

Minutes of the October 2, 2023, Regular Board Meeting of Sherman Township

The regular scheduled meeting of the Sherman Township Board was held on Monday October 2, 2023, at 7:00 pm, in the meeting room of the township hall. The meeting was called to order by Supervisor-Smalligan at 7:02 pm. After the pledge of allegiance, roll call was taken and members present were Karen Berens, Doug Berens, Stan Stroven, Ken Smalligan, and Jamie Kukal.

Motion was made by S Stroven and 2nd by D Berens to approve the agenda with the addition of lawyer contact policy under new or unfinished business. All approved, motion passed.

Motion was made by S Stroven and 2nd by K Berens to approve the minutes from September 5, 2023, as presented. All approved, motion passed.

Public comment was pertaining to the proposed ordinance change and was held until presented by the planning representative for consideration.

Treasurer-Berens presented her report of outgoing funds highlighting the payment for the carpet installation of \$7496.46 and a bill from the road commission for gravel edging to finish the road project on 32nd street. Clerk-Kukal said she had researched for any policy limiting the spending on lawyer fees and had not found anything in writing, so she recommended the paying of the lawyer fees for the recent certified letter authorized by the supervisor related to the proposed home- business occupation ordinance changes. Motion was made by D Berens and 2nd by S Stroven to accept the Treasurer's report and authorize the payment of bills. Roll call vote was taken. Yes; K Berens, D Berens, S Stroven, Ken Smalligan and J Kukal No; none. Motion passed.

Clerk-Kukal presented the clerk's report, highlighting the upcoming November election, the workmen's comp insurance audit, and a FOIA request for emails pertaining to the proposed home business occupation ordinance changes. Kukal also asked for any changes or additions for the yearly newsletter, to be submitted to her ASAP so she could get them to the printer in time. K Berens confirmed that the printer is requesting them by November 6th, and she requested them printed on blue paper this year. Kukal informed the board of set terms coming open in December and the need to run advertisements for that and snow removal. Kukal is waiting on notification from the County Clerk when the final early voting site agreement will be ready for signatures, they are thinking mid-month. The township hall parking lot work is scheduled to start October 16th.

Supervisor- Smalligan presents Resolution # 2023-8 Adoption of the Amended and Restated Joint Fire Board Ordinance for consideration. Motion was made by J Kukal and 2nd by K Berens to adopt Resolution #2023-8 Adoption of the Amended and Restated Joint Fire Board Ordinance as presented. Roll call vote was taken. Yes; K Berens, D Berens, S Stroven, Ken Smalligan and J Kukal No; none. Motion passed.

For the trustees' reports, trustee-Berens asked the board when they would like him to close the porta potties down at Crystal Lake Park. It was recommended late November or first of December depending on when freezing becomes an issue.

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Trustee-Stroven reported that Nieboer Electric fixed the lights that were out on the north and east sides of the building. Stroven asked if it would be worth asking Reith and Riley to present a bid for resurfacing the little section of 24th street where it comes off the curve in Wooster. Clerk-Kukul was tasked with contacting them.

Planning commission representative- Berens presented the proposed Home Business Occupations for consideration. (Appendage #1) Supervisor-Smalligan started the discussion with a letter from resident Dean Van Ostenberg stating his reasons for opposing the changes. (Appendage #2) Treasurer-Berens suggested striving out metal works and Sawmills from # 3 of the proposed changes. Clerk-Kukul read her prepared statement stating her position on the subject. (Appendage #3) Trustee-Stroven voiced his concerns if the board does not adopt the proposed changes limiting control. For #2, currently the township could end up with a 5-acre piece with 2400 square foot building and with the changes it is 4000 square feet on 40 acres giving up a little more footage on the building but regulating the requirement of where much more than current regulations. #3 proposes limiting metal works, sawmills and other similar uses to only agricultural and 40 acres, where currently someone could apply for a special use for a sawmill on any 5 acres. #6 currently has no limit on the size of outdoor storage and one is needed. Stroven sees more restrictions with the additions than as it currently stands and believes that other nuisance concerns will be handled with the special use permit application, public hearing and regulation process.

