

Clearwater Township
Planning Commission
Regular Meeting of September 10, 2018
As approved October 1, 2018

Call to Order, Pledge of Allegiance:

Chair Backers called the meeting to order at 7:04 pm, and opened with the Pledge of Allegiance.

Roll Call of Members and Recognition of Visitors:

Commissioners present: Backers, Casassa, Clerk Eldridge, Fields, Von See.

Township officials: Zoning Administrator Parzych

Public: Jan Mangus, Jim Lindner, Tom Pierce, Mary Beth Kazanski, Becky Norris, Brian Kroll, James Moore, Jerry Kranz, Deputy Clerk Jule Moore, Jim Stanton, John Boucher, Stan Zenas.

Approval of Agenda:

Chair Backers moved consideration of the Mass Gathering Ordinance to the October meeting.

MOTION by Von See, second by Casassa to accept the agenda as amended. Motion carried.

Call for Disclosure of Conflicts of Interests:

Chair Backers called for commissioners to disclose any real or potential conflicts of interests.

Chair Backers declared a conflict for Clerk Eldridge on Item 4. Clerk Eldridge responded that she will have a statement. Commissioners Casassa, Von See, and Fields declared no conflicts of interests.

Approval of Minutes:

MOTION by Casassa, second by Von See, to accept the minutes of August 6, 2018, as presented. Motion carried.

Public Comment for Matters Not on the Agenda:

Becky Norris – read her letter to the Commission, which letter is hereby incorporated into the record by reference, and a copy of which is attached to the permanent copy of these minutes as [Att A].

Commissioner Comment for Matters Not on the Agenda:

There were none.

Ongoing Permanent Business:

Nothing new to consider on medical marijuana.

Old Business:

Consideration of the Mass Gathering Ordinance matter having been moved to the October agenda, there is no old business to consider.

Report of Planning Commission Chair:

Chair Backers – Stated he placed four items on the agenda:

- 1) An explanation from him regarding a recall petition
- 2) Resolution 1 of 2018, proposed to deny recognition of the appointment of an alternate member to the Planning Commission;
- 3) By-laws proposed amendments;
- 4) Resolution 2 of 2018, proposed to adopt a statement on property rights.

Backers outlined his reasons for initiating a recall petition against the members of the Clearwater Township Board. He indicated that, in his opinion, the Board had improperly enacted Amendment 8 to the Zoning Ordinance; conducted meetings in a manner that he found questionable, and which had caused citizens to bring complaints to him; and lastly, illegally appointed a sixth member to the Planning Commission.

He stated that he would not recognize either the position or the appointee, and that this was the purpose of proposed Resolution 1.

Backers noted that he proposed a number of amendments to the By-laws, most of which were housekeeping items, but a couple were substantive.

He proposes Resolution 2 to adopt a statement of property rights.

Report of Township Representative:

Clerk Eldridge – Reported that Larry Niederstadt resigned as Supervisor as of August 15, 2018. Ads have been placed several local papers for applicants. Applications will be received until September 14, and interviews will be conducted on Monday and Tuesday, September 17 and 18.

The gym floor has been finished and it looks wonderful.

An audit was performed by Jim Anderson, with positive results.

The Board approved Chair Backers' request to send a letter to property owners whose properties are adjacent the unopened alleyways in the township, looking for volunteers to serve on a committee seeking appropriate solutions to the problem as well as funding for those solutions.

Report of Zoning Administrator:

Zoning Administrator Parzych – Distributed his report for August 2018, which report is hereby incorporated into the record by reference, and a copy of which is attached to the permanent copy of these minutes as [Att B]. A member of the public asked "Do we get a copy of that report?" Secretary Fields responded that the report is always attached to the permanent copy of the minutes.

New Business

Resolution 1 – Chair Backers read proposed Resolution 1, which Resolution is hereby incorporated into the record by reference and a copy of which is attached to the permanent copy of these minutes as [Att C].

MOTION by Backers, to adopt Resolution 1; there was no second. Motion died for lack of a second.

