

## Minutes of The

### Ogden Dunes Plan Commission Meeting

Special Meeting - Town Meeting Room – October 9, 2019 - 7:00PM

#### Members of the Ogden Dunes Plan Commission

Mike Falk, Chair 764.4676 ♦ Scott Stolarz, Vice-Chair, (312) 446-8150 ♦ AJ Bytnar (219) 741-5040  
♦ Nate Ball, 762-1319 ♦ Scott Lehmann, 763-4688 ♦ Roger Rhodes, 764.2680  
Jill Woodburn Secretary, 763-2246

**Building Commissioner** – Pat Smith, 929-7746

**Members absent:** AJ Bytnar and Scott Lehmann

**Guests:** T.J. Frain, Nathan Vis, Tom Frain – Owner of Duneland Landscape, LLC, Jacqueline Frain, Rich Osgerby, Carla Berry, JoAnn and Paul Arnold, Susan Anderson Cleland, Kris Bailey, Mike Teeling, Aaron Babb, Carla Berry, Charles Costanza

1. Call to Order: 7:05 CST
2. Tom Frain Diana (projects 1 and 3) and Ski Hill (project 2) – License status hearing
  - A. Attorney for Tom Frain (TF), Nathan Vis (NV) waived reading of the Complaint into the record.
  - B. MF presentation of elements of the Complaint.
    - i. MF presented a computer-aided presentation detailing perceived inadequacies with project 1 (Diana #1) While several items were discussed in various order with reference to one or more of the project faces, for purposed of clarity, what follows below includes the main items addressed:
      - a. MF stated that a review of the record demonstrated that no calls for inspection of Diana #1 were made to the Town during construction, thus violating Ogden Dunes Code Section 152.061 . Neither RR nor PS was present during construction.
      - b. MF identified photographs provided by TF appearing to show multiple courses of blocks placed with no apparent compaction and backfill and no photographs of a compactor on site. MF further stated that TF has provided no evidence of compaction to a minimum of 95% of Standard Proctor (ASTM D698) as set forth in the Allan Block Installation Guide.
      - c. MF identified photographs provided by TF appearing to show existing planting, a dead main from the previous wall, and tree stumps in close proximity to the built wall. Given the proximity of these extraneous items, it was submitted that these photographs demonstrate the lack of 12" of wall rock behind the stacked blocks as set forth in the Allan Block Installation Guide.
      - d. MF identified photographs provided by TF appearing to show existing planting, a dead main from the previous wall, and tree stumps in close proximity to the built wall. Given the proximity of these extraneous items, it was submitted that these photographs demonstrate the lack of 12" of aggregate behind the stacked blocks as set forth in the Allan Block Installation Guide.
      - e. MF identified photographs provided by TF appearing to show existing planting, a dead main from the previous wall, and tree stumps in close proximity to the built wall. Given the proximity of these extraneous items, it was submitted that these photographs demonstrate the lack of GeoGrid as set forth in the Allan Block Installation Guide.
      - f. MF identified photographs provided by TF appearing to show, based upon a visual counting and known dimensions of the stacked blocks portions of the project in at least one photograph, a wall which appears to be over 40" in height.
      - g. MF identified photographs provided by TF appearing to fail to show draining present at the toe of the wall. Instead, photographs identified appear to show drainage pipes well above the toe of the wall.
      - h. MF identified photographs and compared it to an initial plan, to demonstrate that the finished project does not appear to follow the submitted design plan.
    - ii. MF presented a computer-aided presentation detailing perceived inadequacies with project 2 (Ski Hill).

