

CASCO TOWNSHIP BOARD OF TRUSTEES  
MINUTES SPECIAL MEETING  
MAY 15, 2018 @ 3:00PM

Approved 6/18/18

Call to Order: Overhiser called meeting to order at 3:00pm and led in the Pledge of Allegiance.

Present: Overhiser, Macyauski, Brenner, Winfrey, Graff, Attorney Ron Bultje and 13 other interested people.

Absent: None

Allan reviewed the agenda for the Special Meeting:

1. First on the Agenda is talking about an Informational letter from Township Attorney, Ron Bultje that discusses things associated with the upcoming referendum.
2. Initial Budget discussion primarily on the general fund.
3. Cost of living salary resolution for officials and employees.
4. Lawnmower bid.

- **Discussion with Ron Bultje about upcoming referendum.**

Allan pointed out that the board has had the informational letter from Ron Bultje, with the Memorandum is "confidential – subject to Attorney/Client Privilege to discuss it or the Township may waive that privilege and will waive it if contents of the Memorandum be disclosed to the public. The board has the ability to go into executive session or to make it public at this time and go ahead and discuss it.

Ron said as long as the letter has been maintained confidential to this point you could go ahead into executive session.

Allan recommended that we make a motion to make this document public and go ahead and discuss the memorandum.

Paul made motion. Judy supported.

All Votes in favor. Motion Carried.

Allan explained that the Memorandum is a result of the last couple of months this board and people in the audience have had questions about the referendum. What does **yes** mean? What does **no** mean? It was the consensus of the board that we seek some legal advice to figure out exactly how to answer these questions. After I discussed this with Ron he came up with some very good thoughts.

Judy asked Ron why the Memorandum is marked confidential? Ron explained that he marked it that way because it is your privilege as my client to keep it confidential. It is your privilege to waive that, which you just did. He also said he marked it confidential because it is your right to let you know you can keep it confidential if you want to. He marked it confidential so that you know you are aware of your rights.

Judy asked is there any reason why it should be confidential or as we move forward anything requested of you should remain confidential? Ron responded when he gives legal opinions on issues of public concern should be confidential so that people are aware that the clients have the right to keep it confidential. Judy thought it was strange because many of your other letters were not handled this way.

Ron responded that quite often he will write a letter that he knows will be read at an open meeting. Summary of a resolution that is going to be discussed at an open meeting he doesn't mark that confidential.

Ron explained that the question from Allan was, "What can we talk about in terms of the election?" The terms of the officials are you may educate talk about facts, but you may not advocate results. Ron discussed the questions and concerns that his letter explained, see the following:

**1. What is the Impact of the Allegan County Circuit Court Case?**

As you are aware, a few years ago the Allegan County Circuit Court decided a case regarding Rentals in the Township. In doing so, the Circuit Court found that rentals, are commercial land uses and are not allowed in residential districts in the Township.

The first question is whether the Township is bound by that decision. The Township was not a Party to that lawsuit and did not have an opportunity to defend its Zoning Ordinance.

Further, the case was appealed to the Michigan Court of Appeals, which upheld the decision of the Circuit Court, but only by focusing on the restrictive covenants regulating the property, not by focusing on the Zoning Ordinance.

There is a question whether the Circuit Court decision intended to just address the short-term rentals which led to that litigation, or whether the decision addressed long term rentals as well. The decision did not clarify that issue, or even what would distinguish a short-term rental versus a long-term rental.

Thus, if the Amendment does not take effect following the referendum election, the Circuit Court decision will continue to influence the interpretation of the Zoning Ordinance, but to an unknown extent. The result will be a significant amount of confusion regarding unresolved issues, which may only be clarified by further litigation.

**11. Are Rentals Grandfathered as Prior Nonconforming Uses?**

Even if the Zoning Ordinance, without the Amendment, does not allow short-term rentals or long-term rentals, there may well be a dispute as to whether those engaging in the rental of their property are allowed to continue to do so because the rentals are prior nonconforming uses which are grandfathered and therefore need not comply with the Zoning Ordinance.

