



**DEPARTMENT OF THE ARMY**  
BUFFALO DISTRICT, CORPS OF ENGINEERS  
1776 NIAGARA STREET  
BUFFALO, NEW YORK 14207-3199

REPLY TO

December 20, 2010

Regulatory Branch

SUBJECT: Restoration Agreement, Department of the Army No. LRB-2010-01605

Mr. Anthony Valore  
Valore Builders  
23550 Center Ridge Rd.  
Westlake, Ohio

Dear Mr. Valore:

This letter is in reference to the filling activities which have recently occurred at your property located at 6107 Wadsworth Rd, Montville Township, Medina County, Ohio.

The U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged or fill material into waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act. Certain activities, such as landclearing using mechanized equipment and/or sidecasting in jurisdictional water is regulated under Section 404 of the Clean Water Act.

Based on observations of your property on November 24, 2010 by Ed Wilk (Ohio EPA Representative) and a review of in-office resources which included the assessment of aerial photographs, it was determined that areas within your property meet the federal wetland criteria are present on your property and are subject to regulation by the USACE. More specifically, the wetlands and stream are part of a surface water tributary system which ultimately flows into the Rocky River, a navigable water of the United States. The investigation further determined that approximately 0.02-acres of wetland was filled without Department of the Army authorization. As a result of this determination you are in violation of federal law

As agreed upon in order to resolve the violation you shall perform the following

- 1.) Restore the federal jurisdictional wetland (sheet 1 of 1) that has been filled, to pre-disturbance elevations and grades.
- 2.) All disturbed areas shall be seeded with a wetland seed mix and mulched.
- 3.) Verification, including photographs, shall be provided to this office confirming the removal and restoration has been completed.
- 4.) All fill material removed from the wetland shall be disposed of at an upland site well removed from waters of the United States, including wetlands, and shall be adequately contained to preclude reentry into these waters.

2010 DEC 22 AM 10:03

OHIO EPA - DSW

Restoration Agreement, Department of the Army No. LRB-2010-01605

The wetland must be restored with all plantings completed by **January 31, 2011** or by an approved extension date from this office.

It is our understanding that a wetland delineation has been completed for the property that identifies wetlands and stream. It is highly recommended to have the wetland delineation verified by the USACE to avoid further violations of the Clean Water Act.

Copies of this letter have been forwarded to Mr. Ed Wilk of the Ohio EPA, Art Colman of the Ohio EPA, and Judith Enrick Montville Township Zoning Inspector.

Questions pertaining to this matter should be directed to me at (440) 437-5841, by writing to the following address: U.S. Army Corps of Engineers, 33 Grand Valley Avenue, Orwell, Ohio 44076, or by e-mail at: [tina.p.stonemetz@usace.army.mil](mailto:tina.p.stonemetz@usace.army.mil)

Sincerely,  
**COPY**

Tina P. Stonemetz  
Monitoring and Enforcement Section

**FILE COPY****received**

12-08-10



Office of the Prosecuting Attorney  
Medina County, Ohio

72 Public Square • Medina, OH 44256

Phone: 330-723-9536 • 330-225-7100 • 330-336-6657 • Fax: 330-723-9532

Support Enforcement: 330-723-9546 • Juvenile Division: 330-764-8399

Victim Assistance: 330-723-9537

December 6, 2010

DEAN HOLMAN  
Prosecuting Attorney

**PERSONAL AND CONFIDENTIAL  
ATTORNEY CLIENT PRIVILEGED**

Montville Township  
c/o Judy Emrick, Zoning Inspector  
6665 Wadsworth Road  
Medina, Ohio 44256

**Re: *Misc. Zoning Issues***

Dear Ms. Emrick:

As you may recall, at the October 13, 2010 Zoning Commission meeting, the Board of Zoning Commission had several questions concerning Township Zoning Draft Regulations. The relevant text sections and my review follow.

**1. Enforceability of Section 730.9 – Mandatory Review of Conditional Use Operations.**

The Commission indicated that there are conditional uses within the Township that are required to be brought back in before the Board of Zoning Appeals for a formal review of compliance. If the uses are in compliance, then the conditional use certificate is renewed. The Commission asked whether the regulation requiring mandatory review and renewal is enforceable.

I have found no 9<sup>th</sup> District cases (our appellate district) on point. However, other districts provide some guidance. The 3<sup>rd</sup> Appellate District indicates that a township may place a time limit on conditional use permits so long as such a requirement is provided for in the township's zoning resolution.