- a. MF stated that during construction, it appeared from visual inspection that the wall was going to be in excess of 48", requiring engineering. MF stated that no such engineering was received. MF stated that a review of the record demonstrated that the original plan submitted was not certified and stamped by a professional engineer licensed in the State of Indiana
  - b. MF identified photographs appearing to show existing planting close to the wall. Given the proximity of these plantings / soil, it was submitted that these photographs demonstrate the lack of 12" of aggregate behind the stacked blocks as set forth in the Allan Block Installation Guide.
  - c. MF identified photographs appearing to show existing planting close to the wall. Given the proximity of these plantings / soil, it was submitted that these photographs demonstrate the lack of 12" of wall rock behind the stacked blocks as set forth in the Allan Block Installation Guide.
  - d. MF identified photographs appearing to show no apparent compaction and backfill. MF further stated that TF has provided no evidence of compaction to a minimum of 95% of Standard Proctor (ASTM D698) as set forth in the Allan Block Installation Guide.
- iii. MF made a presentation detailing perceived inadequacies with project 3 (Diana #2).
- a. MF presented that upon inspection, the wall of Diana #2 appeared to show no apparent compaction. MF further stated that TF has provided no evidence of compaction to a minimum of 95% of Standard Proctor (ASTM D698) as set forth in the Allan Block Installation Guide.
  - b. MF presented a description of two methods that could be used to determine the general adequacy of compaction, without the aid of a compaction density gage. These gage-free methods were proposed to MF by a Purdue Engineering professor. Tests included a tile probe and a knife, which MF stated could be used get a general idea of existing compaction.
  - c. TF was not present for the tile probe or knife test with Diana #2, but PS, RR and MF were present. TF was invited at this meeting to take part in such a test at the site in the future if he desires.
- C. NV questioning of RR, PS and MF
- i. NV questioned RR on Town history of inspections as it pertains to retaining walls, requirements for stamped engineer drawings, and timeline with inspection on Diana #1.
    - a. RR stated that the number of inspections depend upon the project complexity and can range typically from 2-4.
    - b. RR agreed that prior to 2017, inspections for projects often occurred at the end of said project.
    - c. Inspection of Diana #1 was at completion of the project when RR received a request to return a deposit. The inspection was visual and RR had concerns – indicating at least some of inadequacies set forth above.
    - d. RR no comment on industry standards.
    - e. RR was present with 2019 site visit (Diana #2) for tile probe and knife tests.
  - ii. NV questioned PS on his role in Ski Hill and Diana #2
    - a. NV stated there was no basis stated on the face of the posted stop work order at Ski Hill. Upon review PS did not see the basis stated on the face of the order posted at Ski Hill.
    - b. NV questioned PS as to why TF was not present at the inspection of Ski Hill. Response: PS is part-time and inspections performed when PS is available.
  - iii. NV questioned MF about the compaction tests and presence at inspections.
    - a. MF stated that the tests had been conducted in the past
    - b. MF discussed his thoughts on the quality of the knife tests in block gaps.
    - c. MF, PS, and RR stated that MF as a member of the PC is present as a percentage of inspections.
  - iv. NV made general comments:
    - a. NV set forth timeline of perceived lack of timely responsiveness from Town Attorney.
    - b. NV mentioned residential and commercial guidelines from Allen Block.
- D. NV presented to the PC a packet of emails, correspondence, and assorted information pertaining to Diana #1, Ski Hill, and Diana #2.