Trustee-Berens said the planning commission has worked hard to find a good balance of what needed to be updated to present to the board and he is in favor of the proposed changes. Supervisor-Smalligan said that 90% of the residents who spoke at the public hearing were against the changes. He still feels it goes against the master plan and if you have a 40-acre parcel across the road from you, they will put their business up front, towards the road, not in the back corner away from your home. With an Amish family of 10 children, the business could easily grow into an industry. Smalligan also wanted to inform the board that the township's lawyer had been contacted by a lawyer representing concerned residents about the proposed changes. Resident Jay Diehl stated his reasons for opposing the changes.(Appendage #4) Jay confirmed that he was the resident that made the FOIA request and contacted a lawyer for advice. Resident Abby Diehl read Appendage #5, the letter from the township lawyer, page 2, paragraph 4. Resident Warren Stroven stated that the proposed changes are not consistent with the master plan. He said with the many hours of training he has worked as a previous planning commissioner; he reminded the board that "I think, and I feel" should not pertain to your decisions and he encouraged the board not to change the ordinance. Planning Commissioner Don Clark referenced Appendage #5, the lawyer's opinion in support of his opposing the proposed changes. (page1/paragraph 2, page 1/paragraph 3, page 1/paragraph 4, page 2/paragraph 1, page 2/paragraph 2/sentence 2 & 4, page 3/paragraph 1, page 3/paragraph 3, page 3/paragraph 5, page 4/paragraph 2) Clark commented that 5 years ago the planning commission doubled the building size and now here they are looking to double it again and he doesn't believe it follows the master plan.

Resident Rick Tanis read the definition of farming "the activity or business of growing crops and raising livestock" and stated that nowhere does it reference sawmills or pogo stick factories. Resident Steve Kotecki said that at the public hearing he was concerned about regulating the changes, along with other townships. He would encourage going back to the original building size before the 2017 changes.

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Supervisor-Smalligan said that he has asked who is pushing for the changes and no one has told him who. Clerk-Kukal responded that no one is pushing for the changes, back in 2021 the township board asked the planning commission to work with Mr. Ryan Coffey and bring the whole township ordinance up to date and this is just the current section they are working on. Smalligan recalled recommending a sub-committee to work on changes for the STR ordinance but not the township ordinance as a whole. J Kukal responded that it was previous to that when it is stated in the board minutes. S Stroven said he would not vote it down the way the changes are presented, however he would like to see common ground reached. The motion was made by S Stroven and 2nd by J Kukal to return the proposed changes to the planning commission to reevaluate with input from Mr. Coffey and resident representative Jay Diehl. Roll call vote was taken. Yes; K Berens, D Berens, S Stroven, Ken Smalligan and J Kukal No; none. Motion passed.

Assessor-Story was not present, so Supervisor-Smalligan read the provided report, highlighting the wrapping up of field work season.

Sexton-Tollefson reported that all was good and quiet on the cemetery front. The sprinkler system will be blown out soon for winter preparations.

Building inspector-Smalligan presented his report indicating 1 permit and 7 inspections last month.

Deputy Zoning Administrator-Borgman's report confirmed the 1 permit.

For White Cloud Sherman Utilities Karen Koprolices reported on the meeting earlier that day where they learned of two new hookups being added.

For Fremont Fire District, K Berens reported billing \$1,453.25 and collecting \$231.99 for the month. For White Cloud, S Stroven invited everyone to the open house on October 10th.

For new or unfinished business, Clerk-Kukal presented her concerns about the excessive spending of township money for unnecessary legal advice. (Appendage #6) K Smalligan responded to the claims, reminding everyone that there were two complaint forms in 2021 for the issues and he did not ask Cliff for them at that time. He also read his forwarded email where he voiced his concerns and apologized for not voicing them before the August meeting, verses Kukal's interpretation of should have asked permission before the August meeting. Smalligan feels this is a personal attack from J Kukal. Motion was made by S Stroven and 2nd by D Berens to work on a new policy for who and to what expense can contact the lawyer. Four yays, Motion passed.