Section 730.9 of the Township's Zoning Resolution indicates that certain uses must be "reviewed/renewed" every so often. Based on our meeting, it is my understanding that after a specified time period, the BZA wants to be able to bring the property owner in for a formal review the conditional to make sure it is still in compliance. If the conditional is in compliance, it is renewed. However, what happens if the conditional is not in compliance – is the conditional use permit considered "revoked?"

The Zoning Resolution could place a time limit on the conditional, indicating that it ends within a certain period time and must therefore be renewed by the BZA. However, if the

Township wants to revoke a conditional use permit, they must give the property owner his procedural due process rights; this would include a public hearing on the matter.

I must note it is *typically* the Zoning Inspector's duty to monitor the conditional to ensure ongoing compliance. Further, I must reiterate that I have found no case law from the 9<sup>th</sup> District dispositive on whether time limits on conditionals are permissible.

**2. Does a Conditional Use Run with the Land or with Ownership.**

Ohio law indicates that a conditional use runs with the land; that is, the use does not end upon change of ownership of the property.

**3. Does the Township Have the Authority to Require Proof of Liability Insurance (relating to wind turbine regulations); In the Alternative Can the Trustees Require a Surety Bond.**

As I indicated at the October 13, 2010 meeting, the Township does not have the authority to require proof of liability insurance through their zoning powers. In response, Vice Chair Alan Piatak asked whether the Trustees may require a surety bond as a condition of construction of wind turbines.

It is well settled in Ohio, that townships have no inherent or constitutionally granted police powers. What police powers the townships do have are delegated by the Ohio General Assembly and is limited to that which is expressly delegated to them by statute. There are several provisions in the Revised Code that expressly permit a township to require a surety bond in relation to construction projects (e.g. R.C. 5571.16(E) township trustees may require an applicant to post a deposit or bond with sureties prior to an excavation in a public highway). However, there is no similar statutory provision relating to wind turbines or similar structures. Therefore, it is my opinion, and you are so advised that the Trustees may not require a surety bond prior to construction of a wind turbine.

**4. Are there Alternate Ways to Achieve the Desired Results of Section 410.8 L. 13. b) and c)?**

Sections 410.8 L. 13. b) and c) deal with the Township's ability to remove an inoperable wind turbine after a specified period of time, and to place any unpaid costs as a lien on the property owners tax bill. As indicated at the October meeting, the Township has no authority to enforce sections b) and c) through their zoning code. If there is an inoperable wind turbine, the Township could issue a zoning violation, and, ultimately, could enforce the Zoning Resolution through an injunction action instituted by this Office.

However, R.C. 505.86 does provide township trustees with the ability to remove, repair or secure certain buildings and structures, and to recover the costs involved in such actions. I have attached an outline of the 505.86 and associated documents. As always, procedural due process is required (and is provided for in the outline); however, certain steps may be able to be skipped in the event of an emergency due to an immediate risk to the health, safety, or welfare of the community. Please review this outline, and contact me if you have any questions or comments.

5. **Does the Prosecutor's Office have any Sample Rules and Regulations Regarding Inflatable Signs?**

In light of the pending lawsuit involving Medina Township, the Montville Township Zoning Commission would like to know if there is anything they should do concerning Montville's Zoning Resolution regarding inflatable signs. The Commission stated that Montville's regulations are nearly identical to Medina Township's regulations. Section 510.5 lists prohibited signs throughout the Township. That section states in relevant part:

All signs not expressly permitted in this Chapter or exempt from regulation pursuant to Sec. 510.10 are prohibited in the Township. Such signs include but are not limited to the following:

A. Animated, flasher, blinker, racer type, intermittent, video, tri-vision, or similar devices, moving or revolving signs, whirligig devices, *inflatable signs* and tethered balloons. . . (Emphasis added).

Our Office does not have any sample rules or regulations regarding inflatable signs. Further, the only litigated case that this Office is aware of, found that inflatable signs could not be completely prohibited.

As always, if you have any questions or comments, please do not hesitate to contact me at (330) 723-9536.

Very truly yours,

DEAN HOLMAN  
Medina County Prosecutor



DAVID J. FOLK  
Assistant Prosecutor

Enclosure

ZONING COMMISSION MEETING  
OCTOBER 13, 2010

MR. DAVID FOLK  
ITEMS FOR DISCUSSION

**DRAFT OF REGULATIONS FOR REVIEW/DISCUSSION:**

**Sec. 730.9 MANDATORY REVIEW OF CONDITIONAL USE OPERATIONS.**

Whenever the operation of the approved conditional use is regulated either by conditions set forth in this Chapter or by conditions, stipulations, safeguards and limitations prescribed by the Board of Zoning Appeals, (Effective June 22, 2006) the conditional use shall be reviewed/renewed to determine if the use has been and is being operated in compliance with the conditions of the conditional zoning certificate.

