

**THE CHARTER TOWNSHIP OF OSHTEMO**  
**Township Board Meeting**  
**June 14, 2016**

The Oshtemo Township Board public comment session was held at the Township Hall. Supervisor Heiny-Cogswell called the meeting to order at 6:00 p.m.

**PRESENT:**

Supervisor Libby Heiny-Cogswell  
Clerk Deb Everett  
Treasurer Nancy Culp  
Trustee Nancy Carr  
Trustee Dusty Farmer  
Trustee Zak Ford  
Trustee Grant Taylor

Also present were Township Engineer Marc Elliott, Planning Director Julie Johnston, Fire Chief Mark Barnes, Lt. Troy Faulk and 5 interested people.

Motion by Culp, second by Ford to adopt a resolution to adjourn to closed session to consult with legal counsel for purposes of discussing pending litigation because to do so in an open meeting would have a detrimental effect upon the Township's position and disclose matters protected by attorney-client privilege. Roll call showed Heiny-Cogswell-yes, Taylor-yes, Carr-no, Culp-yes, Everett-yes, Farmer-yes, Ford-yes. The Board adjourned to closed session at approximately 6:00 p.m.

Motion by Taylor, second by Farmer to return to open session at approximately 7:00 p.m. Carried 7-0.

Supervisor Heiny-Cogswell called the regular meeting to order at approximately 7:05 p.m.

**PRESENT:**

Supervisor Libby Heiny-Cogswell  
Clerk Deb Everett  
Treasurer Nancy Culp  
Trustee Nancy Carr  
Trustee Dusty Farmer  
Trustee Zak Ford  
Trustee Grant Taylor

Also present were Township Engineer Marc Elliott, Planning Director Julie Johnston, Fire Chief Mark Barnes Lt. Troy Faulk and approximately 40 interested people.

**CITIZEN COMMENTS**

Lorie Versteeg, 9850 Sunnywood, commented a committee was formed in 2009 to consider a leaf burning ban and came to the Board in 2010 with a recommendation and letter of support from Fire Chief Barnes to ban open burning of leaves and grass clippings. She noted no action had been taken and inquired as to the status of the issue.

Jim Jackson introduced himself and advised he was running for Kalamazoo County Treasurer.

**CONSENT AGENDA**

Items on the consent agenda were:

- a) Minutes of May 10<sup>th</sup> regular meeting, May 17<sup>th</sup> joint meeting, and June 1<sup>st</sup> special meeting.
- b) Receipts & Disbursements Report
- c) Revision of Mutual Aid Box Alarm (MABAS) agreement.
- d) Friends of the Parks Treasurer Appointment

Motion by Taylor, second by Heiny-Cogswell to approve the consent agenda. Carried 7-0.

**RECOGNITION – KALAMAZOO COUNTY SHERIFF'S OFFICE**

Sheriff Rick Fuller presented Kalamazoo County Deputy Bryan Jolliffe and Michigan State Trooper Joshua Arnold with commendations for their actions at an incident on April 21<sup>st</sup> protecting the life and property of others.

**RECOGNITION – ROGER TAYLOR**

Supervisor Heiny-Cogswell advised the Board wished to recognize Roger Taylor for his participation as a Zoning Board of Appeals member from 2006 to 2013 and Parks Committee member from 2011 to 2015. Mr. Taylor was unable to attend; the certificate will be presented at a later date.

## **MYSTIC HEIGHTS SITE CONDOMINIUM – STEP I – TENTATIVE PLAN APPROVAL**

Planning Director Johnston presented for consideration tentative approval of a site condominium development, Mystic Heights, a proposed 40 unit residential site condominium located on the east side of VanKal Street on 40 acres between Stadium Drive and M Avenue. She advised the Planning Commission first considered the plan in 2015 and denied it indicating the development maximized the greatest number of building sites at the expense of natural features; they did not feel the design met the intent of the ordinance. Meetings were held with the applicant and the Township to discuss how to bring the tentative preliminary plan more into compliance with the intent of the ordinance; the applicant submitted the current plan and the Planning Commission at the April 28, 2016 meeting decided to recommend approval to the Township Board.

Ms. Johnston then reviewed the standards for tentative plan review; streets have been reviewed by the Road Commission of Kalamazoo County and found acceptable, the proposed development meets the density requirement, some sites will require extensive grading and tree removal to provide suitable space for home and drain field construction, drainage as designed is not anticipated to generate enough to cause adverse impact on surrounding properties; specific building and grading plans for each site will need review, sidewalks are provided, no reserve strips are planned, natural features including steep slopes and substantial wooded areas exist, the plan provides a 20 foot buffer along the rear property line of building sites at the perimeter where trees will not be removed and trees over a 12 inch diameter will be preserved except in the building envelope, as necessary for improvements and/or to facilitate drainage. There are two limited common elements which total 1.75 acres and have been set aside for protection of topography of steep slopes and to ensure lots meet the Township's width to depth ratio for lots. While grading and drainage are typically in Step 2, because of concerns the issue was raised in Step 1. Without clear grading plans, engineering details and individual site assessments from Kalamazoo County Health Department the exact impact cannot be determined, however, it is fairly clear in order to establish suitable building sites substantial grading and tree removal will be required, particularly sites 7-18 and 26-28.

She also advised the Fire Department has reviewed the plan and indicated they have no concerns, the Township Engineer has concerns related to grading and stormwater management, which will need to be more clearly addressed in Step 2, Kalamazoo County Health Department has conducted a pre-preliminary review including a site visit and soil borings, they provided the applicant with the results.