For public Comment, Jay Diehl expressed his concerns with taking the power away from the supervisor to seek advice from the attorney, when those actions are meant to protect the township and save thousands in the long run. He would advise the board to handle this as an internal conflict and seek conflict resolution rather than to adopt a policy. Butch Deur commented that the bottom line is the board has the best interest of the township in mind and all are working for the same goal. Everything has been going great until recently with emotions high. Karen Koprolices would like to see the conflict resolved internally. Don

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Clark thanked the board for sending the proposed ordinance changes back to the planning commission for review.

Meeting adjourned at 8:36 pm

Submitted by: Jamie Kukal-Clerk

Visitors present:	Wayne Berens	Vonda Tollefson	Jerry Engel	Al Smalligan
	John Borgman	Gary Smalligan	Butch Duer	Dick Chenard
	Karen Koprołces	Don Clark	Mark Kukal	Ryan Coffey
	Gary Hoppa	Arron Henry	Warren and Pat Stroven	
	Jay, Julie, Annica and Abby Diehl		Rick Tannis	Steve Kotecki

Jamie Kukal, Sherman Township Clerk

Balance Sheet

As of September 30, 2023

	Sep 30, 23
ASSETS	
Current Assets	
Checking/Savings	
MASTER ACCOUNT	
101-001 · General Fund cash	211,898.82
203-001 · Mayo Drive cash	22,748.89
220-002 · Robinson Lake Cash	19,864.06
221-001 · Crystal Lake Cash	45,368.86
336-001 · Fire protection millage Fr & WC	10,913.84
Total MASTER ACCOUNT	<u>310,794.47</u>
151-001 · Cemetery cash	6,020.53
202-001 · Road Checking	63,311.39
249-001 · Capital acquisition cash	3,626.29
260-001 · Gerber FCU	
261-336 · Gerber Fire Runs Savings	3,653.76
263-001 · Gerber FCU ARPA Account	127,294.75
Total 260-001 · Gerber FCU	<u>130,948.51</u>
401-001 · Winter Tax Account	3,899.68
402-002 · Summer Tax Account	585,988.65
Total Checking/Savings	<u>1,104,589.52</u>
Total Current Assets	<u>1,104,589.52</u>
TOTAL ASSETS	<u>1,104,589.52</u>
LIABILITIES & EQUITY	<u>1,104,589.52</u>

RED Strikethrough = removed existing language

BLUE = added new language

BLACK = no language changes

Purpose of changes

To allow for additional owner-occupied home business opportunities in the Agricultural District ONLY. These changes provide more flexibility for value-added small-scale agricultural operations (i.e. food processing, stores, etc.) and other operations commonly seen in more rural areas while limiting their scale and impact on neighbors. Also, to limit the size of outdoor storage areas.

Section 17.15 - Home Business Occupations: All Districts except Lake Residential. A Home Business Occupation may be permitted only as a special use and includes an occupation or profession carried out by a member of a family residing on the premises, which is clearly incidental and secondary to the principal residential use, and does not involve the alteration of the structure or change the character thereof. The above requirements as well as those listed below must be met to be considered a "Home Business Occupation".

