

**Clearwater Township**  
Planning Commission  
Regular Meeting of December 3, 2018  
As approved, January 7, 2019

**Call to Order, Pledge of Allegiance:**

Chair Backers called the meeting to order at 7:01 p.m., and opened with the Pledge of Allegiance.

**Roll Call of Members and Recognition of Visitors:**

Commissioners present: Backers, Cassasa, Eldridge, Fields, Von See.

Township officials: Zoning Administrator Parzych

Public: Ronald Lefebre, Mary Beth Kazanski, David M. Green, Deputy Clerk Jule Moore, Archie Kiel, Carol Backers, and one member of the public who declined to sign in.

**Approval of Agenda:**

Amended agenda to move item 14 (election of officers and establishment of dates for the upcoming year) to the January 2019 meeting, and to add discussion of marijuana to item 9 (Old Business) of the current agenda.

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

**Call for Disclosure of Conflicts of Interests:**

Chair called for commissioners to disclose any real or potential conflicts of interests. All declared having none.

**Approval of Minutes:**

**MOTION** by Casassa, second by Von See, to accept the minutes of November 5, 2018, as presented. Motion carried.

**Public Comment for Matters Not on the Agenda:**

Jeff West – expressed concern over his impression that zoning violation enforcement is not even-handedly applied within the township. He asked how the township planned to achieve equitable enforcement. He stated his opinion that every roadway should be patrolled by the Zoning Administrator, on a regular schedule, looking for violations.

Chair Backers – opined that this would require revising the duties of the Zoning Administrator. As it stands, only written complaints get attention.

Commissioner Fields – commented that his very question had been raised at the MTA seminar she recently attended, and offered the response that the presenter gave. The presenter stated that a township can elect to act on complaint or to have a full-time enforcement officer on patrol. If the township opts to act on complaint and, while following up on a complaint, the Zoning Administrator observes another violation, he cannot ignore that violation – he is duty-bound to act on it.

Chair Backers – stated that this is not what is being done at this time.

Jeff West – further complained that “on the tickets that I’ve received, I’ve asked for the complainant and never received that information. Charise Spinks, who has interest in the land has asked for the complainant as well and never received that information.”

Zoning Administrator Parzych – stated that this was not the venue for this discussion and that “you did get the complaint forms.”

Chair Backers then called an end to this discussion.

[Post meeting note: Here are the Zoning Administrator’s duties per the Zoning Ordinance (Ordinance #22)

**25.03 ZONING ADMINISTRATOR: DUTIES**

- A. Issue all Land Use Permits and insure compliance with the Zoning Ordinance and maintain records thereof.
- B. Conduct inspections of all buildings and structures, and the use of all land subject to the provisions of this Ordinance to determine compliance.
- C. Investigate all applications for variances and Special Use Permits and report any discrepancies to the Jurisdictional agency.
- D. Investigate all complaints of any illegal act or violation of this Ordinance, and initiate appropriate action to correct such illegal act or violation.
- E. Review annually all Special Use Permits on file to insure compliance.]

**Commissioner Comment for Matters Not on the Agenda:**

Commissioner Fields – reported on the Land Use seminar she attended November 29, 2018 in Mt. Pleasant, presented by Steve Langworthy, for the MTA. She stated that she has signed up for the Township Governance Academy and, as part of that ongoing learning program, made a commitment to take one thing out of the day’s training and bring it back to the township. Her particular project will be to persuade both the Township Board and the Planning Commission to agree to an annual joint review of the Master Plan. If this effort is successful, the joint review will be a calendared item that recurs every year. The commitment application asked for a beginning and completion time; she committed to beginning immediately, hoping to have the annual joint review agreed upon and in place as a calendared event, by March 31, 2019.

**Correspondence:**

No new correspondence that is not part of the agenda.

