

**CLEARWATER TOWNSHIP
ZONING BOARD OF APPEALS
Regular Meeting
April 12, 2010**

Draft Minutes

Chair Al McShane called the meeting to order at 7:01.

Members present: Jim Adams, Tina Fields, Lucy Gerlach, John Margo, Al McShane.

Agenda: approved as presented by Chair.

Minutes: Regarding the minutes of January 11, 2010, Gerlach proposed amending the draft minutes to eliminate the paragraph beginning with Fields stated that and the following paragraph ending with changes to the Zoning Ordinance and replace the two paragraphs with the following:

Regarding the ZBA By-Laws, Gerlach suggested that Section 2,G Public Hearings, #12-14 needs clarification. She pointed out that once we review and finalize wording for this section, it should be sent to the Planning Commission for inclusion in the Zoning Ordinance, as required by MZEA 125.3604. She also requested a review of the section on conflict of interest. After further discussion it was moved by Margo and seconded by Fields to put review of the ZBA By-Laws on the agenda for the next meeting. Motion carried.

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Moved by Fields, second by Margo to approve the minutes of January 11, 2010 as amended. Motion carried.

No members of the public or township officials present.

No Zoning Administrator report.

Review of ZBA By-Laws:

Section 1, A - Gerlach proposed limiting ZBA officers to 3-year terms. Moved by Gerlach, second by Margo to so limit. Motion denied.

Section 1, B - Gerlach proposed adding prepare an agenda (see Section 2, F), to be distributed to ZBA members one week prior to the meeting immediately following at all meetings. • Moved by Fields, second by McShane to so add. Motion carried.

Section 1, D, 1 Minutes - Gerlach proposed changing first sentence to: "The secretary shall see that minutes are taken at each meeting and that a copy is filed as a permanent record with the township clerk." • Moved by Gerlach, second by Margo to so change. Motion carried.

Section 1, D, 3 Attendance Fields will research annual reporting requirement for discussion at next meeting.

Section 1, D, 4 Notices Gerlach proposed re-wording as follows: The secretary shall insure that such notices as may be required by the ZBA are issued. • Moved by Fields, second by Margo to so re-word. Motion carried.

Section 2, B Notice Gerlach proposed adding Regular and special to begin first sentence (Fields suggested simply adding All •) and adding and the MZEA following Open Meetings Act. Moved by Gerlach, second by Fields to so add All and the MZEA. • Motion carried.

Section 2, F Agenda Motion by Fields, second by Gerlach to eliminate the sentence beginning The chairperson shall • Motion carried.

Section 2, G Public Hearings The board agreed that Gerlach would word a disclaimer to add to the first paragraph since the rules of procedure as stated would be strictly followed in the case of a public hearing regarding a request for a dimensional variance but not all steps would be included in either an appeal of an administrative decision or a request for interpretation of the zoning ordinance or map. The wording is as follows:

All steps of these rules of procedure shall apply to hearings on a request for a dimensional variance. However, in the case of a hearing for an appeal of an administrative decision, or a hearing concerning interpretation of the zoning ordinance or map, not all steps shall apply.] •

Section 2, G, 7 Gerlach proposed re-wording first sentence to read: Call for disclosure of conflict of interest (see Section 5). • and eliminating a through d immediately below. Motion by Gerlach second by Margo to so change. Motion carried.

Section 2, G, 12-14 Gerlach proposed eliminating 12 through 14 and re-wording as follows:

12. The Chair reads each standard, pertinent findings of fact are presented and discussed, and a roll call vote is taken on whether or not the requested variance meets the standard. • Motion by Gerlach, second by Fields to so change. Motion carried.

13. If each standard is determined to be met by a majority vote, the variance is approved; otherwise, the variance is denied. Motion by Margo, second by Fields to so change. Motion carried.

Section 2, G, 15, 16, and 17, will change to 14, 15, and 16, respectively.

Section 2, H Special Meetings Gerlach proposed eliminating, as the information is either in another section or unrelated to the ZBA. Motion by Gerlach, second by Fields to so eliminate. Motion carried.

Section 3, B Gerlach proposed eliminating and replacing with the following: Work with the Township Board to set an annual budget. Moved by Fields, second by Margo to so change. Motion carried.

Section 4, A Proposed by Gerlach to change notifying a ZBA member • to notifying a ZBA officer • Motion by Gerlach, second by Fields to so change. Motion carried.

Section 5: Conflict of Interest Gerlach proposed eliminating the entire section and replacing it with the following:

- A. A public official has a unique responsibility to avoid a perception of impropriety. Decisions made by a ZBA must be free of real or perceived bias. If a member participates in or votes on a request for a variance in which he or

she has a conflict of interest, the validity of that decision could be challenged in court.

- B. A ZBA member shall declare a conflict of interest and recuse himself/herself on a request for a variance when:
 - 1. The ZBA member's own property is involved in the request;
 - 2. The property of a relative of the ZBA member is involved in the request;
 - 3. The ZBA member has a business or financial interest in the property involved in the request, or has a business or financial interest in the applicant's company, agency or association;
 - 4. The ZBA member owns or has a financial interest in neighboring property; i.e., any property falling within the notification radius for the public hearing at which the request is being considered;
 - 5. MCL 125.3601(13) requires that a ZBA member recuse himself/herself from deliberating and voting on a request which he/she previously voted on as a member of the planning commission or the township board.
- C. To recuse oneself is more than simply abstaining from voting. The person must also remove himself/herself physically from any discussions, hearings, deliberations and information-gathering regarding the request.
- D. In any case in which a ZBA member recuses himself/herself, he/she may have someone else present to represent his/her interests.
- E. Failure of a ZBA member to recuse himself/herself from a vote on a request in which he/she has a conflict of interest constitutes malfeasance in office, which may result in his/her removal from office by the legislative body [MCL 125.3601(9)].

Motion by Fields, second by Margo to so change Section 5. Motion carried.

New business: Gerlach asked if all members have a copy of MTA Township Planning & Zoning Decision-making: A Handbook for Planning Commissions and Zoning Boards of Appeals, 2008. Members expressed desire that the township order 5 copies of same.

Fields announced that the planning commission will hold a public hearing on May 3 to consider revised sections of the zoning ordinance, including the revised ZBA standards for review of a dimensional variance application.

No old business.

Next regular ZBA meeting: July 12, 2010

Meeting adjourned at 9:04.

Respectfully submitted,

Lucy Gerlach
ZBA Secretary