- 1) No more than twenty-five percent (25%) of the gross floor area of the dwelling unit shall be utilized.
- 2) A Home Business Occupation may also be carried out in a separate un-attached structure *"or a part of a separate un-attached structure"** not to exceed twenty-four hundred (2400) square feet.* added June 2017, except in the Agricultural District where an unattached structure utilized for a Home Business Occupation may not exceed four thousand (4000) square feet on parcels forty (40) acres or greater and with a minimum setback of two hundred fifty (250) feet from any preexisting neighboring residence.
- 3) Creates no nuisance or undue hazard due to heat, glare, noise, smoke, vibration, noxious fumes, odors, vapors, gases, or any other disturbances at any time resulting from such operation. In the Agricultural District operations such as metal works, sawmills, carpentry/construction, food processing, grocery/farm/feed stores or other similar uses are permitted as a Home Business Occupation. Operations such as metal works, sawmills or other similar uses are only permitted in the Agricultural District on parcels forty (40) acres or greater and with a minimum setback of two hundred fifty (250) feet from any preexisting neighboring residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television off the premises, or causes fluctuations in line voltage off the premises.
- 4) There shall be no change in the exterior appearance of the dwelling or premises, or other evidence of the conduct of the "Home Business Occupation" other than one non-illuminated sign not greater than 16 square feet in size relating to such occupation.
- 5) Notice provisions regarding commercial property shall apply to uses under this section.
- 6) The outdoor storage of goods and/or materials of any kind is prohibited unless screened by a tightboard fence, landscaped buffer, landscaped berm, etc. from view from neighboring property and road right-of-ways. All outdoor storage area is limited to the square footage of the separate un-attached structure utilized for the Home Business Occupation. If required, the type of screening shall be determined at the discretion of the Planning Commission.
- 7) Activities relating to the Home Business Occupation must be carried on only by residents of the dwelling, plus not more than ~~one~~^{two} non-resident.
- 8) Provides adequate off-street parking, in addition to that required for the principal residence.
- 9) Any such Home Business Occupation is subject to inspection by the Zoning Administrator of the Township.
- 10) Any such Home Business Occupation is valid only for the approved applicant and is not automatically transferable upon transfer of said property.
- 11) The Planning Commission shall have the authority to order a limit on the hours of operation, impose conditions of operation or, if deemed necessary, order the complete termination of the activity.

#2 read by Ken

Sherman Township Board of Trustees
2168 South Wisner
Fremont, Mi 49412

9/26/2023

Dean Van Ostenberg
917 South Croswell Ave.
Fremont, MI 49412

Dear Board Members,

I would like to address the proposed changes to Section 17.15 of the Sherman Township Zoning Ordinance "Home Business Occupations".

1. The proposed changes fly in the face of the Township Master Plan that states that the purpose of the ordinance is to maintain the Rural, Agriculture, Residential character of the Township. This stated desire is reaffirmed in one the Township's most recent ordinance additions, the Short-term Rental Ordinance, in which the first line states that the Township wishes to preserve and retain the agricultural and residential character of the township.
2. I believe the proposed changes will benefit a few but have an adverse effect on many through reduced quality of life and property values.
3. The current section of the ordinance that regulates home business has been in place for many years and is similar to many other townships in the state. I see no reason to change it at this point in time. In other words, the proposed changes, as I see it, are "a bridge too far".

Respectfully submitted,

Dean R. Van Ostenberg

Home Based Occupation Ordinance Changes

#3 read by Jamie Kukal

I, township clerk, Jamie Kukal, would like to start by stating that I personally do not have an issue with the proposed changes. I feel that as the ordinance stands, the township is left open to possible future issues without any regulations on outside storage, being able to put a 2400 square foot building on land as small as 2 acres, and no listing of possible home based occupations.

- The ordinance as it stands is very vague and open to broad interpretations:
 - The only regulation on outdoor storage is the fence, landscaped buffer, landscaped berm or ect required to hide storage. These changes give the township limits of the footage that can be utilized for storage where the township has none now.
 - As the ordinance stands we could potentially have a home based business of 2400 square feet on any consecutive parcels. Granted each individual one would have to apply for a special use permit. With these proposed changes we would be putting a tighter regulation on the size and area. That is a maximum of a 50' X 80, building on 40 acres.
 - Home based occupation is very vague in our ordinance and may be interpreted differently by individuals. There are no lists of some of those occupations and if looked up you can come up with several different examples, however never is there a list of non-examples or occupations that do not qualify. My search alone turned up 985 definitions and samples of "Home occupations". Here are a few:
 - Home occupation means any occupation, trade, profession, personal service, day care or craft carried on by an occupant of a residential building as a secondary use to the residential use of the building.
 - Home occupation means any occupation, business, profession or commercial activity carried on by a member of the immediate family, residing on the premises.
 - Home occupation examples - Accountant, planner, architect, surveyor, artist, attorney, author, ceramist, clergyman, engineer, interior designer, landscape architect, musician, photographer, dentist, physician or other licensed medical practitioner, teacher (not to exceed 3 pupils), or other practitioners in similar services.
 - Home occupation Services - dressmaking, handicrafts, tailoring, millinery, nameplate making, home cooking, baking or preserving, telephone/mail services and other similar service-based businesses. **AT NO POINT DOES IT SAY WHAT IS NOT A SERVICE.**
 - Section 17.15 - Home Business Occupations: All Districts except Lake Residential. A Home Business Occupation may be permitted only as a special use and includes an occupation or profession carried out by a member of a family residing on the premises, which is clearly incidental and secondary to the principal residential use, and does not involve the alteration of the structure or change the character thereof. The above requirements as well as those listed below must be met to be considered a "Home Business Occupation".