**Public Hearing on the Ronald Lefebre petition to rezone his property on Valley Road, with parcel tax ID of 004-015-004-20, from Agricultural to R-1 Residential.**

Commissioner Fields – indicated that two informative documents had been provided to the commissioners and copies made available for the public:

- 1) the steps required in a public hearing as set forth in the by-laws of the Planning Commission, and, because this petition is for a rezoning, which represents an amendment to the Zoning Ordinance for Sections 13.05 and 17.05 ;
- 2) the pertinent sections from Article XXIX, regulating Zoning Ordinance amendments.

**Chair opens the public hearing:**

Chair Backers – opened the public input portion of the hearing on Ronald Lefebre’s petition to rezone parcel with tax ID 004-015-004-20 to R-1 Residential.

**Zoning Administrator presents his report:**

Zoning Administrator Parzych – commented that the application with supporting documentation was distributed to the Planning Commission at the November 2018 meeting. Essentially, he reports that the property is in the Agricultural District, but that its neighbor to the west is R-1 Residential, as are its neighbors across the street; that rezoning this parcel would simply extend the R-1 Residential district by one parcel.

**Applicant presents his case:**

Ronald Lefebre – stated that he wants to be able to sell the property and that as it stands, he cannot sell it. The property is long and narrow, having the “bowling alley” effect, which makes it illegal to sell, according to current law. In its current zoning district, because of the minimum acreage requirement (5 acres), it cannot be split into parcels that meet the “no more than 4-to-1 depth-to-width” requirement. For that reason, he requests the rezoning. He notes that neighbors across the street are in the R-1 Residential district.

**Speaking for:**

Jeff West - asked why Mr. Lefebre can’t sell the property in its current zoning designation. Mr. Lefebre responded it is because of the “bowling alley” effect. Chair Backers echoed “deep and narrow.” West commented that the applicant clearly got caught up by a change in the law and all he’s trying to do now is find a way to be able to sell the property and profit from it.

**Speaking against:**

David Green – expressed concern that future construction on the subject property would interfere with his view and possibly change the character of the wildlife habitat.

There being no further persons speaking to the project, at this point, Chair Backers closed the public input portion of the hearing.

**Commission deliberations:**

There were seventeen notices mailed out to the owners of property within 300 feet of the subject property, including to the applicant himself. There were no written responses or phone calls received in response to the notices.

**Findings of fact:**

- 1) The Zoning Administrator declares that this property abuts the R-1 Residential district on two sides. Thus it would simply be extending the R-1 district by one parcel.
- 2) The river and wildlife corridor are unlikely to be negatively impacted by this rezoning even with future construction on anticipated split parcels because there is no access to that part of the property, and it is already recognized as unbuildable wetlands. (Additional comment from Mr. Green, that if that is the case, he no longer opposes the rezoning request.)

- 3) As the property stands, because of its dimensions, it's unsellable.
- 4) As it is currently zoned, it cannot be split into parcels whose dimensions meet the 4-to-1 depth-to-width limitation. (instituted by PA 591 of 1996 adding Section 109, amending the Land Division Act PA288 of 1967; specifically MCL 560.109.1.b, effective Mar. 31, 1997)

Clerk Eldridge – asked Mr. Lefebre what the zoning was of his property when he bought it. He responded that it was Agricultural at that time, which he thought was June of 1995. He could have sold it at that time as it stood, but, he recalled that in 1996 the rule prohibiting the “bowling alley” effect came into being. He said he knew of that issue because it was already in place in Antrim County. The new rule made his property a legal nonconforming property, but he cannot legally sell it as it is.

Ronald Lefebre – when he talked with Dawn Kuhns (Clearwater Township Assessor), she said he couldn't sell it because of the greater than 4-to-1 depth-to-width ratio.

Chair Backers – putting the property into R-1 changes the acreage minimum, allowing for splits that make the land sellable.

Commissioner Casassa – asked whether other parcels in the township have this same issue. The answer is yes, because a number of such parcels existed before the rule went into effect.

**Standards of review for the proposed amendment from Section 29.03 of the Zoning Ordinance:**

A. What, if any, conditions related to the petition have changed which justify the amendment?

Finding of fact: the property's dimensions became illegal after the owner bought it. This is not due to the actions of the purchaser. The law changed after he bought the land.

