

CASCO TOWNSHIP BOARD OF TRUSTEES
SPECIAL MEETING
OCTOBER 23, 2017 @ 5:30 PM

Approved: January 15, 2018

Call to order: Overhiser called meeting to order at 5:36pm and led in the Pledge of Allegiance.

Present: Overhiser, Brenner, Macyauski, Winfrey, Graff & 22 other interested people.

Absent: Graff was 15 min. late

Reason for meeting:

A. Township Attorney to respond to Trustee, Judy Graff, statement she read on October 16, 2017.

B. Board questions and discussions on Rental Ordinance draft.

Allan opened the meeting, and explained that our attorney, Ron Bultje, is here to respond to Judy's document that she read to the board at our regular meeting 10/16/17. We have a time crunch, Ron must be at a meeting at 7:00pm. He also stated that the Planning Commission has been working on the issue with the zoning changes for several months and it became obvious that we were probably going to need a Rental Ordinance and if we could start on that at the same time here it would be helpful.

Allan asked Ron Bultje to start with his response to Judy's correspondence from 10/16/17.

Ron's response will be an attachment of these minutes.

Ron said that he just handed out to the board copies of his correspondence, so he said he would walk thru it and summarize it.

The specific issue that Ron had been given was for the 10/16/17 correspondence from Judy. Is there something inappropriate or with the process the township is following, do we have conflicts of interest, and are we engaging in in-proper conduct that we need to correct?

Ron stated that was his assignment to determine those issues, and to respond and give the township some guidance.

Ron's short answer is that he thinks that the process that the township is using is fine and there are not any conflicts of interest that are creating issues. Then he gave the reasons and he apologized somewhat for the length. There were a lot of thoughts that Judy had given in her correspondence.

He started with Land Use –

I. Land Use Definitions

The correspondence from Judy concentrated on Land Use definitions in the Proposed Regulation Ordinance and therefore it is a zoning ordinance and therefore it is within the fair view of the planning commission. Ron said he didn't think that was a fair conclusion. There are land use definitions in the proposed regulatory ordinance, which is proposed and not adopted, there are land use definitions some are coming right from the zoning ordinance and some are in addition and but the fact that there are land use definitions or two in the Regulatory Ordinance doesn't turn it into a zoning ordinance. The Rental Ordinance as proposed talks about occupancy limits, smoke detectors, carbon monoxide devices, inspections, insurance requirements, trash receptacles, those are not zoning issues, those are not land use issues, those are regulation issues which are appropriate to put in a Regulatory

Ordinance. The Rental Ordinance doesn't say you can have STRs in these zoning districts but not in those zoning districts, doesn't say they are allowed by rights, doesn't say they are allowed by special land use, doesn't address those zoning issues which you find in a zoning ordinance. Ron said there was a prior draft that Judy saw and the statement in the Purpose Section, **we are going to allow and regulate STRs and single-family dwellings in the following zones**. This was taken out of that rental ordinance and we didn't say in the draft that Ron revised and gave to you, that we were going to allow in any specific zone. We did say this ordinance would apply to STRs in these zones. To the extent that they exist in those zones, this Regulatory Ordinance would address but it doesn't say there allowed use or there grandfathered in or a special use or anything like that. That would be a zoning ordinance decision. We left that out of the Regulatory ordinance that we revised in suggesting that you look at. Just the fact that the rental ordinance defined land uses doesn't, in our opinion, make it a zoning ordinance.

II. State Law

Judy referenced the Township Planning Act 168 of 1959 that Act has been repealed and replaced by the Michigan Planning Enabling Act 33 of 2008, as amended, which you are subject to now. However, some of the arguments that Judy makes of her correspondence will apply no matter what act. Ron stated he didn't think that was a huge deal.

III. Land Use Responsibilities

Ron stated that Judy did say in her correspondence that the PC is solely responsible for defining land uses. That is not correct.

