a variance, well I'm ready to fight for that.

Ammeson: I appreciate that. We do not want to go to Court.

Sellers: I know.

Ammeson: We are not here threatening to go back to Court.

Rettig: Think about this. Our first ruling was that ZA did not overstep. The Court made the decision to reverse. Interpretation is not appropriate at this time, a variance should or would have been the next step. The interpretation of a temporary structure is at issue – we have no definition and that the remand back to the planning commission. That's it in a nutshell.

Zarantenello: I don't know who said it, but we are missing the evidence to make a decision.

Rettig: Because we don't have a definition.

Zarantenello: We don't have enough evidence in front of us.

Sellers: We certainly could have made a decision on a variance.

Rettig: That's correct, but that never came to us.

Sellers: We certainly could have upheld our variance.

Rettig: But variance never came to us.

Strohl: Carol did you get your question answered.

Sellers to Chudik: You need to apply for a variance.

Sellers: I'm reading something. We approved putting it there so that's why they didn't come for a variance.

Rettig: Kathy, remember our decision was that the ZA did not overstep her bounds, that was our decision.

That's what they took to Court. The Court then makes the decision they reversed our decision.

Sellers: I understand, you thought you had it.

Strohl: Any more questions. We do have a motion, why don't you repeat your motion and we'll take a vote.

Rettig: I believe my motion was, we do not hear this case at this time because we do not have the authority to overrule the Court's decision, my second part of that was that we refund the fee that was paid, and the third part was to send this back to the Planning Commission to make the definition much more clear in our ordinance so that we are able to make better decisions when these things come to us.

Kathy: Seconded

Strohl: We'll take a vote.

Sizer: I am going to go with the advice of our ZA and Township lawyer and am going to support.

Rettig: Yes.

Zarantenello: I support

Kathy: I support

Strohl: I support. So we have a unanimous approval of the motion.

Strohl: Do we have a motion to adjourn?

Zarantenello: I motion to adjourn 11:15 a.m.

Sellers: I second.

Strohl: All in favor. All ayes. Adjourned.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary