

Ridgemont Properties – Conditional Use Request

September 24, 2008

November 12, 2008

December 10, 2008

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September 24, 2008. Ch. Manley called the Ridgemont Properties hearing to order at 8:00 pm. (Immediately following the Cancelliere Variance Request Hearing).

Roll found: Manley, Fox, Hoop, Zeleznak, Huff, Sullivan and Mainzer present. Also present: Jim Kamps, Trustees Schulte, Catherwood and 1 guest.

Ch. Manley polled the board as to whether they reviewed the application packets for the Ridgemont Properties Conditional Use request.

**Response: Manley – yes Fox – yes Hoop – yes Zeleznak –yes
Huff – yes Sullivan – yes Mainzer – yes**

Ch. Manley polled the Board as to whether they inspected the property at 1921 Ridge Road. It was noted that this inspection was only to the exterior of the property.

**Response: Manley – yes Fox – yes Hoop – yes Zeleznak –yes
Huff – yes Sullivan – yes Mainzer – yes**

Ch. Manley stated that the Hinckley Township Board of Zoning Appeals acts within the regulation of Section 519 of The Ohio Revised Code and exercises its powers as provided under Section 7 & 13 of The Hinckley Township Zoning Regulations. All hearings are open to the public and any person may request that a schedule or agenda be mailed to them by providing a self addressed stamped envelope in advance.

Ch. Manley asked if the zoning office had received any written or verbal communication pertaining to this hearing. Ms. Garrett reported that a letter from Diane Dermody, of the Highland Library was received. Clerk Garrett read the letter aloud. Ch. Manley stated that written communications from persons not present this evening include communications that are not made by affidavit. Because persons not under oath make these communications, this Board does not accept them. He also noted that written communications might include some writing by affidavit, by persons that are not present this evening and, therefore cannot be subjected to cross-examination. These affidavits, therefore, will not be given much weight, if any, in the decision of the Board on this matter.

Ch. Manley noted that the Board of Appeals does not accept as testimony non-written communication made by known or unknown persons, not under oath at a properly noticed hearing. He explained to those present that the meeting is being taped for the record. In addition he noted for the record that the documents that relate to this application might include written communications from persons who are not present this evening.

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In addition, the audience was informed that they must state their name, address, and be sworn in. All testimony will be given from the podium.

Clerk Garrett read the legal notice.

Due to the fact that there were no representatives of the Kass party nor their lawyer in attendance the Board voted to continue the hearing to November 12, 2008. The Board has many questions for the parties involved such as future ownership of the property, maintenance on the driveway and whether there has been any complaints logged by the police department.

Mrs. Fox made a motion to continue to the hearing to November 12, 2008.

Mrs. Huff second.

Vote: Huff – yes Zeleznak – yes Hoop – yes Fox – yes Manley – yes

Hearing adjourned at 8:16 pm.

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Ch. Manley called the hearing to order at 7:25 pm.

Roll found: Manley, Fox, Hoop, Zeleznak, Sullivan and Mainzer present. Mrs. Huff had an excused absence. Also were Mr. Pope, Mr. Kamps, past Trustee Ron Rhodes and 9 guests in the audience.

Ch. Manley polled the Board as to whether they inspected the property at 1921 Ridge Road, Hinckley Township this evening.

**Response: Manley – yes Fox – yes Hoop – yes Zeleznak – yes
Sullivan – yes Mainzer – yes**

Due to a scheduling error, the representatives for the Ridgemont Property application were not present at the hearing in September. The Board of Zoning Appeals continued the hearing so that the Kass' and their attorney Mr. Steve Bailey could be present.

Attorney Steve Bailey stated the value of the Ridgemont Properties Art Museum, also known as Cliffside Artists Collaborative Museum. It operates as a private museum, open to the public only by appointment. The principle purpose is for educational

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programs for youth and adults. In 2005 the BZA granted a Conditional Use Permit. We are here tonight to have a renewal of that permit. There were several issues that were raised by the board at that time. I believe that every concern has been addressed. Mrs. Kass will now answer any new questions. This museum has been in operation since 2005 under your conditional use permit. It has been holding programs, enhancing the art education of the community and working with other community organizations such as the library to expand the artistic exposure of the community. In that time I do not believe there has been even a single complaint.