The PC doesn't make any decision with regards to land uses or zoning ordinances adoptions or amendments, they should only make recommendations on what will be land uses and how to be defined and how they will be regulated in the zoning ordinance. So, the board retains the sole digression, therefore, I think it is a fair issue to for the board to consider.

IV. Purposes of Planning

In Judy's correspondence she lists several purposes of planning. In doing so, the Correspondence incorrectly quotes from the repealed Township Planning Act. Nevertheless, those quoted purposes remain valid, and they show how inaccurate Judy's correspondence is.

As noted by the Correspondence, promoting public health, safety, and welfare is a legitimate purpose of planning. But that does not mean that the Township Board cannot adopt any ordinance other than a zoning ordinance to address those issues. The Township Board may adopt and in fact has adopted an Anti-Noise, Public Nuisance Ordinance, a Water and Wastewater Ordinance, a Dangerous Building Ordinance, and a Land Division Ordinance. All of them promote public health, safety, and welfare. None of them were adopted as zoning ordinances and none of them were subject of public hearings before the Planning Commission. But all of them are valid Township ordinances, properly adopted.

Likewise, the proper use of natural resources is a legitimate purpose of planning. Again, the Township Board may consider a wetland ordinance, or a sand mining ordinance, or any number of other ordinances to protect natural resources, without having the Planning Commission first hold a public hearing and without amending the Zoning Ordinance.

Regulating a transportation system, a sewage system, a water system, and a recreation system likewise is a legitimate purpose of planning. As noted above, the Township has adopted or may adopt regulatory ordinance pertaining to any or all of these subjects. None of these ordinances are or would be subject to a public hearing before the Planning Commission.

Judy came into the meeting late and asked for a minute before Ron proceeded. Then Judy said that she doesn't appreciate getting a report at the meeting, whether I'm on time or not.

Allan said that all of us just got this document at 5:30pm. He said that he was the only one that saw it this morning talking to Ron. He wanted Ron to present it to the board.

Paul said he didn't think that Ron should go through the whole thing again but maybe summarize what he has gone through already.

Ron reviewed the land use definitions, the state laws, and the purpose of planning for Judy.

Ron said he would like to talk about land use definitions, his opinion is that this does not turn the rental ordinance into a zoning ordinance. The rental ordinance as it stated regulates things like smoke detectors, carbon monoxide devices, insurance, inspections, trash receptacles that are not land uses, there was a prior draft regulatory ordinance which I was asked to review, and I included a statement in the Purpose Section that said We are going to allow and regulate STRs and single-family dwellings in the certain zones. We have removed that statement from the renting ordinance because that was a statement of land use of which I didn't think was appropriate. The revised Regulatory ordinance I prepared recognized this would apply to STRs in certain zone's, but it doesn't say there allowed or how they are allowed, by special use or grandfathered because that would be a zoning ordinance. **Roman Numeral II.** that the Township Planning Act, Public Act 168 of 1959, has been replaced by Township Planning Enabling Act, Public Act 33 of 2008. **Roman Numeral III.** The planning commission is not solely responsible for land uses, that is entirely up to the board. It is the Township Boards responsibility the PC only makes recommendations to the board.

The purpose of planning is promoting public health, safety, and welfare is a legitimate purpose of planning. Also, the proper use of natural resources is a legitimate purpose of planning. The Township board may consider a wetland ordinance, or a sand mining ordinance, or any number of other ordinances to protect natural resources, without having the PC first hold a public hearing and without amending the Zoning Ordinance.

Promoting transportation, sewage system, water system, and a recreation system is a legitimate purpose of planning. None of these ordinances are or would be zoning ordinances.

Judy said that her point in that specific one is that the PC does have the responsibility to recommend. Yes, she agrees. It has always been that the PC is the only body that can recommend to the Township Board concerning a zoning ordinance.

Ron agreed with Judy, but this is a Regulatory Ordinance not a Zoning Ordinance.

