

Clearwater Township
Planning Commission
Regular Meeting of May 6, 2019
As approved June 3, 2019

Call to Order, Pledge of Allegiance:

Chair Backers called the meeting to order at 7:02 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.

Public: Carol Backers, Norm Neuenschwander, and a gentleman who declined to sign in

Approval of Agenda:

Add mass gathering language under ongoing business, Tillman amendment request under old business, and zoning administrator procedures under new business.

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

Call for Disclosure of Conflicts of Interests:

Chair calls for commissioners to disclose any real or potential conflicts of interests. All members of the Commission declared no conflicts.

Approval of Minutes:

MOTION by Backers, second by Casassa to accept the minutes of April 1, 2019, as presented. Motion carried.

Public Comment for Matters Not on the Agenda:

Norm Neuenschwander – commented that donors to the sandbar safety committee of TLPA are saying that if they don't see any improvement in the sandbar situation, this year will be the last year they donate funds to that cause. Discussion ensued on the probable negative results of such a loss of funding, which has helped pay for overtime of our local law enforcement officers, during the Fourth of July weekend in particular. The township does not have the means to increase the Parks and Recreation budget to cover that expense. The neighboring townships do not assist with the expense.

Jeff West – stated that he had a couple of concerns: 1) there is a requirement for all special use permits to be reviewed annually to ensure compliance with the conditions of those permits, and he is not confident that annual review is happening; 2) the property on which a telecommunications tower, located on a hill between Schneider and Wilhelm Roads and belonging to 186Networks, is zoned residential, but the use is commercial and is now being taxed as commercial, which fact has not been reported by the assessor to the township board – as she told Mr. West it is not her job to do so; and 3) the zoning violation complaint form used by the township allows for anonymous complaints, thus depriving the accused of the right to face his accuser, which he claims violates Article 6 of the Constitution of the State of Michigan.

[Post-meeting note: Article 6 of the Michigan Constitution has nothing to say about the rights of an accused person. It deals entirely with the structure of the Judicial Branch of the state government. Mr. West may have meant to refer to Article 1, Section 20 *Rights of accused in criminal prosecutions*. This section guarantees the accused in every **criminal** prosecution to be confronted with the witnesses against him or her. No similar provision was found with regard to **civil** prosecution.]

Discussion then ensued between Mr. West and members of the Commission on the performance of our Zoning Administrator and on what that individual’s job duties should be, until the point of order was raised that this topic was on the agenda and not a matter for discussion during the public comment period.

Commissioner Comment for Matters Not on the Agenda:

There was none.

Correspondence:

Chair Backers - reported that we have not had a response from the State Attorney General to our letter seeking clarification on the physical boundaries of our county and township, and the township’s jurisdiction at its waterbody boundaries.

Fields commented that at the Michigan Lake Stewardship annual conference, May 3 and 4, 2019, she put the matter as a question to Attorney Cliff Bloom, one of Michigan’s foremost authorities on Water Law. His response was that it would be highly unusual for the county boundary not to extend in a straight line out into the water, and that the information has to be in the original statute that formed the county.

Ongoing Permanent Business:

The language agreed upon at the April meeting, for the Mass Gathering Ordinance and for the Mass Gathering Permit Application, was reviewed one final time.

MOTION by Fields, second by Von See, to forward the proposed Mass Gathering Ordinance and the Mass Gathering Permit Application to the Township Board for review and action. Motion carried.

Old Business:

Chair Backers reported that Tillman Infrastructure is requesting we revise some language in our Zoning Ordinance to accommodate their tower. After discussion, the following motion was made:

MOTION by Fields, second by Backers, to authorize Clerk Eldridge to compose a memo to the Township Board declaring that the Planning Commission respectfully declines to amend the Zoning Ordinance per the request of Tillman Infrastructure. Motion carried.