Clerk Eldridge stated that the action of appointing an alternate to the Planning Commission will be reversed at the Township Board meeting of September 19, 2018. The Board acknowledges that it made a mistake. There was no intent to act improperly or illegally.

She challenged the matter even being brought to the Planning Commission, stating that the Commission lacked jurisdiction to address the matter.

Chair Backers asserted his position that the Commission has the authority to write resolutions and policy statements. He dismissed the idea that the Board simply made a mistake that it is willing to correct. He stated that the Board demonstrated ignorance of the law, incompetence, or willful violation of Township and State law.

Commissioners Casassa and Fields both asked why the error had not simply been brought to the attention of the Board rather than taking the seemingly extreme measure of initiating a recall process.

Chair Backers stated that he had been concerned over the Board's actions for some time, and, as he put it, "the icing on the cake" was this particular error. He said he felt compelled to take legal action. He then detailed the process for going forward, getting the petition language approved, getting the required number of signatures for each individual on the Board, getting the signatures certified by the County Clerk and going to election in May. If the matter does go to special election in May 2019, each member of the Board will be required to run as an incumbent and the voters will decide who remains and who is removed.

Planning Commission By-laws Amendments – Chair Backers proposed certain Amendments to the Planning Commission By-laws. Secretary Fields also provided an annotated copy of the proposed changes, with suggestions. The capitalizations, and item renumbering, are essentially housekeeping items and will be updated by Secretary Fields.

Section 1. Officers D. Secretary 1 Minutes – Backers suggested addition is: "The draft minutes shall be submitted to the Commission members and the Township Clerk for publication on the Township website by _____."

Fields suggested addition is to state that "The draft minutes shall be made available to the public in accordance with The Open Meetings Act, 267 of 1976, as amended, which stipulates in 15.269.3 'A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after meeting at which the minutes are approved by the public body.'"

Eldridge questioned the need, since the matter of minutes publication is covered under the Open Meetings Act, with which we must comply. Backers replied that this is in response to the request from the public that the agenda be posted by a specific time prior to a meeting.

MOTION by Fields, second by Backers, to add the suggested Open Meetings language to the section 1.D.1 Minutes. Motion failed.

Roll Call Vote:

- Von See – abstain
- Casassa – abstain
- Eldridge – nay
- Fields – yes
- Backers – yes

Section 2. Meetings F. Agenda 6 Comment for Matters not on the Agenda

MOTION by Backers, second by Fields, to include under section 1.F.6 Comment for Matters Not on the Agenda, 1) Public, 2) Commissioners, and 3) Correspondence; to add 1.F.7 Ongoing Business; and to renumber the remaining items accordingly. Motion carried.

Roll Call Vote:

- Casassa – yes
- Eldridge – yes
- Von See – yes
- Fields – yes
- Backers – yes

Section 2. Meetings G. Public Hearings Note

MOTION by Backers, to change 90 days to 60 days in the note under section 2.G Public Hearings. There was no second. Motion withdrawn.

Chair Backers asked for Zoning Administrator Parzych’s opinion on the wisdom of shortening the time for the required notice of Planning Commission’s decision. Following discussion, Backers withdrew his motion.

Section 4. Duties of the Zoning Administrator C.

MOTION by Backers, second by Fields, under Section 4 Duties of the Zoning Administrator, Subsection C, to strike the words “Administrator is expected to” and insert “Administrator’s duties include.” Motion carried.

Roll Call Vote:

- Casassa – yes
- Von See yes
- Eldridge- yes
- Fields – yes
- Backers – yes

Section 5.Absences, Removals, Resignations, and Vacancies B.

MOTION by Fields, second by Backers, under Section 5 Absences, Removals, Resignations and Vacancies, Subsection B to replace the current language with “Members of the Planning Commission may be removed by the Township Board in accordance with MCL 125.3815(9): ‘The legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.’”.

Motion carried.

Roll Call Vote:

- Eldridge - yes
- Von See -yes
- Casassa yes
- Fields – yes
- Backers – yes

Adoption of amended By-laws.