This argument that the rentals may be grandfathered as prior nonconforming uses depends on whether or not the rentals were legal when they were initiated. If the rental uses were not legal when they were started, then they would not be grandfathered.

On the other hand, if the rentals began before the Township had zoning, or if the rentals began when a prior Zoning Ordinance would have allowed them to operate legally, then those continuing the rental operations could at least argue that their rental are grandfathered as prior nonconforming uses and may continue even if not allowed under the current Zoning Ordinance.

Whether or not current operators of rental dwellings could successfully make an argument that their rentals are grandfathered as prior nonconforming uses would have to be evaluated by the Township on a case-by-case basis, leading to a significant amount of uncertainty, and possibly leading to a significant amount of litigation to clarify issues.

**111. Is the Township Estopped From Enforcing (Not Allowed to Enforce) its Zoning Ordinance Against Rentals?**

Even if those operating long term rentals or short-term rentals or both in the Township are not grandfathered as prior nonconforming uses, those rentals operators may be able to successfully argue that the Township is estopped from enforcing (not allowed to enforce) its Zoning Ordinance against the rental operations.

The rationale of this argument would be that the Township has allowed the rentals to operate for years. The Township has been aware of their operation. The Township has taken no action to eliminate the rental operations, but rather has allowed the rental operators to upgrade their rental units in reliance on a continued ability to engage in rental operations. Therefore, the argument would be that the Township cannot change its position now and bring enforcement action against the rental operators, stopping them from continuing the rental operations in which they have engaged for years, sometimes decades without interference or objection from the Township.

Again, this would be a very fact intensive argument. Every rental operation would have to be considered on a case-by-case basis, as to when it was initiated, when the Township learned about the operation, what expenses the rental operator has incurred in reliance on the Township's failure to take action, etc.

Again, a significant result of this argument would be a large amount of confusion and uncertainty, again possibly leading to a significant amount of litigation to resolve uncertain issues.

#### **1V. Does the Zoning Ordinance Improperly Exclude Rentals?**

Even if long term rentals and short-term rentals are not grandfathered as prior nonconforming uses, and even if the Township is not estopped from enforcing its Zoning Ordinance against those rental operations, a question remains whether the Zoning Ordinance is illegal as exclusionary. If the Zoning Ordinance does not allow long term rentals or short-term rentals, when there is a significant demand for those rentals, the Zoning Ordinance might be considered to be illegal because it is exclusionary.

Again, this is not an issue that could likely be worked out between the Township and the various pro-rental and anti-rental factions which exist in the Township. Rather, the most likely way to resolve this issue would likely be to litigate the matter in Circuit Court, with a possible appeal to the Court of Appeals and possibly to the Michigan Supreme Court. If so, a resolution for this issue could be years away.

#### **V. Township Residents and Property Owners Could Sue Each Other.**

Even if there is nothing the Township can do under its Zoning Ordinance to regulate or prohibit long term rentals or short-term rentals or both, whether because the rentals are grandfathered or because the Township is estopped from enforcing its Zoning Ordinance or because the Zoning Ordinance wrongfully excludes rentals, that would not necessarily preclude Township residents or property owners from suing those who own and operate rental operations within the Township. Even if the Township is unable to enforce its Zoning Ordinance against the rental operations, Township residents and property owners could still potentially use the Zoning Ordinance to argue that the rental operations violate the Zoning Ordinance and therefore are nuisances which must be determined to be illegal by the Circuit Court.

Obviously, these issues would again be decided on a case-by-case basis, with any number of lawsuits filed against any number of rental operations in the Township. The resolution of these lawsuits, including appeals to the Court of Appeals and possibly the Michigan Supreme Court, could take years.

Judy handed out and read her opinion of Ron Bultje's Memorandum which she felt was geared towards litigation. A copy of this letter will be part of these minutes.