Mr. Pope concurred with Mr. Bailey.

Mr. Bailey: Larry and Sara are extraordinarily generous people. Part of their generosity is to pass along this gem to the Western Reserve Historical Society when they pass away. They are committed to the preservation of this collection of art. Their main objective is that these works are preserved. The permanency of the conditional use permit will give them the peace of mind that I think they deserve. To know that this is something they can count on and pass on to future generations. Now I think the board can see how they conduct business of the museum.

Mr. Sullivan inquired about the reasons that the permit should be permanent.

Mr. Bailey: At their stage in life, the Kass's want permanency and certainty about the future of the museum. It is extremely important to them and the things they have done for the community. The other reason is the ultimate destiny for this property is to belong to the Western Reserve Historical Society. We are in the process of forming a 501.C3 for the educational programs that go on at the museum. All of this depends on approval of other boards and grants, donations. The permanency of the permit gives us the stability in the eyes of the community when seeking the funding for educational programs.

Mr. Sullivan: It seems to me that there is a difference between the art collection and the real property.

Mr. Bailey: Both are destined to become the property of the Western Reserve Historical Society. The contract which is a binding agreement with the WRHS is that property and various other assets, 1921 Ridge Road and all the art collection will be passed to the WRHS, along with some other assets and will be kept as long as it is economically possible.

Ch. Manley: I think that is what bothers us. Our concern is that times change, members change. We could be stuck with something that we didn't want.

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Mr. Bailey: I understand that concern. I am acquainted with 2 members of the WRHS executive board who have assured me that ongoing issue with the Thompson Auto Collection is not an issue. Under a permanent conditional use permit, the could never be used for anything other than an educational facility.

Mrs. Fox: What about these approvals needed from other boards and approvals for funding? What occurs if you do not receive this funding?

Mr. Bailey: This facility is completely funded now and can in the future be completely funded by the Kass'. There is a separate 501.C3 called the Cliffside Artists Collaborative which is in the process of being formed. The purpose is to conduct the educational programs at the museum and our goal is to make it self-supporting by seeking grants and donations from other foundations. For instance, the Lambert Foundation which already has given the CAC some start-up money. We intend to seek more of these kinds of grants and donations in the future so these programs can be expanded and paid for. As of now, the Kass' support this and will support it into the future and frankly substantially upon their death.

Sara Kass was sworn in accordingly: We have a board, Cindy Eihouser, director of the Beck Center, Robert Conrad from WCLV, Jim Shaw is with the Wolstein Group, Pat Raymond, attorney with Buckingham, and Doolittle is former director of the WRHS. In order to get grants we are involved with many different people. We have entertained all the superintendent of Medina County area, state senators, House of Representatives, state Board of Education. We are active in participating in programs in the Medina County School area. We are currently writing grants to obtain funds from the Martha Holden Jennings Foundation and also the Ohio Arts Council. In order to do this, we must have a permanency. Without the permanency, we will not get grants. When I came to this board in 2005 I promised certain things. I believe I have more than met what I said I was going to do. You may speak with Will Koran, the district Superintendent, about how we are developing these art programs.

Ch. Manley: I am still concerned over the need for the permit in being permanent. The Hinckley Historical Society has received some small grants yet they do not own that building across the street. They are in that building at the privilege of the township Trustees.

Mrs. Kass: If Hinckley grants us the permanent conditional use permit, you can put ground rules on the property they must be adhered to even after we are deceased. That is what I want to happen to give Larry and me peace of mind. We are doing these things for the community and that is why I have come to you. I could have people on my property without having to come to you. I want to make sure that the programs that we are developing will remain with the community and surrounding communities.

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Mrs. Fox: Who will make decisions after you and your husband have passed on?