Home Based Occupation Ordinance Changes

- Section 2.41 - Home Occupations: Any use customarily conducted entirely within a dwelling and carried on by inhabitants thereof, without being evident in any way from the street or from neighboring premises. See Section 3.22.
 - Section 3.22 - Home Occupations: Any use customarily conducted entirely within a dwelling and carried on by inhabitants thereof, without being evident in any way from the street or from neighboring premises. In order to preserve the residential character of the neighborhood and/or the residential uses of existing homes, and to maintain a segregation between the areas that are characterized as residential and those characterized as commercial and industrial, permitted home occupations shall: 1) Involves activities within the dwelling and/or un-attached accessory building. 2) Occupy no more than twenty-five percent (25%) of the dwelling. 3) Not alter the exterior character of the residential building. 4) Signs, See Section 5.01(3). 5) Be conducted as an accessory use only by residents of the dwelling 6) Employ only mechanical equipment which is similar in power and type usual for household purposes and hobbies. 7) Do not utilize explosive material, create noise, odors, radio/electrical disturbances, glare, vibrations, fumes or endanger any person, or other disturbances to the peace and tranquility of the surrounding neighborhood. 8) Do not create a greater volume of traffic than normal residential use. 9) Any occupation conducted within a dwelling or un-attached building which does not meet all of the above conditions shall be considered a Home Business Occupation and is permitted only as a special use under Section 17.15

Those were my personal opinions and findings, after the public hearing I took into consideration many concerns that the public voices. The first being the potential of industrialization or Industries.

- Industrialization is the process of transforming the economy of a nation or region from a focus on agriculture to a reliance on manufacturing.
- Industrialization is the process by which an economy moves from primarily agrarian production to mass-produced and technologically advanced goods and services.
- An industry is a group of manufacturers or businesses that produce a particular kind of goods or services.
- Industrial jobs focus on the production of industrial goods through the manufacturing process. This involves moving raw materials to a factory, creating the goods, storing the finished products in a warehouse, and shipping the products to customers. Industrial jobs are split into two sectors.

With the regulations on size and employees, a company could not grow to an industry without continually returning for approval on their special use permit.

Home Based Occupation Ordinance Changes

As for the incidental or secondary intent of the resident. As long as there is still a resident on the property that will continue to stay the primary intent of the property. Take the old VenEmpst farm as an example. It has changed hands more than once, however they purchase the home for their residence as the primary intent and then have had to apply for special use permits.

Now for the more legitimate concerns of increased traffic, noise and the possible Reduction of farmland, I have to trust that those issues will be handled on a case by case procedure of the special use permit with the public hearing and regulations and if an incident develops after a permit, I hope the concerned resident would submit a complaint for the zoning administration to follow up on.

And finally the concerns about the township not following the master plan. The master plan is essentially this governing body's mission statement. It highlights the areas of importance from the information gathered in the most recent census and by information provided by residents feedback. It in now way is a governing regulation indicating what not to take into consideration, so once again it is subject to individual interpretation. I feel that the planning commission does a great job of trying to balance the scales of representing the master plan, standard compliance updates, the concerns of those who voice their feedback and sustainable growth in our township.