MOTION by Backers, second by Von See, to adopt the Planning Commission By-laws as amended September 10, 2018. Motion carried unanimously.

Roll Call Vote:

- Von See - yes
- Casassa - yes
- Eldridge - yes
- Fields - yes
- Backers - yes

Resolution 2 – Chair Backers proposed Resolution 2, which Resolution is incorporated into the record by reference, and a copy of which is attached to the permanent copy of these minutes as [Att D]. Backers commented that he has offered this statement on property rights at previous meetings, and he wants the Planning Commission to adopt it as a reminder that whenever we promulgate a regulation for the common good, there is always also some effect on the property rights of the citizens. For the record, Backers read the Resolution (see [Att D]).

Backers relied on a quote he said came from a 1971 Washington State Supreme Court case (Wanemere Corp. v. Washington State), and attributed to Judge Richard B. Sanders. Research revealed that Judge Sanders was not on the Supreme Court of Washington State in 1971 and that the quote came originally from a 1921 case in Texas (Spann v. Dallas). In the original case, the text included a qualifying second paragraph. The research is detailed in the notes document hereby incorporated into the record by reference, and a copy of which is attached to the permanent copy of these minutes as [Att E].

Following discussion, Backers withdrew Resolution 2.

The hour being late, consideration of a Noise ordinance is moved to October.

Closing Public Comment:

Mary Beth Kazanski – echoed the comment from Commissioner Casassa that the Master Plan intro already expresses the intent to protect individual rights. She indicated that there is a need to tackle the noise control and mass gatherings ordinance considerations. She also indicated that the intent of Resolution 2 is good, but that its specifics make it a can of worms that would come back to haunt us.

John Boucher – said he liked proposal 2, because he sees it as a protection against encroachment by “tree huggers” and “extremists” on the rights of property owners, who he referred to as a “sleeping public” who suddenly find themselves losing their rights.

Stan Zenas – declared that if we followed the rules we claim to honor, we wouldn’t have advanced Amendment 8, because he believes it took away property rights by dictating what kind of vegetation could go in the front lawn. He then expounded on what he perceived as rules that diminished people’s property value, such as having screening that would block the homeowner’s view of the lake.

James Lindner – stated that he doesn’t understand the resistance to a resolution of property rights to be used as a guideline for making decisions. He also challenged the idea that the Constitution is in any way protective of property rights, that the founders avoided the topic because of the sensitive issues surrounding slavery in that era. Chair Backers commented that “this isn’t over” and that we’d encounter it many times again.

Brian Kroll – offered his prepared rewrite of the referenced Master Plan language. He distributed copies to the Commissioners. Chair Backers thanked him.

Jim Stanton – agreed that the Chair’s proposal is reasonable. He said it is trying to make the Commission and the Board realize they work for the community. He said we “need an amendment like that to look at and be reminded that you’re here to work for us, and we appreciate what you do.” He continued “I certainly wouldn’t want to do your job. Thank you very much.”

Tom Backers – commented that with what’s happening with the “Three Lakes people, Torch Lake Protection, and the property owners, the attendance at our Planning Commission meetings is way up.”

Kathy Eldridge – said it is great that we are all talking about this. The Board is cautious about ideas and examples from the west coast as not necessarily being good for Michigan.

There followed much crosstalk, and argument among the speakers, until a motion to adjourn put an end to it.

Adjournment:

MOTION by Casassa, second by Backers, to adjourn. Adjournment at 9:05.

Assignments:

- Noise ordinance consideration move to October

- Mass gathering ordinance consideration move to October
- Fields to update the By-laws and republish

Next Meeting: October 1, 2018, 7:00 pm, at the Clearwater Township Community Center (aka the Little Red Schoolhouse).

Respectfully submitted,

A handwritten signature in cursive script that reads "Tina Norris Fields".

Tina Norris Fields
Secretary

Rebecca M. Norris
6022 Aarwood Road NW
Rapid City, MI 49676

Monday, September 10, 2018

Clearwater Township Planning Commission

Dear Planning Commission Members:

It is my understanding that you propose to take up as one of the items of business at the September 10, 2018 regular meeting discussion and possible action concerning an action by the Clearwater Township Board that has been deemed by someone as illegal.