Mrs. Kass: The regulations that we implement will have to be followed in our wills.

Ch. Manley: What if the next directors decide to allow another type of artist such as stone masons?

Mrs. Kass: It is written in our wills and trusts and the WRHS has signed an agreement with us. The endowment is tied to the art work and the facility. They cannot sell it. It must remain what we have developed it to be.

Mrs. Fox: In order for them to continue getting the money from your endowment.

Mrs. Kass: Yes.

Mrs. Fox: What happens if they (WRHS) say they no longer wish to have the money from the endowment and they wish do something else with the property?

Mrs. Kass: We will make sure that the wills and trusts will have an alternative so that it can maintain the restrictions that we want for it to remain an educational facility.

Mr. Sullivan: Do you agree that using the property as you have planned would not change the essential character of the neighborhood?

Mrs. Kass: Yes. I agree with that.

Mr. Sullivan: Will the use that you perceive be hazardous or disturbing to any existing or future neighbors?

Mrs. Kass: No.

Mr. Sullivan: Would the use of the property as an educational facility as it is now used and as you expect it to be used would not be detrimental to the property and the immediate vicinity?

Mrs. Kass: No.

Sullivan: Does the property have vehicular approaches that do not interfere with the traffic in the area?

Mrs. Kass: Yes. We have made all those provisions and more since the last time we were here. That is why we are open by appointment only.

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Sullivan: Are their loud speakers outside the facility?

Mrs. Kass: No.

Mr. Sullivan: Would the property ever be used for housing of the insane, drugs or liquor addicts?

Mrs. Kass: No.

Mr. Sullivan: I noticed on the way in tonight that the lighting is subdued. Would the lighting remain the same in the future?

Mrs. Kass: I think that there is some new lighting along the parking area. It is all on a timer. It would remain similar.

Mr. Sullivan: Does any of the lighting on the sculptures focus or shine directly on any adjacent properties?

Mrs. Kass: No.

Mr. Sullivan: And this would be the case going forward?

Mrs. Kass: Right.

Mr. Sullivan: I did not see any equipment or tools housed outside of the structures, is that all kept inside somewhere and would it continue that way?

Mrs. Kass: Yes.

Mr. Sullivan: How is the sanitary system?

Mrs. Kass: We have 2 wells and a brand new septic system. It has all been approved by Medina County,

Mr. Sullivan: Is the driveway 20 feet wide?

Mrs., Kass: I do not know about that one. It can handle a school bus.

Mr. Sullivan: Is it all paved?

Mrs. Kass: No it is black-top.

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Mr. Bailey entered into the record copies of correspondence received from people of the community who have participated in programs at the facility.

Mr. Bailey: The Kass' have a contract with the WRHS. In this contract it provides for certain assets of theirs to be left to the WRHS, including this collection of art. To make it binding it has to be a quid pro quo. The WRHS has to get something and the Kass' have to get something. What the Kass are getting in that contract is a binding promise that will preserve this collection in tact n the manner that it is currently preserved.

The answer to your question is that they really don't have a choice. If they accept the gift, they have to keep this property intact. As an additional safeguard, the CAC board is a 501.C3. It is a supporting organization. It is tied to WRHS. Under the terms of the contract with the WRHS this property actually goes to the control of the CAC. The CAC is a board which is controlled by the WRHS. The CAC is a board that is required to carry out the Kass wishes. Who will make the decisions in the future? The CAC will make the decisions in the future. This will be strictly governed by the promises made to he Kass' in this contract.

Mrs. Fox: Suppose the WRHS decided to pull out of this contract totally. What does the board do? What are their powers? They are responsible for this property in Hinckley. What will they do?

Mr. Bailey: The WRHS would be in breach of contract. The only other choice they would have would be to sell the property. The only thing they are permitted to do is to run an educational program.

MR. Sullivan: One of our concerns is that there are several different kinds of education programs, for example, a barber college. One of these different art programs may qualify as an educational institution. This is one of my concerns. If we were to condition on the continuation of the current use: to display the work of regional artists and to use that display of regional art to educate people, does that create any problems?