The condition that changed was the statute regarding the required legal dimensional ratio.

***Roll call vote on A “is there a changed condition that justifies the amendment?”:***

Von See - yes

Casassa - yes

Eldridge - yes

Fields - yes

Backers - yes

**The Commission finds that a condition, not the doing of the applicant, justifies this proposed amendment.**

B. What, if any, error in judgment, procedure, or administration was made in the original Ordinance which justifies the amendment?

Finding of fact: this is not applicable; the error is not within the Ordinance, but is due to a change in the law.

***Consensus on B:***

All Commissioners unanimously agree that B is not applicable.

**The Commission finds that there is no applicable flaw or fault in the original Ordinance relative to this proposed amendment.**

C. Would the approval or denial of this petition set a precedent? If so, what possible effects might result from this?

Finding of fact: while there may be an appearance of a precedent, in fact the township has extended R-1 district zoning into other districts in the past.

***Roll call vote on C “would this set a precedent?”:***

Von See - no  
Casassa - no  
Fields - no  
Eldridge - yes  
Backers - no

**The Commission finds that this action would not set a precedent.**

D. If approved, what impact would the amendment have on the ability of the Township and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future?

Finding of fact: all required public services and facilities are already available to the surrounding neighborhood. There would be no impact.

***Roll call vote on D “would there be an impact?”:***

Von See - no  
Casassa - no  
Fields - no  
Eldridge - yes  
Backers - no

**The Commission finds that this action would not have a negative impact on available public services and facilities.**

E. On a rezoning petition, how would it affect the environmental conditions or value of the surrounding property if approved?

Finding of fact: it would increase the value of surrounding property. There would likely be no perceptible change to the environmental conditions of the surrounding area.

***Consensus on E:***

All Commissioners unanimously agree that approving this rezoning request may increase the value of the surrounding property and have negligible impact on the environmental conditions.

**The Commission finds that approving this rezoning petition would have a potentially positive impact on the value of surrounding property, and a negligible impact on the environmental conditions of the surrounding area.**

F. Are there any significant negative environmental impacts which would reasonably occur if the petitioned zoning change were approved and the resulting allowed structures were built? Such as:

1. Surface water drainage problems;
2. Waste water disposal problems;
3. Adverse effect on surface or subsurface water quality; and
4. The loss of valuable natural resources such as forest, wetlands, historic sites, wildlife, mineral deposits or valuable agricultural land.

Finding of fact: even with new homes constructed on this land, there would be no new issues to contend with. The only possible loss is of farmland, but it is not now being used as farmland, nor has it been in recent memory.

**Consensus on F:**

All Commissioners unanimously agree that approving this rezoning request will not have any significant negative environmental impacts.

**The Commission finds that approving this rezoning petition would not any significant negative environmental impacts even if the resulting allowed structures were built.**

**MOTION** by Fields, second by Von See, to recommend to the township approval of Mr. Lefebre’s petition to rezone his property, having tax ID# 004-015-004-20, to R-1 Residential. Motion carried.

Roll call:

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

This concludes the public hearing.

[Post meeting note: Mr. Lefebre’s property was actually zoned Recreational, not Agricultural, at the time of the hearing. However, the acreage and dimensional requirements are not affected by that difference.]

**Ongoing Permanent Business:**

Secretary Fields sought the consensus of the Planning Commission concerning her project to persuade the Township Board and the Planning Commission to commit to an annual joint review of the Master Plan. The consensus of the Commission was in favor of her moving forward with that project.

**Old Business:**

Mass gathering ordinance discussion – we have a draft compiled by Chair Backers, based on the ordinances of Blue Lake Township and Suttons Bay. He made note of some specific suggestions, such as leaving the investigation and application review responsibilities with the Zoning

Administrator, but reserving the approval responsibility to the Township Board. A threshold number of 400 people found favor with the members of the Commission because there is no wish to unnecessarily restrict what people can do on their own property. The concept of waivers for certain kinds of gatherings, at the discretion of the Township Board, also found favor with the Commission.