4 read by Jay Dehn

Public Comment Hearing 10/2/23

Sherman Township Board,

In reviewing the minutes from the special hearing on September 13th, the planning commission approved the proposed ordinance change, however failed to complete the required "finding of fact" as outlined in section 21.05 of the zoning ordinance. This step is vital to ensure the proposed changes are without bias and done so in a manner that is not arbitrary and capricious. This step is required prior to submission to the township board for approval. Incidentally, this step was also missed during the ordinance change in June of 2017. Arguably, that ordinance change will be deemed unlawful by a judge with competent jurisdiction. I'll ask the board to suspend any vote until such time as the planning commission completes its Finding of Fact in a public hearing and adds such findings to the minutes as required by section 21.05.

Conflicts with the Policy Goals as described in the Sherman Township Master Plan:

1. Balance the rights of individual property owners with the concerns and interests shared by Sherman Township residents to preserve the existing natural environment, wherever possible.
2. Discourage development of non-agricultural land uses in prime farming areas through the application of zoning regulations.
3. Reduce the potential for conflicts arising from certain agricultural practices and non-farm residences through the implementation of "buffer" land use districts.
4. Promote clustering of development, design flexibility and innovation that protects natural amenities and open space.
 - a. Our neighboring districts have had success by limiting development of larger businesses to specific areas in the township outside of prime agricultural areas.
 - b. Such areas could be a compromise between the Sherman Township residents, which would allow residents to have close access to their businesses while not creating a conflict with neighbors.

These concerns were mirrored by Cliff Bloom, attorney for Sherman Township in a letter to the Sherman Township board dated August 28, 2023. This letter was obtained by a Freedom of Information Request and is added to this letter.

I request that this letter and the attached letter from Cliff Bloom to Supervisor Smalligan be added to the minutes of this meeting for public record.

Bloom Sluggett, PC

COUNSELORS & ATTORNEYS

Clifford H. Bloom
Direct Dial (616) 965-9342
Direct Fax (616) 965-9350
cliff@bloomsluggett.com

August 28, 2023

Mr. Ken Smalligan
Township Supervisor
Sherman Township
Sherman Township Hall
2168 South Wisner
Fremont, Michigan 49412

**Re: Home-Based Businesses (a/k/a Home Business Occupations)
Zoning Ordinance-Proposed Amendments**

Dear Supervisor Smalligan:

You have indicated that the Sherman Township Planning Commission (the "Planning Commission") is considering amendments to the Sherman Township Zoning Ordinance (the "Zoning Ordinance") that will significantly liberalize the rules regarding so-called "home business occupations" (Sherman Township's phrase). You have asked us for our legal opinion regarding the advisability of those amendments.

Virtually every municipal zoning ordinance in the state provides for "home occupation uses." Those are very low intensity and extremely limited commercial or business uses that have traditionally occurred within single-family houses, and can include music lessons, crafts, home offices and salons. In general, it is not considered a violation of good and prudent zoning and planning principles to allow such small (and often times almost invisible) commercial or business uses within houses in single-family residential or agricultural zoning districts.

A minority of townships in Michigan have also provided for "home based businesses" (what Sherman Township calls "home business occupations") in single-family residential or agricultural zones within such townships zoning ordinances. Home based businesses are generally larger and more intensive than home occupation uses. Most townships in Michigan do not allow home-based businesses.

We respectfully urge the Planning Commission to carefully consider the advisability of what the current draft amendment ordinance refers to as a "home business occupation" (what most municipalities call "home based businesses"). While some other rural townships do allow home based businesses, we strongly recommend that Sherman Township not allow home based businesses for a variety of different reasons.

Home occupation use allowances for many townships represents the compromise of a basic zoning principle. Conventional zoning and planning theories hold almost universally that commercial and industrial uses should not be allowed in areas zoned for residential, agricultural or rural residential uses. That principle is based on a variety of different reasons, including the potential conflict between residential, agricultural and rural uses and the different activities associated with commercial or industrial uses. There has also been a desire by most zoned townships to concentrate commercial and industrial uses in certain limited areas within the township involved. Most township master plans are consistent with those principles. Of course, one exception to the general principle that business or commercial uses should not occur in rural areas is the business of farming and agricultural operations. Another exception is (of course) very limited home occupations.