Roll call vote:

- Von See - aye
- Casassa - aye
- Eldrdge - aye
- Fields - aye

Backers – aye

Unanimous

[Post-meeting note: Per Ordinance 22 (Zoning Ordinance), 29.01.B, “An amendment can be initiated by either the Township Board, the Planning Commission, or an individual property owner.” An application for a text amendment to the Zoning Ordinance was presented to the Planning Commission by Tillman Infrastructure acting as agent for property owners James and Denise Bargy (property tax id 4-004-033-007-15). Per Ordinance 22 (Zoning Ordinance), 29.02 “The Planning Commission shall conduct at least one (1) Public Hearing on each petition for amendment. Notice shall be given in compliance with PA 110 of 2006 (Michigan Zoning Enabling Act), as amended.” Therefore, a public hearing on this request will be held at the June 3, 2019, meeting of the Planning Commission, with notice published in the Elk Rapids News issue of May 16, 2019, and notice mailed to all persons owning property within 300 feet of the subject property, not less than 15 days before the June 3, 2019 meeting, regardless of whether their property is within the same zoning jurisdiction.]

Report of Planning Commission Chair:

Nothing additional.

Report of Township Representative:

Clerk Eldridge – reported that the roads the township will work on this year are Morrison and Shell Way. The bid for Shell Way did not consider the washed out portion, and will be rebid. The county is working on West Plum Valley Road. The Board is asking the Planning Commission to recommend improvements to the zoning violations process, with specific procedural suggestions for the Zoning Administrator. In particular, the Board wished to streamline the process and reduce the current 30, 60, 90 days system to something like 30 days from the notice of violation, going to court if there is no evidence of good faith efforts to comply.

Report of ZBA Representative:

Commissioner Fields – reported that the ZBA met April 8, 2019 to hear a variance request from Mike Bieniek of LCC Telecom, as agent for Tillman Infrastructure and property owners James and Denise Bargy. The ZBA was short one member as its secretary was away in Virginia. Commissioner Fields acted as the secretary *pro tem* for the ZBA. As the ZBA proceeded through the standards of review, it found the first standard to be not met. Since all standards must be met for a variance to be granted, the ZBA asked the township attorney whether it should continue with the remaining standards. Attorney Wendling said that all the standards should be reviewed because if the matter went to trial and this one standard was the only obstacle to the variance, and it were persuasively argued to the court, the ZBA denial could be overturned; furthermore the court could find that the ZBA hadn't completed its job. At the second standard, the ZBA was tied, two for and two against. Attorney Wendling advised that the applicant had the right to ask for postponement until a full board was present. The applicant did so request and the matter was postponed until the next regular meeting of the ZBA. The applicant also indicated that the variance petition might be modified.

Report of Zoning Administrator:

The Zoning Administrator's report for March 2019 was distributed, and is hereby incorporated into the record by reference, and a copy of it is attached to the permanent copy of these minutes at [Att A].

New Business

Chair Backers – reported that the Township Board has asked the Planning Commission to assist in creating a procedures manual for the Zoning Administrator. The commissioners are asked to consider the task, and come to the next meeting with suggestions.

Closing Public Comment:

Jeff West – commented that there should be a log of zoning violation tickets that members of the public can access. He further stated that his requests for documentation are not being met in full. He claimed that the township is not following the law and he threatened to take police action if he remains unsatisfied with the township's response to his requests. Having made his threats, he left.

Adjournment:

MOTION by Von See, second by Backers, to adjourn. Adjournment at 8:17 p.m.

Assignments:

- Fields to try to get from the equalization department the map of the county as drawn for its original statute, and any amendments thereto.
- Fields to forward to the board the mass gathering ordinance and application.

Next Meeting: June 3, 2019, at 7 p.m., in the Clearwater Township Community Center (aka the Little Red Schoolhouse).

Respectfully submitted,



Tina Norris Fields
Secretary

Clearwater Township Zoning Administration Monthly Report

Month/Year MARCH 2019

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

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

Zoning Violations

_____ Zoning Violations closed this month
7 Open Zoning Violations as of this month
5 New Zoning Violations opened this month
0 Zoning Violations under investigation
3 30 Day Notices Sent or in this status
3 60 Day Notices Sent or in this status
 _____ 90 Day Notices Sent or in this status
 _____ Turned over to Attorney

Date: 4-23-19

Signature: 
 Zoning Administrator