Mr. Bailey: None. It is exactly consistent with the contract that they have with the WRHS and we would not only accept that we would welcome it. Larry and Sara are dedicated to that.

Mr. Sullivan: What about coming for renew on a five year basis?

Mr. Bailey: We are trying to create a permanency. We are trying to represent this as a permanent fixture in our community. We would like to say that we have secured the permission of the Township to do for as long as this is here. There is a great deal of

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passion on the part of the Kass'. I am their personal lawyer, I am their friend. The lack of permanency on the part of the Kass' is something they stew about a lot.

Mrs. Fox: I understand from what you both said regarding that this permanency is almost necessary for you to obtain additional funds and approvals from other boards. I understand the need for the permanency for the art collection but do you have to have the permanency for the location?" What about keeping the collection permanent but possible change it to a different location. It gives you permanency for your approval from your boards it just means that it is not necessarily permanently located here in Hinckley.

Mr. Bailey: This is part of the entire plan. It is part of the contract.

Mr. Zeleznak: It is a wonderful institution; I believe the whole board agrees. It is a conditional. That means that things have to be done per conditions. If we make it permanence, we do not have those checks and balances to check that this is being done, that the conditions are being met. This has been brought up by all the different questions that we have all asked. Conditions mean that we do have some checks on it. In the past, as long as the conditions are met, we kept on renewing the request.

Mrs. Fox: Isn't having a renewable conditional use permit a form of permanency in and of itself?

Mr. Bailey: No. On any given board, the people can change.

Mrs. Fox: In any board you are involved with, the people may change as well making different decisions as well.

Mr. Bailey. That board is governed by a contract that they have to follow.

Mrs. Fox: If they choose to go ahead and follow through with using this facility here.

Mr. Bailey: If they choose to use it for anything else, the conditions this board has put on it would be violated and the permit would be void.

Ch. Manley: It must be a "conditional" use permit. We cannot change the zoning. Are you asking for the conditional to not have a renewal, but rather that it be permanent unless situations occur that violate the conditions?

Mr. Bailey: This is not a problem at all.

Mrs. Kass introduced John Samolko from Kent State University.

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Mr. John Samolko was sworn in accordingly. I was a 35 year art educator at Aurora High School. My students in my final year were the first members of the pilot program that visited the museum. I have first hand knowledge of how functional the museum is working. I have not had a student that attended the museum that did not have a positive reaction. They were impressed with the amount of artwork that was there. The architecture and the building itself is a work of art. You can compare with Frank Llyod Wright's Falling Water in Pennsylvania. It has a lot of character. I am helping to hire an intern for next semester. This is a gem for Hinckley, Ohio.

Ch. Manley: I do not think anyone on the board is questioning the quality of the collection. Our concern is with the property in the future.

Amelia Hayes, 1929 Ridge Road, was sworn in accordingly. I am a neighbor that lives 2 doors away. I think it is wonderful what the Kass' are doing. I am a neighbor and have never been invited. I do not know exactly what is there because I have never been there. We know that there is a lot of work going on back there. The peace and tranquility of my house is my castle. For quite a while now there's building going on and we have had no problems at all. I am worried about when someone else might take it over. In the future I am worried about busloads of children, although I think it is wonderful to expose children to the arts. Once the WRHS gets a hold of this, like anything else, are the contracts going to be followed? I am worried about these other agencies. I am worried about eminent domain. Is there enough parking? What if they need our property?

Keith Woodall, 1929 Ridge Road. I just want to be secure that when another entity takes over someday, that the proponent is taken care of in the proper way. D we trust the people who will own it in the future? I think it is nor unreasonable if they have to go in from of this board for a review every couple of years. Will there be enough money in the future to take care of the property?