Zoning regulations allowing home occupations "open the door" just slightly to permit very small, low-intensity business, commercial or semi-industrial uses in areas that are technically not zoned for such uses. Most townships tightly control home occupation uses and limit them to uses that have traditionally and historically occurred within residential dwellings. Common home occupation uses include music lessons, arts and crafts, small beauty parlors or salons, limited taxidermy, limited commercial sales (such as Avon products, Amway, Shaklee or Mary Kay), professional offices (attorney, CPA, architect or realtor), catering, dressmaking and chainsaw or knife sharpening. Many townships do not even allow home occupation uses to occur in a separate accessory building or pole barn, but limit the uses solely to occurring within the residential dwelling. However, other townships have "opened the door" slightly more to allow limited home occupation uses in a pole barn or accessory building (so long as the use occurs primarily in the house).

Over the past decade, a limited number of rural and semi-rural townships throughout Michigan have loosened up their regulations on home occupation uses and allow business, commercial and even light industrial uses to occur that were not traditionally carried out within a residential dwelling. The townships that have liberalized their attitude towards allowing commercial, light industrial and business uses on properties not zoned for such uses generally call those uses "home based businesses." Among the home based businesses allowed by some townships include limited excavation equipment, landscaping, veterinarian office, small engine repair, small machine shops and small plumbing, electrical or HVAC businesses. Some townships allow home based businesses "as of right" (i.e., as permitted uses), while other townships require special land use (or the equivalent) zoning approval.

What are the potential risks and negative impacts associated with home based businesses? First, some planners and property owners have asserted that it is inherently unfair to allow some commercial, business and even semi-industrial uses to occur on properties not expressly zoned (or taxed) as commercial, business or industrial. Many other business owners have been required to purchase or lease expensive properties in areas zoned commercial, business or industrial and do not believe it is fair to allow competitors to have a cost advantage based upon not having to purchase or lease property so zoned. Second, home based businesses frequently conflict with the master plan of the township involved which generally prohibits

Mr. Ken Smalligan
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commercial, business and industrial uses in areas not zoned for such uses. Third, home based businesses can conflict with nearby residential, agricultural and rural uses. Fourth, home based businesses that are successful and grow can become problematic when they outgrow their surroundings. By definition, home occupations and home-based businesses should not exceed a certain size, level, intensity, and scope. Full blown commercial, business and industrial uses should not occur in areas that are zoned for residential, agricultural or rural uses. It is almost always difficult for a township to deny an expansion request for a successful (and growing) home based business when the owner asserts that he, she or it would not have started the home based business in that location earlier if they would ultimately have to move their business elsewhere due to expansion. Fifth, once a home based business is lawfully established, the township involved cannot stop the business or force it to move if the business creates significant problems for the area in which it is located. Lawful nonconforming uses generally cannot be terminated by a township. In essence, "the genie is out of the bottle."

Allowing home based businesses (or even home occupation uses) to occur in a detached accessory building can cause many problems.

Why have some townships agreed to allow home based businesses? Many of the current home based business zoning regulations in townships can be traced back to the beginning of the great recession in approximately 2007 (although due to the prior Michigan one-state recession, some of the home based business regulations were adopted even earlier). It was a way of allowing a business to commence without imposing more expensive start-up costs such as buying or renting property formally zoned as commercial, industrial or for business. It also allows the owner of the business to live on the same property and to cut down on commuting time to the business. Finally, some advocates of home based businesses assert that property owners should be able to do what they want with their property as long as it is reasonable, and small home based businesses frequently are consistent with the surrounding area.

Some of the uses discussed by the Planning Commission are entirely appropriate in rural areas (especially agricultural zones) with special land use approval, but would not normally be deemed a "home based business." Such uses could include sawmills and agricultural processing operations.

