

Monument Board of Trustees, Nov. 5

# Christmas tree light rental approved

By Jim Kendrick

On Nov. 5, the Monument Board of Trustees approved funding for Christmas tree lighting along Second Street by consensus. The board also unanimously approved the appointment of Monument resident Melissa Wood as an alternate planning commissioner, in accordance with commission bylaws. Woods can be a voting member anytime one of the commissioners is absent. She stated that she was interested in keeping businesses downtown as well as bringing in new businesses to help the town grow.

The vacant seat created by the resignation of Trustee Rick Squires had not yet been filled for this meeting.

### Trustee comments

Trustee Jeff Kaiser thanked Treasurer Pamela Smith "for all the extra help and guidance you've given. You take a little extra time to explain things and your budget has done so well. I just wanted to thank you personally."

### Public comments

John Dominowski, owner of the shopping center on Front Street, asked the board to use money from the annual fund financed by town business license fees to pay for Christmas lights on the trees just installed on Second Street between Highway 105 and Beacon Lite Road. He presented a letter to the board signed by about 13 downtown business owners requesting that the trees be lit this season.

Green said there was enough money left in the 2012 budget to pay the lowest bid to lease Christmas lights for this season. Smith said \$9,800 remained in this Community Development Fund that could be used toward this request.

The board unanimously agreed by consensus to finance the Christmas tree lighting as requested by Dominowski.

County resident Lee Ackerman of 910 N. Washington St. complained again about the unsightliness of the adjacent town property to the south at 840 N. Washington St., which is owned by XKE Contractors Inc. She said her 22-acre horse farm has a county zoning of RR-5, rural residential and five acres or larger, while the XKE lot has a town zoning of planned heavy industrial development (PHID).

**Background:** Ackerman and her husband Dennis Ackerman, who have owned their property for 25 years, had complained to the Board of Trustees about the XKE property on Aug. 1, 2005. Some of the concerns they expressed at that meeting were:

- The property had dropped \$150,000 in value since XKE owner Todd Smith turned his property into "an industrial wasteland."
- Horses were still kept where the long-vacant land had recently been graded.
- The 60- to 150-year-old pine trees forming a visual screen within the 10-foot buffer zone next to her property line had been allowed to die.
- Excavation just inside the buffer zone had cut into the roots of the buffering trees, killing several other pine trees and four patches of scrub oak elsewhere on the property, and other healthy trees on the property had also been taken down.
- The trees that died and were planted specifically for buffering within the

10-foot-wide buffer for an industrial lot should be replaced on a two-for-one basis in accordance with town regulations.

- Smith had destroyed some "greenway" in the center of the XKE parcel.

For more information, see [www.ocn.me/v5n8.htm#bot718](http://www.ocn.me/v5n8.htm#bot718)

Some of the statements made by Lee Ackerman at this Nov. 5 board meeting were:

- The XKE property is covered with junk and debris.
- The town zoning changed to PHID before Todd Smith took ownership of the XKE property.
- She has spoken to town staff several times since her 2005 public comments.
- There are no appropriate boundaries between the two properties.
- The town has legal language about offensive public nuisances that could be applied to get XKE to abate/clean up its property.
- The acre of 200-year-old trees that was a satisfactory visual buffer next to her property has been cut down.
- In the section on additional requirements of industrial use, the town's industrial zoning code now states that a 50-foot buffer is required.
- The board could declare the XKE property a nuisance to get him to abate it.
- "If you don't want to erect an 8-foot fence on his side, erect it on mine."
- Even if Smith has said he's going to clean it up, he's never going to clean it up.
- It sounds like Smith has no legitimate or legal site plan.
- "Can I have a legal answer from the town attorney on whether he has a legally zoned business, or do I need to get an attorney?"

Town Manager Cathy Green stated that when the XKE property was annexed, the site plan that was adopted by the Board of Trustees was a "very bad site plan" with only a 10-foot buffer with "10 little stars for trees," and it was never recorded with the county.

She said she had town Engineering Inspector Greg Maggard go to the County Assessor's Office to determine if the site plan in the town file was the legitimate site plan for creating the industrial zoning when the property was annexed. The site plan in the file for the previous landowner,

before Smith, had never been recorded. Green said Smith would likely be opposed to record a current plat with current code requirements. "I assume the law would say you have to go with what was in the file and what was approved at that time by the Board of Trustees."

XKE is now an RV storage business with non-conforming uses that were approved at the time of annexation. Green said, "It's a heavy industrial site with a lot of scrappy-looking stuff." Smith's house on this industrial site was a grandfathered non-conforming use.

Green then discussed the town's code enforcement history with Smith considering the Ackermans' original public comments noted above. Green said she and two town code enforcement officers had gotten Smith to remove trash around his house, but not the trash further up the hill next to the Ackerman property boundary. She stated that the trash next to the Ackerman property is "almost small" compared to all the stuff Ackerman has to look at on the whole property, which she said is a bad situation.

Green said, "We just don't have the law behind us to get anyone out there to do anything about it." She added, "I'm not ever sure what we would do to abate it, because what he's doing on that property is unsightly to a neighbor but he's doing it legally."

Town Attorney Gary Shupp advised the board that there is not much the board

can do, even though the town would never allow this kind of district to exist now. The town cannot retroactively require screening now.

"Abating a nuisance is a term of art" that courts have defined in a lot of case law, and this case does not meet the legal definition, Shupp said. The town has no obligation to build a fence on the Ackerman property and "that has all kinds of interesting ramifications also." Shupp said he would research the town file and provide a legal opinion to the board. He also said the Ackermans could obtain legal counsel at any time of their choosing.

David Betzler of Health Advocacy Partnership thanked the board for its \$1,600 contribution and asked that the board pose for a picture to memorialize

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