My purpose in communicating with you is to warn you to avoid performing an illegal action yourselves as you proceed with you deliberations. It is my understanding that the chair of the Planning Commission proposes to exclude a member of the Planning Commission from participating in one of its business topics. There is nothing in the current Planning Commission bylaws (or, to my knowledge, the State of Michigan enabling legislation) that would grant the chair such authority. And the existing Planning Commission bylaws specifically state that all members are to vote on all matters.

So, please, if you elect to criticize the activities of others on legal grounds, do so legally.

Sincerely,



Rebecca M. Norris

Clearwater Township Zoning Administration Monthly Report

Month/Year Aug

3 Land Use Permits Issued
 _____ Garages, Sheds
 _____ Residences
1 Residences w/Attached Garage
2 Pole Barns
 _____ Resident Additions
 _____ Decks, Porches, etc.
 _____ Miscellaneous, Other Buildings

49 Field Checks
4 Attorney Contacts
1 Planning Commission Meetings
 _____ ZBA Meetings and/or Township Board Meetings
 _____ Contacts with Public, Home or Land Owners
 _____ Training Sessions

Zoning Violations

5 Zoning Violations closed this month

20 Open Zoning Violations as of this month

_____ New Zoning Violations opened this month

_____ Zoning Violations under investigation

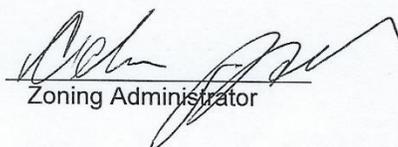
_____ 30 Day Notices Sent or in this status

_____ 60 Day Notices Sent or in this status

_____ 90 Day Notices Sent or in this status

_____ Turned over to Attorney

Date: Aug 31

Signature: 
Zoning Administrator

**CLEARWATER TOWNSHIP
PLANNING COMMISSION
RESOLUTION 1 of 2018**

At the regular meeting of the Clearwater Township Planning Commission, Kalkaska County, State of Michigan, held at the Clearwater Township Community Center in Rapid City, Michigan on September 9th, 2018, at 7:00 PM.

COMMISSION MEMBERS PRESENT: Chair Tom Backers, Vice-Chair Len Von See, Secretary Tina Fields, Member Gianine Casassa, Township Representative Kathy Eldridge

EXCUSED FOR CONFLICT: Township Representative Kathy Eldridge

The following Resolution was presented to the remaining quorum of members for consideration and adoption. Motion to adopt as written made by Tom Backers, seconded by _____.

ROLL CALL VOTE:

**CLEARWATER TOWNSHIP
PLANNING COMMISSION
RESOLUTION 1 of 2018**

WHEREAS: On August 15th, 2018, at the regular Township Board meeting, the Township Board unanimously voted improperly and illegally to amend and modify the statutory structure of this Commission; and

WHEREAS: Both Public Act 33 of Michigan law, and Clearwater Township Zoning Ordinance 21 explicitly state the structure and responsibilities of this Commission,

BE IT RESOLVED: That the Clearwater Township Planning Commission does not recognize the additional illegally added Commission position, or it's improperly appointed person. This Commission will continue to operate under the legally designated structure and authority mandated by the State of Michigan, and Clearwater Township Zoning Ordinance 21.

**APPROVED AND ADOPTED BY THE CLEARWATER TOWNSHIP PLANNING
COMMISSION**

This 9th day of September, 2018

Respectfully submitted,

Thomas J. Backers,
Chair
Clearwater Township
Planning Commission

**CLEARWATER TOWNSHIP
PLANNING COMMISSION
RESOLUTION 2 of 2018**

At the regular meeting of the Clearwater Township Planning Commission, Kalkaska County, State of Michigan, held at the Clearwater Township Community Center in Rapid City, Michigan on September 10th, 2018, at 7:00 PM.