It should be kept in mind that the Township generally cannot lawfully favor one group of property owners over another. The Township cannot favor one group or another (which could include the Amish or a similar group or community) in obtaining zoning approvals for certain uses, but not allowing others to do the same. Zoning must be administered equally and with impartiality regardless of the race, sex, religion, etc. of the landowner or zoning applicant involved.

It should also be pointed out that zoning approvals "run with the land." Accordingly, the Township is without legal authority to require a new special land use approval (or Township approval of the transfer of such an approval) if a parcel subject to a special land use approval is

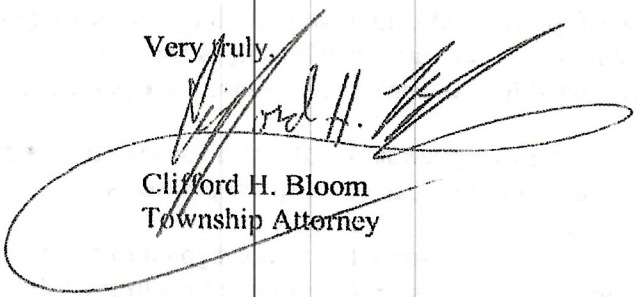
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sold or transferred. The Township could accomplish the same via a business licensing ordinance, but few rural townships have such ordinances.

Finally, it is really not necessary to provide for home based businesses within Sherman Township. There are many potentially available commercial and industrial parcels located a short distance from the Township's boundaries in Newaygo, Grant, Hesperia and Fremont.

Please do not hesitate to contact me should you or any other Township official have any questions regarding these matters. Thank you.

Very truly,



Clifford H. Bloom
Township Attorney

cc: Township Clerk
Chairperson of the Planning Commission
Ryan Coffey Hoag, MSU Extension

I would like to see the board come up with a new policy that would regulate who and to what degree or expense, can contact the lawyer with township concerns. I have looked into it and at this point I can not find anything in writing indicating regulations in place. In my short term in office I recall other situations where the lawyer may have been excessively contacted in regards to issues that hold personal importance. In December 2020, Ken contacted the lawyer about short term rentals in our township and if they were allowed with the present ordinance. A letter was drafted and the lawyer advised us that short term rentals were allowed with the present ordinance. That letter cost the township \$462. In March 2020, according to planning commission minutes the township attorney said to leave the issue of short term rentals alone. There continued to be concerns with one resident on Long Lake that was renting their residence as a short term rental and Ken continued to encourage something to be done. In December of 2021 the issue escalated and the Zoning administrator had to enforce violations by the resident that was renting out their lake home. Those actions angered the Resident and a FOIA request was received. The lawyer was needed to handle those issues with the FOIA request and violations, however Ken had the lawyer draft a STR moratorium ordinance and zoning amendment at that time. The township incurred a cost of \$651 for the FOIA and violations issue and \$315 for the STR moratorium and zoning amendments. As noted in the January 4, 2021 regular Board Meeting minutes, the board was not yet advised of the possibility of adopting a moratorium until that meeting and had not received any copies of the letters to the resident concerning violations yet. In February 2021 the moratorium was presented to the board for a vote and was voted down 4-1 with the stipulation that the planning commission make it a priority to do more research on STR and work towards a future ordinance for regulating STR in the township.

In regards to the current issue at hand in August 7, 2023 the board voted 4-1 to approve the planning commission to proceed forward with the public hearing on the home based occupation ordinance changes. On August 8, 2023 Ken had a conference call with the lawyer over his concerns totaling \$264. On August 24, 2023 Ken received the draft letter from the lawyer with his opinion on the issue where Ken advised the lawyer to finish with the certified copy and sent the board the draft copy. In that forwarded draft copy email Ken said "I probably should have asked prior to our August meeting, I apologize for that." A certified copy was received by the Clerk on August 28, 2023, township cost for that letter was \$456. In my opinion Ken had plenty of time to appraise the board of his intent to reach out to the lawyer. Each of these cases have been personal investments for Ken and I don't feel that is an appropriate representation of the township as a whole. I would like to see a policy adopted to prevent these added expenses incurred from happening in the future.