Judy said that when you mix regulatory items with land use items it confuses everybody.

V. Purpose of Rental Ordinance – Even if the Zoning Ordinance is Amended to Clearly Prohibit Short Term Rentals

Ron continued, even if the Rental Ordinance is adopted, and even if the Zoning Ordinance is ultimately amended to clearly prohibit short term rentals, that would not make the Rental Ordinance unnecessary or irrelevant.

If the Zoning Ordinance does not allow short term rentals, that does not necessarily mean that short term rentals currently existing could not be grandfathered and thus allowed to continue. In that event, the Township Board could legitimately decide it would want to regulate those grandfathered short-term rentals with the Rental Ordinance.

One could argue that a short-term rental could never be grandfathered under the Zoning Ordinance if the short-term rental was never a legal land use. However, that would not preclude an owner of a short-term rental in the Township from arguing that the Township is prohibited from enforcing the prohibition against short term rentals against existing short-term rentals which were operated for years with the knowledge of and without interference from the Township. Again, in that event, the Township Board could legitimately decide it would want to regulate those STRs with the Rental Ordinance.

Further, even if the Zoning Ordinance does not allow short term rentals, State Law may be amended to allow STRs in some or all circumstances. In that event, the Township Board may well want its Rental Ordinance in effect.

Even if the Zoning Ordinance is amended to clearly prohibit short term rentals, that amendment could be the subject of a referendum and could be voted down by the electors. In that event, short term rentals could possibly be allowed to continue in the Township, in which case the Township Board could legitimately conclude that it wants its Rental Ordinance in effect.

Judy said that in grandfathering whatever standards wind up being is the Zoning Ordinance still does not permit renting, no more new ones can take place.

Ron said that is true. But then there is historically there is some preexisting and this regulatory ordinance would apply them in terms of insurance, trash, occupancy limit, registration, those kind of things, for the board to consider. There is also the fact that State Law maybe be amended to allow STRs then the regulatory ordinance would be worthwhile. If the zoning ordinance is amended to prohibit STR's, that amendment could be the subject for referendum. So, in many of those situations the regulatory ordinance would have, could have, some value for the township to be in place. It would survive any ZO in this decision the Township Board could legitimately conclude that it wants its RO in effect.

VI. THE RENTAL ORDINANCE WOULD NOT INTERFERE WITH THE PLANNING COMMISSION

Even if the Township Board adopts the Rental Ordinance, which it has not done at this point, that would not preclude the Planning Commission from recommending the elimination of STRs in the Zoning Ordinance, if that is the desire of most of the PC. If the PC only recommends definitions for land uses for those reasons there is no concept of interest to consider recommending a regulatory ordinance while the PC is dealing with a zo. It is not a conflict of interest or anything inappropriate about the

board considering a Regulatory Ordinance or having a harmonizing committee to talk about any issues between the regulatory ordinance and the Zoning Ordinance. For those reasons, it is his opinion that this is not a conflict of interest. Any harmonizing committee would be subject to public body to listen to the discussion and hear those differences in open forum which is exactly the way we want to operate.

I understand Judy said.

Allan said that he talked to Ron last week about your letter, Judy, and I asked Ron what do we do, are we okay and he said he didn't suggest I change a word. Ron said that he knows this is all in a short period of time and I have another meeting I must attend, but Allan wanted to make sure that there was a quick response because these are about conflict of interest.

Allan stated that it is clear when we have one issue were attacking from two weapons, ZO changes and RO to go with it and with the same people involved.

Ron said harmonizing is the committee is to do what the township board said to do.

Allan stated that they talked last week about your letter Judy and said what do we do?

Allan said he had talked to Ron this morning.

Ron said that Allan wanted a quick response because these are great concerns to make sure we are acting on this.

Judy said that after she got to the meeting giving the highlights you said that when you looked at the regulatory ordinance you took out the land use would you be more specific.