Mr. Ron Rhodes, 1185 Stony Hill Rd. I believe all these questions are valid. I also know that this board is capable of writing the conditions that will cover everyone's concerns. The Cleveland MetroParks brags that we are the jewel in their emerald necklace. This is a gem that many communities would love to have. We are lucky enough to have it. This could be the diamond in our town. Please work this out so these folks can c=have the peace of mind that their project is permanent in Hinckley. If this just lights the fire in one child's eyes, it will be worth all the effort that is put into it. We have allowed people to paint cars in their backyards, run sprinkler system companies out of their homes. Please work this out.

Mr. Kamps read a letter from the Zoning Commission stating its support of the conditional use permit being renewal and not permanent. (See attached letter dated_____)

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Mr. Kamps stated that the Zoning Commission was not privy to all of the information presented tonight when the board drafted this letter. A change in the operation of the facilities would entail a sale of the property or some major change. The recommendations of the Zoning Commission did not put a time limit for the review and renewal but make a recommendation that the conditional use permit be renewed when there is a change in the ownership or a change in operations of the museum.

Mr. Sullivan: Why do we care if there is a change in ownership or a change in operators as long as the property continues to be used in the manner it is being used today?

Mr. Kamps: Our concern is that we have zoning rules and regulations. We were not privy to the information that was given tonight and the Board was concerned for the longevity of the use as a permitted use.

Mr. Sullivan: If the use of that property continues without change, as it is today, why do we care that is running it as long as it is being done? It seems to me that this institution has a much defined purpose and collection which allows for a very specific statement of conditions that can be placed on the variance which can live in perpetuity. We are all worried about permanency as if it is a negative thing. I suggest that it is a very positive thing for this community. If it could be made permanent, it would be a good thing.

Mrs. Fox: What conditions would you suggest so that it could be made permanent?

Mr. Sullivan: We can work out the exact wording and have it presented at the next meeting. One suggestion is to have a condition that the property be continued to be used as a place to house the art of regional artist, as a place to conduct educational activities that educate school children on the art of being artists, on creating and on the value of that work. Enforcement is an issue that is faced every time a conditional is granted.

Mr. Pope, zoning inspector, suggested a semi-annual audit as well as making the permanent conditional void if the conditions are not upheld.

Mr. Bailey made a commitment to write the conditions with suggestions from the board and other residents that would satisfy the board.

The proposed conditions will be made available to the public.

Mr. Zeleznak made motion to continue the hearing to Dec. 10, 2008 at 7:00.

Mrs. Fox second.

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Vote: Sullivan – Yes Zeleznak – Yes Hoop – Yes Fox –Yes Manley – Yes

Hearing was adjourned at 8:30 pm

December 10, 2008

This hearing began on September 24, 2008, continued to November 12 and continued to this date (December 10, 2008).

Ch. Manley called the hearing to order at 7:30 pm.

Roll found: Manley, Fox, Hoop, Zeleznak, Huff, Sullivan and Mainzer present. Also attending were Mr. Pope, Mr. Kamps, and Trustee Schulte, and 5 guests.

Ch. Manley stated that the Hinckley Township Board of Zoning Appeals acts within the regulation of Section 519 of The Ohio Revised Code and exercises its powers as provided under Section 7 & 13 of The Hinckley Township Zoning Regulations. All hearings are open to the public and any person may request that a schedule or agenda be mailed to them by providing a self addressed stamped envelope in advance. Ch. Manley noted that the Board of Appeals does not accept as testimony non-written communication made by known or unknown persons, not under oath at a properly noticed hearing. He explained that the meeting is being taped for the record. He also noted that relevant documents might include written communications from persons who are not present this evening.

Ch. Manley announced that written communications from persons not present this evening include communications that are not made by affidavit. Because persons not under oath make these communications, this Board does not accept them. He also noted that written communications might include some writing by affidavit, by persons that are not present this evening and, therefore cannot be subjected to cross-examination. These affidavits, therefore, will not be given much weight, if any, in the decision of the Board on this matter. In addition, the audience was informed that they must state their name, address, and be sworn in. All testimony will be given from the podium.