**V1. The Township is Not Conceding any of These Issues.**

To the extent the Township discusses any of the above possibilities, the Township should make clear that it is not conceding any of the above arguments. The Township is not conceding that short-term rentals or long-term rentals are grandfathered as nonconforming uses. The Township is not conceding that long-term rentals or short-term rentals are allowed to continue because the Township would be estopped from enforcing its Zoning Ordinance. The Township is not conceding that its Township Ordinance illegally excludes long-term rentals or short-term rentals from operating in the Township.

Rather, the Township is simply acknowledging that these arguments could be made, and that if they are made, the only way to ultimately finally resolve them may well be through litigation in the Circuit Court, with possible appeals to the Court of Appeals, and possibly even appeals to the Michigan Supreme Court. Thus, the resolutions of all of these issues could well take many years and many dollars and in the meantime a significant amount of confusion would remain in the township concerning what land uses are allowed and what are prohibited by the Zoning Ordinance.

**V11. Conclusion.**

If you have any questions concerning the above, please advise. The above is not necessarily a recommendation that all of these statements be made. However, the above includes statements that the Township could make as educational statements, as answers to questions from Township resident and property owners, without advocating any particular result in the referendum election to be held this August. By discussing the possibilities of what might happen if the Amendment is voted down in the referendum, the Township is not advocating for or against the referendum, but simply attempting to answer questions which have been and may continue to be concerning the referendum.

John Barkley asked for some more information about the referendum, what is the next steps to get this on the ballot.

There was discussion on the language of the referendum on the ballot.

Sally Newton asked about letters going out to some of her clients that mentions don't forget to register. Allan responded don't advertise to rent if you haven't registered.

Lois Swartz, Chris Barczyk, Dave Campbell, Debbie Weaver, Ellie Callander, Val Baas, Janet Chambers, & Ron Bultje discussed the board members position they can educate but not advocate.

- **Budget Discussion.**

Allan explained that what the board has is the preliminary budget for the board to look over. We will schedule a special meeting to go over the budget more thoroughly line per line.

- **Cost of Living Salary Resolution for Officials & Employees.**

Allan presented to increase the employees & Township officials a cost of living raise 2.1% increase. The following Resolutions need to be adopted.

Resolution No. 51518 – 3 Treasurer  
increase from 26,400.00 to 26,954.00  
Paul made motion to approve the resolution no. 51518. Judy supported.

Resolution No. 51518 – 4 Clerk  
Salary increase to \$26,954.00  
Judy made motion to approve the resolution no. 51518 salary increase for clerk. Paul supported

Resolution No. 51518 – 5 Supervisor  
Supervisor increase to \$26,954.00  
Lu made motion to approve the Resolution No. 51518 salary increase for supervisor. Paul supported.

Resolution No. 51518 – 6 Trustee – Judy Graff  
Salary increase to \$9,189.00.  
Cheri made motion to approve the Resolution No. 51518 – 6 for salary increase for Trustee Graff.  
Lu supported.

Resolution No. 51518 – 7 Trustee – Paul Macyauski  
Salary increase to \$9,189.00.  
Lu made motion to approve the Resolution No, 51518 – 7 for salary increase for Trustee Macyauski.

The employees will receive a cost of living raise of 2.1% increase also.

Roll Call Vote:

Yahs: Overhiser, yes, Brenner, yes, Winfrey, yes, Graff, yes, Macyauski, yes

Nays: None

These Resolutions will be part of these minutes.

- **Lawnmower Bid.**

Allan explained that the township went out for bids for our used lawnmower, we received only one Bid in the amount of \$1,001.00.

Allan made the motion to accept the bid in the amount of \$1,001. Lu supported.

Lu made motion to adjourn. Paul supported.

Meeting adjourned at 4:45pm

Minutes respectively submitted by,  
Cheryl Brenner, Township Clerk