- A. Public and non-public utility telecommunication facilities shall be reviewed/renewed not less than every two years, but not more than every three years, from the date of issuance.
- B. Conditional uses, other than as noted in A. above, shall be reviewed/renewed not less than two years, but not more than three years from the date of issuance and/or subsequent review/renewal. After completion of the approved development plan (if applicable) and after two consecutive reviews verify compliance with the conditions of the conditional zoning certificate, the conditional use shall no longer be subject to a mandatory review by the Board of Zoning Appeals.
- C. Site inspections shall be conducted periodically by the Zoning Inspector or designee. (Revised )

**DOES THE TOWNSHIP HAVE THE AUTHORITY TO REQUIRE PROOF OF LIABILITY INSURANCE?** (Related to discussion regarding wind turbine regulations.)

**ARE THERE ALTERNATIVE WAYS TO ACHIEVE THE DESIRED RESULTS OF SECTION 410.8 L. 13. b) and c)?**

- b. Upon failure to remove an inoperable wind turbine within the required timeframe, the Montville Township Zoning Office shall issue a Notice of Violation directing the removal of the wind turbine and all components within ninety (90) days. Upon confirming continuing noncompliance, the Montville Township Zoning Office may contract with a contractor to remove all wind turbine components as established in the required entry agreement provided by the property owner at the time of permit application.

- c. The property owner is responsible for all costs and expenses incurred in connection with securing, removing, and disposing of the system. Upon failure to pay invoices for all such costs and expenses within thirty (30) days of invoicing by the Montville Township Fiscal Officer or designee, any unpaid costs will be placed as a lien to be collected as part of the real estate taxes.

**DOES THE PROSECUTOR'S OFFICE HAVE ANY RECOMMENDATIONS OR  
SAMPLE REGULATIONS FOR INFLATABLES?**

received  
12-08-10

**OUTLINE OF R.C. §505.86**  
**(Buildings & Structures)**

**FILE COPY**

STEP 1: The Fire Department, Building Department, or the Health Department declares that a building or structure is (1) insecure; (2) unsafe; (3) structurally defective; or (4) unfit for human habitation. This should be in writing to the Trustees.

STEP 2: The Trustees send Initial Courtesy Letter to the owner giving a **reasonable amount** of time (probably at least 14 days) to correct and the opportunity to challenge the determination. *Form 1*

STEP 3: The Trustees request title report to obtain name(s) of the owner(s) and all lien holders.

STEP 4: If owner does not respond to the Initial Courtesy Letter within the time given in the letter, send Order requiring removal, repair, or securing the building within thirty (30) days. The Order should be sent by **certified mail** or personal delivery to the owner and to each lien holder. *Form 2*

NOTE: If the Trustees cannot obtain delivery by certified mail or personal delivery, please contact the Prosecutor's Office.

Step 5: If no correction made within 30 days from delivery of Order, schedule a show cause hearing and send Notice of Hearing to each owner and to each lien holder by **certified mail** or personal delivery. *Form 3*. The show cause hearing must be scheduled for a reasonable date after the delivery of the Notice of Hearing (probably at least 10 days).

Step 6: Hold hearing in which witnesses are sworn and testimony is given. Whoever issued the decision in Step 1 should testify. There should be a court reporter or at least an audio recording of this hearing. **The hearing should go forward even if the owner does not appear.**

Step 7: If the evidence presented is sufficient, the Trustees should issue a written decision that the building or structure is insecure, unsafe, structurally defective, or unfit for human habitation; that the owner failed to show cause why the building or structure should not be removed, repaired, or secured; and that the township will proceed with the removal, repair, or securance of the building or structure. The decision should provide when such work is intended to be started.

Step 8: The Trustees may now remove, repair, or secure the building or structure. Keep track of all costs paid for such work.

Step 9: The Trustees may have the clerk certify the total costs along with a description of the property to the county auditor. This will be added to the tax duplicate. Alternatively, the Trustees may file a civil action against the owner to collect the costs and the Medina County Prosecutor's Office is available to assist in such collections.