COMMISSION MEMBERS PRESENT: Chair Tom Backers, Vice-Chair Len Von See, Secretary Tina Fields, Member Gianine Casassa, Township Representative Kathy Eldridge

The following Resolution was presented to the members for consideration and adoption. Motion to adopt as written made by Tom Backers, seconded by _____.

ROLL CALL VOTE:

**CLEARWATER TOWNSHIP
PLANNING COMMISSION
RESOLUTION 2 of 2018**

WHEREAS: On August 7th, 2018, Amendment 8 to Clearwater Township Zoning Ordinance _____ was defeated by a vote of _____; and

WHEREAS: The ballot initiative and opposition to Amendment 8 was well organized, well financed, and well represented at the polls;

BE IT RESOLVED: That the Clearwater Township Planning Commission does recognize the effect Zoning regulations have on individual private property rights, and therefore adopts the following **Statement on Property Rights** as a policy guideline for future recommendations to the Township Board for any new or amended regulation promulgated by the Commission:

Statement on Property Rights

The word “property” assumes ownership. Ownership implies control. Any imposition or restriction on the control of property therefore diminishes or abrogates the ownership of property, physical or intellectual. Zoning regulations are intended to balance the rights of the individual with the general welfare of the community as a whole. It is the position of the Clearwater Township Planning Commission that any Zoning regulation acknowledges both the rights of the property owner and the community in general.

The following legal description of property rights has been used in Washington state since 1971, and defines the legal basis for actions against government for destruction of private property rights. Any action by Clearwater Township directly or indirectly affecting property rights should take this opinion into consideration to minimize or eliminate the possibility of legal action against the Township.

Judge Richard B. Sanders, Supreme Court, State of Washington

Notes on the cited case supporting the proposed definition

Judge Richard B. Sanders, Washington State, elevated to the Supreme Court in 1995. So the 1971 Supreme Court decision was not by him. The court then was: Chief Justice Hamilton, Justice Rosellini, Justice Hunter, Justice Hale, Justice Sharp, Justice Wright, Justice Neil, and Justice Pro Tem Ryan.

In the Wandermere case, the following citation was made:

“In Ackerman v. Port of Seattle, 55 Wn.2d 400, 409, [348 P.2d 664](#), 77 A.L.R.2d 1344 (1960), this court quoted with approval Spann v. Dallas, 111 Tex. 350, 355, 235 S.W. 513, 19 A.L.R. 1387 (1921):

Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right.”

This paragraph was, indeed, cited in the Wandemere v. Washington State case of 1971 as having been quoted in the Ackerman v Port of Seattle case of 1960, from the Spann v Dallas case of 1921.

The Wandermere case was a claim of unconstitutional taking by the Department of Highways for building a drainage ditch, within the Highway Right of Way, that was originally planned to be a fully buried underground pipe, but was changed to a ditch with width varying from 20 to 48 feet and at a depth of 5 to 8 feet. The taking claimed by Wandermere was their free access to the highway. They would have to build a bridge over the ditch, rather than having the underground pipe installed under their existing access way. They sought an injunction to halt the construction until their proper amount of damages had been determined. They did not prevail.

From the Spann v Dallas 1921 case:

“Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right. Therefore a law which forbids the use of a certain kind of property, strips it of an essential attribute and in actual result prescribes its ownership.”

“It is a right which takes into account the equal rights of others, for it is qualified by the obligation that the use of the property shall not be to the prejudice of others. But if subject alone to that qualification the citizen is not free to use his lands and his goods as he chooses, it is difficult to perceive wherein his right of property has any existence.”

In this case, an ordinance was passed that essentially prohibited the building of “business houses” in a residence district, defined as a district within which there were more “residence houses” than “business houses.” The exception would be only when three-fourths of the property owners of the residence district approved. And then, only if the building inspector approved of the design, and there were no guidelines for such approval, thus leaving it entirely up to the discretion of the building inspector. What is more, the plaintiff had purchased the land months before this police power ordinance was passed, and been assured that the stores he wanted to build on the lot would be acceptable. His permit application was denied twice before the new ordinance was passed, and a third time following its passage. The court found that the ordinance itself was unconstitutional and the plaintiff prevailed.