- i. NV questioned the validity of the ordinances of the Town of Ogden Dunes.
  - ii. NV questioned TF on proffers to fix the projects. Nothing new to present or new proffer from TF.
  - iii. NV requested a note in the minutes to state that all persons will be treated with respect.
  - iv. NV questioned TF regarding the elements that formed the basis of the Complaint at Diana #1.
    - a. TF stated that he was not actively involved with the construction of Diana #1 and was physically present once or twice to check on the employees.
    - b. TF stated that he did not know that he should request an inspection based on his not having requested inspections prior to 2017.
    - c. TF stated that he did a visual settlement review in 2019 of the finished project at Diana #1 of and that he does not see evidence of wall failure.
    - d. TF stated that the drainage piping in the photographs depict a dry well from a downspout to a drain under the soil of the project of Diana #1.
  - v. NV outlined a timeline, which is presented in the packet of the stop work order at Ski Hill.
  - vi. NV questioned TF regarding the elements that formed the basis of the Complaint at Ski Hill. While several items were discussed, what follows below includes the main items addressed in person and/or in the packet:
    - a. TF stated that while one spot of the wall might have been too high, a new gravity wall plan was submitted.
    - b. TF stated that he submitted a plan to bury downspout above the wall into a 4-inch corrugated pipe and vent it away from the retaining wall.
    - c. TF stated that he submitted a plan to regrade the hill above the retaining wall to minimize the slope toward the wall and dress the soil with grass seed and erosion control blanket.
    - d. TF stated that regarding the original design, he offered to dismantle and excavate any and all wall sections that did not have a minimum 12 inches of rock behind the wall block, up to and including the entire wall if necessary and build the gravity drain wall.
    - e. TF stated that regarding the original design, mechanical plate compactors and hand compactors were used and invited a site visit when performing the task or the taking of a video of the process.
    - f. TF stated that the drainage mechanism was visible in the first inspection.
  - vii. NV questioned TF regarding the Diana #2 project. TF had nothing to add that hadn't been addressed earlier and that is in the packet.
- E. MF and PC questioning of TF regarding Diana #1, Ski Hill and Diana #2:
- i. TF stated that none of the individuals employed to work on the project at Diana #1 are currently employed at Duneland Landscape.
  - ii. TF is unsure of the height of the walls at Diana #1
  - iii. c TF is unsure of the width of the wall rock behind the stacked blocks of Diana #1.
  - iv. TF is unsure of the width of the aggregate behind the stacked blocks of Diana #1
  - v. TF's attention was directed to the drawings submitted as Tab 5 of the packet presented by NV. That drawing was of the proposed gravity wall at Ski Hill. TF was directed to the first two lines of that drawing from Allen Block that reads "The purpose of this drawing is for preliminary design only. This drawing should not be used for final design or construction without the certification of a professional engineer registered in the state in which the wall will be built".
  - vi. TF was unsure as to how to determine compaction but assumed that the projects were passed with a compactor during construction of Diana #1, Ski Hill and Diana #2. TF stated that he does not know what 95% compaction looks like.
  - vii. TF disagreed with the gage-free methods discussed above with reference in particular to Diana #2.
  - viii. TF submits that it is his best guess that photographic evidence used above as the basis of the Complaint of Diana #1 was likely staged by his workers to see what the site would look like at a later time and should not be used to form a basis of the Complaint.
  - ix. TF stated that GeoGrid was used, but that maybe not everywhere based on the proximity of the remaining tree stump.

- x. TF stated that the two passes of the compactor for compaction purposes is required only for commercial projects.
- xi. TF proffered as support for his position that multiple courses could be built at once on Diana #1, an undated email from Jill Fouts that stated that "it is not necessary to build each course to the entire length of wall before building up. There are times the wall installer may elect to build a particular portion of the wall up to a given height while keeping other areas a course, two, etc. lower as seen in the picture attached.". Jill Fouts is listed on the email as a market manager at ReadingRocks, which is a retailer of Allen Block.
- xii. TF's attention was directed to the Building permit of Diana #1, which stated that "All work must be done in compliance with town ordinance and laws".

F. NV questioned Kris Bailey

- i. NV questioned KB regarding information on Diana #1 and Diana #2. KB stated that she took photographs provided by TF discussed above. KB stated that she was present for a portion of the construction of Diana #1 and Diana #2. KB believes that plate compactors were used. KB hired an engineer who has stated that the wall is not failing to date and the report is a part of the packet. KB does not wish that the walls be torn down and rebuilt.
- ii. MF questioned KB. KB is not an engineer and was not present when entire wall was built. KB was not aware of how many passes a plate compactor is to make to effect proper compaction.


G. Rebuttal from NV

- i. NV stated that a compactor would not be kept on site, while a Bobcat would because a Bobcat has a key.
- ii. NV questioned Allen Block residential versus commercial specifications and maintained that residential specifications do not require 95% compaction.
- iii. NV questioned why a stop work order not issued at an Ogden Rd project currently underway (not related to Diana #1, Ski Hill, or Diana #2), where there appear to be multiple layers, sand is fluffed up and to drain is exposed. PS responded that it was not issued because the contractor on that project immediately agreed to fix all of the outstanding issues when approached.

H. JW motioned to take this matter under advisement. NB seconded. Motion carried 5-0

3. Adjourn: 9:47 PM

  
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Chair: Mike Falk

  
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Secretary: Jill Woodburn