In response to a few interjections from Archie Kiel, Chair Backers commented that he saw two things regarding the township's request for a Mass Gathering Ordinance. One was the township's desire to eliminate or control something like an organized battle of the bands at the ballfield, making a lot of noise. The other was "the sandbar committee trying to extend this where it doesn't go, to the sandbar, okay, where our township authority doesn't reach that far."

Further discussion and deliberation will continue at the January meeting of the Planning Commission.

Marijuana – Chair Backers addressed Archie Kiel and said he could have three minutes. Kiel said "I've spent more time than that talking about it in here already. There's absolutely no reason this board doesn't have all the information on it. Marijuana saves lives. I've saved over twenty people from cancer." Kiel engaged in a tirade against the Planning Commission and the Township Board, claiming that both boards had misled him and deprived "veterans, seniors, and disabled people" of their medicine for ten years. He yelled profanity at the Commission and declared he was about to file charges. Kiel declared that the Township Board told him three months ago that the Planning Commission would review the matter and make a recommendation to the Township Board the following month.

The Planning Commission has had no instructions from the Township Board on this matter.

Backers agreed to put a review of the Kalkaska Village Marijuana Ordinance on the January 2019 agenda.

#### **Report of Planning Commission Chair:**

No report.

#### **Report of Township Representative:**

Clerk Eldridge – the proposed noise regulation has been sent to the attorney for review; there is no report back as yet from the attorney. There is a new Fire Chief: Paul Fabiano. There is also a new member of the Fire Department: Derek Tharp. In the recent election the marijuana vote passed; in the township by 773 yes to 546 no' in the county there were 1,000 more yes votes than no votes. We have a letter from the township attorney regarding marijuana. There are two separate issues and they must be treated that way. If the township opts in, that will require zoning action.

#### **Report of ZBA Representative:**

No report.

**Report of Zoning Administrator:**

Zoning Administrator Parzych – distributed his reports for October and November 2018, which reports are hereby incorporated into the record by reference, and copies of which are attached to the permanent copy of these minutes as [Att A].

**New Business**

The items for New Business are moved to the January 2019 agenda.

**Closing Public Comment:**

Jeff West – stated that he would like a copy of the proposed noise regulation. He then resumed his earlier challenge of the Zoning Administrator. Chair Backers admonished him to take the matters up with the Zoning Administrator in a face-to-face meeting and if that was not satisfactory to take his complaint to the Township Supervisor.

**Adjournment:**

**MOTION** by Von See, second by Fields, to adjourn. Adjournment at 8:23.

**Assignments:**

- Fields to send recommendation to the Township Board to approve Ronald Lefebre’s petition to rezone property with tax ID# 004-015-004-20 to R-1 Residential.
- Continue mass gathering deliberations on the January agenda
- Kalkaska Village ordinance to put on January agenda
- Put selection of meeting dates and election of officers on the January agenda.

**Next Meeting:** January 7, 2019, at 7 p.m., at the Clearwater Township Community Center (aka the Little Red Schoolhouse), a joint meeting with the ZBA.

Respectfully submitted,



Tina Norris Fields  
Secretary

### Clearwater Township Zoning Administration Monthly Report

Month/Year OCT 2018

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

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

#### Zoning Violations

\_\_\_\_\_ Zoning Violations closed this month  
 \_\_\_\_\_ 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: NOV - 8 - 2018

Signature:   
 Zoning Administrator

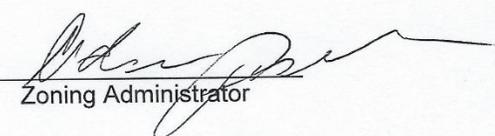
### Clearwater Township Zoning Administration Monthly Report

Month/Year NOV 2018

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

<u>30</u>	Field Checks
<u>2</u>	Attorney Contacts
<u>1</u>	Planning Commission Meetings
<u>    </u>	ZBA Meetings and/or Township Board Meetings
<u>19</u>	Contacts with Public, Home or Land Owners
<u>    </u>	Training Sessions

Date: NOV 30 2018

Signature:   
Zoning Administrator