**\*\* Please note that some of the steps may be able to be skipped in the event of an emergency due to an IMMEDIATE risk to the health, safety, or welfare of the community. If you believe an emergency exists, contact the Medina County Prosecutor's Office for assistance.**

[LETTERHEAD]

[Date]

[Enter property owner's name and address]

Dear Sir/Madam:

It has come to the attention of the township trustees that a building or structure located at [ENTER ADDRESS OF PROPERTY] in the township has been declared insecure, unsafe, structurally defective and/or unfit for human habitation. By virtue of R.C. §505.86, the board of township trustees may order a property owner to make arrangements for the removal, repair, or securance of such kinds of buildings or structures. If a property owner fails to comply with a formal order of the trustees in such regard within thirty (30) days, the trustees have the authority to provide for the removal, repair, or securance of any such building or structure. The owner is responsible for the total expense of removing, repairing, or securing such building or structure. The trustees may place the expenses upon the tax duplicate or may commence a civil action against you.

The trustees accordingly seek your voluntary compliance with the township's desire that the building or structure be removed, repaired, or secured. If you believe the declaration is in error, please contact the trustees with evidence that the building or structure is secure, safe, structurally sound and fit for human habitation. If you fail to take proper action in response to this letter within \_\_\_\_\_ days, formal proceedings under R.C. §505.86 may be commenced by the trustees.

Your immediate cooperation would be greatly appreciated.

Yours Truly,

BOARD OF TRUSTTEES  
OF \_\_\_\_\_ TOWNSHIP:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FORM 1.0

[LETTERHEAD]

[DATE]

[Enter property owner's name and address]

**ORDER**  
**R.C. §505.86**

Dear Sir/Madam:

A building/structure on property owned by you and located at [ENTER ADDRESS] in [ENTER TOWNSHIP NAME] Township has been declared to be insecure, unsafe, structurally defective, and/or unfit for human habitation by [ENTER DEPARTMENT RESPONSIBLE]. A copy of such declaration is attached to this order.

You are hereby ordered to immediately remove, repair, or secure such building/structure. You may request a hearing to challenge this order by submitting a written request to the Township Trustees within fourteen (14) days of this Order. If you fail to comply with this Order within thirty (30) days, you are hereby notified that the Township Trustees will arrange for the removal, repair, or securance of such building/structure and any expense incurred by the Township Trustees in performing such task will be recovered in a civil action against you or will be entered upon the tax duplicate as a lien upon your property and shall be collected as other taxes.

BOARD OF TRUSTEES  
OF \_\_\_\_\_ TOWNSHIP:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

cc: Record Lienholders  
Medina County Prosecutor's Office

Form 2.0

[LETTERHEAD]

[DATE]

[Enter property owners' name and addresses]

[Enter lien holders' names and addresses]

**NOTICE OF HEARING**

Dear Sir/Madam:

You were ordered by the Board of Trustees of \_\_\_\_\_ Township to remove, repair, or secure a building or structure on your property in the township. You have failed to timely perform the ordered task. It is therefore ordered by this Board that a hearing will be conducted at [INSERT ADDRESS OF PLACE OF HEARING] on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_m. at which time and place you and other interested persons are ordered to appear and show cause why the township should not arrange for the removal, repair, or securance of the subject building or structure and collect the expense incurred by the board in performing such task by a civil action against you or by entering the expense of such task upon the tax duplicate as a lien upon the property to be collected as other taxes.

Yours Truly,

BOARD OF TRUSTEES  
OF \_\_\_\_\_ TOWNSHIP:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

cc: Medina County Prosecutor's Office

Form 3.0

**Sec. 730.9 MANDATORY REVIEW OF CONDITIONAL USE OPERATIONS.**

Whenever the operation of the approved conditional use is regulated either by conditions set forth in this Chapter or by conditions, stipulations, safeguards and limitations prescribed by the Board of Zoning Appeals, (Effective June 22, 2006) the Zoning Inspector shall review the operation of the conditional use not less than three years from the date of issuance to determine if the use has been and is being operated in compliance with the conditions of the conditional zoning certificate.

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**Subdivision/Developments**

The conditional zoning certificate for a development/subdivision shall be issued for a three (3) year period of time. After a three-year period has elapsed, the conditional use shall be reviewed for renewal by the Board of Zoning Appeals and a new conditional zoning certificate shall be required and may be issued provided that the Board of Zoning Appeals and the Zoning Inspector determine that the said use has been and is being operated according to the specifications of the Zoning Resolution and the previous conditional zoning certificate. The three-year time limit shall be removed when the approved development/subdivision plan has been completed and turned over to the homeowners association if applicable.

**Wireless Telecommunications Towers**

The conditional zoning certificate for a wireless telecommunications tower shall be issued for a three-year period of time. After a three-year period has elapsed, the conditional use shall be reviewed for renewal by the Board of Zoning Appeals and a new conditional zoning certificate shall be required and may be issued provided that the Board of Zoning Appeals and the Zoning Inspector determine that the said use has been and is being operated according to the specifications of the Zoning Resolution and the previous conditional zoning certificate.

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