Ch. Manley asked if the zoning office had received any written or verbal communication pertaining to this hearing. Ms. Garrett reported that the zoning office had received a letter from Marco, Marco and Bailey, LPA. This letter was forwarded to the board. (See attached letter dated 12/01/2008)

Clerk Garrett polled the board to determine their receipt of this letter:

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**Response: Manley – yes Fox – yes Hoop – yes Zeleznak – yes
 Huff – yes Sullivan – yes Nehrenz – yes**

According to Mr. Sullivan, the applicant has put forth in his letter, conditions that are more than generous. Mr. Sullivan strongly feels that no time limit is required. The issue is that a conditional use permit can be granted for this permitted use. The applicant has the right to it when it shows that it meets the conditions put forth by the board. The question of why the ownership is so much a function of retaining the conditional use certificate is at question. Mr. Sullivan explained that as a township, as long as the uses remain consistent with the zoning regulations, it is a legal granting of the certificate. Our zoning regulations do not say change of ownership and they couldn't. The zoning inspector will inspect the property no matter who the owner is. A certificate of this nature is an enforcement issue and it will be enforced. This is not a use variance. This is a conditional permitted use in our zoning code. The applicant has a right to it but they have to meet the requirements of the zoning regulations. We enforce through the procedures that we have built in.

Mr. Steve Bailey stated that the property is owned by Sara Kass.

Mr. Zeleznak asked Mr. Bailey of the possibility of having the Trustees be involved with selecting a member to the board of Trustees to the museum.

Mr. Bailey agreed that this was a good idea and also stated that a resident, Mr. Woodall, had suggested this as well.

Mr. Norman Johansen, 908 Mattingly Road was sworn in accordingly. Mr. Johansen is a retired director of Sherwin Williams and has been in the art business for at least 50 years. He strongly supports the Cliffside Museum which is the museum owned by Sara Kass and Ridgemont Properties. He feels that this institution will foster the youth of this area's love of art and interest in careers dealing with the arts such as advertising, publishing and design.

Mr. Zeleznak made a motion to grant a conditional zoning certificate for use of the premises as an educational institution for the arts. The certificate will continue in effect for so long as the conditions set forth below are complied with or until the certificate is otherwise terminated by operation of law. The conditions are as follows:

1. The premises shall be used as an educational institution for the arts;
2. The premises shall be in compliance the Hinckley Zoning Regulations and specifically Section 7 thereof;

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3. The property shall remain as a museum in substantially the same condition and under substantially the same uses and practices as existed on November 12, 2008.
4. The operation of the museum shall continue to be on an appointment only basis and not open to the general public for walk-in traffic.
5. The hours of operation shall not begin before 6:00 a.m. and shall not extend beyond 11:00 p.m.
6. No less than annually, the owners of the property at 1921 Ridge Road shall deliver a letter to the Hinckley Township Zoning Inspector confirming that they continue to meet all of the conditions herein.
7. No less than annually, the owners of 1921 Ridge Road shall permit the Hinckley Township Zoning Inspector, upon his request and without the need for him to obtain a warrant, to inspect the interior of the facility.
8. No significant modification of the current use of the facility by the present owners or any future owners shall be made without the consent of the Hinckley Township Board of Zoning appeals.

Mrs. Dottie Fox second.

Mr. Zeleznak asked about a possible term limit.

Ch. Manley stated that there would be no term limit.

Vote: Sullivan –yes Zeleznak – yes Hoop –yes Fox – yes Manley – yes

The conditional use certificate was approved by a vote of 5-0.

The minutes of this hearing will be signed and journalized on January 14, 2009.

The hearing was adjourned at 8:10 pm.

Signatures on following page

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Patty Garrett, Zoning Clerk

Minutes Approved _____, 2009

David Manley, Chairman

Dottie Fox, Vice Chairman

Jeff Hoop, Member

Dave Zeleznak, Member

_____ absent
Melissa Huff, Member

Kevin Sullivan, Alternate Member