We took it out of the purpose section does that mean that it is something that we are adopting as something or is it just a purpose of the ordinance. But the purpose that we are going to allow this to regulate STRs dwellings in the following residential neighborhoods. Even I said the purpose section I didn't like it, it made me uncomfortable, so I took it out and revised it and put it in

Sec. 01-03 This Ordinance shall apply only to STR I kept the reference to these districts but he is not saying that STRs are not allowed in those districts.

Judy responded that she always wants to keep in mind that most people don't deal with it day in and day out and monthly, she said that she has been on the pc for 15 yrs. word are important so when you are uncomfortable with wording and it doesn't belong there and here or shall when you use the word shall it tells a lot of people the difference the people don't appreciate the words can, shall, etc..

Ron said when he uses the word shall, pertains to STRs but he took out the language that says we are going to allow STRs in certain districts.

Judy said that most people out here read it as the same thing. Judy continued while I'm not expecting to have to shy away from using language that we typically use goes in a ZO and while we have a Zoning Administrator interprets. And people don't realize in those words they go ahead and do things and check the rules later. Once the building is up they are not asked to take it down. Judy said that she is making a point here for all of us.

Allan said that this is a work in progress and we did read thru line 17 revised version which he handed out 10/16/17 as the board it is handed out, but we haven't read thru it yet as a board.

Judy said that Allan brought to her attention today that she was to look for this in an email, so she said she appreciates that you are trying to get things to her.

Judy said that her second question is: Lets' say there is a special committee, who do they report their results to? Ron answered If the Township Board establishes a harmonizing committee, they are created by a township board, they will respond to the township board.

Judy asked Ron what does harmonizing mean?

Ron responded that harmonizing is the committee to do what the Township Board says to do.

The issue of collecting fees:

Allan asked Ron about the ability for the Township to collect sufficient fees and for the PC to get appropriate language to allow us to collect the fees we need, such as the host compliance and you mentioned that enabling act gave us more teeth for the rental ordinance.

Ron mentioned that Michigan Zoning and Enabling Act allows us for the collection of escrow, the collection of deposit, from applicants that we have a fund that we can have to cover our expenses. This can be done under the Regulatory Ordinance, but if the application is for a land use so the fee should be in the Land Use Ordinance.

Judy mentioned that as she recalled that there is not any mention of any fees in the ZO. The fees aren't in the ZO, there not in the RO, they should be in a separate fee resolution.

Questions for Host Compliance:

Paul, Allan, Kathy, and Mary will be meeting this Thursday with Host Compliance and we would like some questions to present to them if anyone has one.

Open Issues:

Trash- Separate stand-alone ordinance possibly.

Fire Pits- Ron Wise explained how they administer these.

Fireworks – Is a general stand-alone issue, it depends on the what the State is doing

Septic- This is a subject that we need to work on, past 107th there isn't public water/sewer.

Next steps:

Allan mentioned that he would like another meeting after they have met with Host Compliance and get the questions from Ron Bultje maybe the 1st week of November. It was recommended to have Ron Bultje come back. A meeting after the election, after the auditors, we will schedule a meeting the week of the 13th.

PUBLIC COMMENTS:

Lois Swartz made the statement that her community is not a resort.

John Barkley stated that he just wanted to echo Lois's remark about the three days.

Debbie Weaver-

Laura Townsend asked the board if they can give the PC a time line?

Dennis Weaver- One house on Pacific and now there are 9 homes on Pacific.

Mike Werkema- He did a lot of the development in Miami Park.

Val Baas- Density

Sally Newton asked for a copy of the ordinance.

Bill Chambers-we have gotten a lot of feed-back on the ordinance.
Chris Barcyk said that saturation wouldn't happen if we have resorts.
Debbie Weaver stated that she thinks the market will balance itself out.
James Hart thanked us for the work we have done on this for all these months.

Lu made motion to adjourn @ 7:55pm.

Minutes respectively submitted by
Cheryl Brenner, Clerk