Pat Lennon, attorney representing the developer, VanKal Partnership, commented it has been over a year since the plan was submitted to the Planning Commission, every element complies with the ordinance in the previous and current plans, the current plan was enhanced with input from the Planning Commission and other Township representatives, the principles are Mike Seelye and Scott Carlson, who have completed numerous successful projects, willing to accept input but also understand their rights.

Jan Thomas, 45537 Winchester Circle, commented she has submitted a list of 41 residents of Rustic Acres subdivision who are opposed to the plan, she inquired why 40 homes allowed by ordinance trumps other parts of the ordinance to preserve existing natural features and how does the 20 foot buffer for 11 lots and 1.75 acre corners provide protection of natural features, and who will monitor the restriction to preserve trees over 12 inches in diameter. She urged the Board to consider how well the plan meets all of the ordinance.

Wade Lawrence, 10749 West M Avenue, commented that while the Zoning Ordinance Statement or Purpose for Rural Residential District does not constitute "black letter law" as advised by Township Attorney Porter, it is nevertheless part of the ordinance and makes the intent clear. He commented the proposed plan is nothing more than a traditional subdivision and should be excluded from consideration under the ordinance given the intent is identified as not suitable for such. He inquired why educational, recreational and noncommercial centers are required to maintain not less than 75% open space but not residential development, why the Planning Commission can impose additional restrictions for other uses. He also expressed concerns regarding drainage basins being mosquito breeding grounds, falling property values, inadequate water supply and potential groundwater contamination from septic systems, and only one entrance road. Mr. Lawrence also commented the plan is contrary to the Master Plan.

Christine Dinkins, 13393 Honeysuckle, advised she is the niece of the former owners of the property who would not have wanted the development, the current plan does not preserve natural features, the project is only about the all mighty dollar.

Judy Diani, 4115 South VanKal, commented as elected officials the Board is trusted to do what is right, their neighborhood is rural residential with an average of 10.3 acres per home, they moved to the area for a rural residential way of life, not to have it taken over by a city type subdivision of 40 homes, destroying all of the

natural features of the land in the process. She commented the developers will not feel the negative impact of this change. She also expressed concerns regarding stress on aquifer level, quality of water with all of the necessary drain fields, neighbor's well depths, erosion, detention ponds with stagnant water and mosquitoes, traffic level, noise level, destruction of trees, wildlife, and unique plants. She also commented these issues should be considered before the plan goes to Step 2 and does not believe the ordinances were meant to be followed in a narrow context, especially bypassing the Master Plan; the back half of the property rises to 80+ feet and is very steep and is a natural feature that will not be preserved by clear cutting and bulldozing to accommodate homes. Mrs. Diani commented she understands this is a difficult decision due to pressure of litigation, but urged the Board to do the right thing, listen to all of the neighbors who are opposed, use common sense to look at the big picture, and consider the majority's voice which is interpreting this ordinance correctly.

Art Diani, 4115 South VanKal, thanked the Board for visiting their property to view the proposed site, the property is a historical sight formed by glaciers which will be gone forever, 10 of the proposed sites border his property which is not rural residential, the plan does not preserve natural features, and urged the Board to listen to the people.

John Robyn, 3517 South VanKal, commented the development borders his property, the Board is welcome to visit his property for another perspective, the 80 foot hill is equivalent to 8 stories, this is not a cornfield, they could leave the hill alone and build fewer houses but it's all about the money. He urged the Board to do the right thing.

Ted Boyer, 45732 22<sup>nd</sup> Street, commented he lives across VanKal from the proposed site, he does not feel the environmental effects have been considered including 40 wells, 40 septic tanks and at least 80 additional cars, VanKal will need to be widened for turn lanes, the equipment used to develop will disrupt the lives of the people around the site. He urged the Board to do the right thing and say no.

Terri Hoare, 3499 South VanKal, commented she was there to support her neighbors and urged the Board to turn the request down.

Sydna Boyer, 45732 22<sup>nd</sup> Street, challenged the Board to work for a plan to turn the property over to the Southwest Michigan Land Conservancy to preserve it. She expressed concerns regarding trees in the buffer zone dying and congestion in the area. She urged the Board to do the right thing.

Supervisor Heiny-Cogswell asked for clarification of the plan notes regarding the drainage through the preservation area on some lots.

Mr. Lennon advised the current plan was a product of collaboration with Township staff, the original plan contemplated using a drainage swale which would have resulted in removal of more trees, the concession was to develop the meandering ditch for drainage through the buffer area; a swale would be more problematic, the meandering ditch is a less intense drainage approach. He commented the plan meets the ordinance requirements.

Tim Woodhams, engineer for the developer the plan commented conversations with Township staff led to the language, in the preserve areas no trees will be removed for lot improvements.

Trustee Carr commented she wants residents to know the Board is bound by the ordinance, perhaps the door is still open to preserve more trees, she would not like such a development either, it is unfortunate the former owners did not place contingencies on the sale of the property, but litigation is time consuming and expensive.

Supervisor Heiny-Cogswell commented this is a very difficult situation, she feels the plan does not meet the spirit of Rural Residential in the Master Plan nor ordinance language regarding preserving natural features as far as possible. She further commented the language could be stronger and the Planning Director is working to make changes to the Rural Residential ordinance. She also noted the Township Attorney could not be present at the meeting.

Trustee Ford commented he concurs with Supervisor Heiny-Cogswell, the plan does not do a good enough job to meet the ordinance and preserve natural features, it is a travesty and pure greed.

Trustee Farmer commented she wished to clarify statements by Mr. Lennon; first that the plan has always been in compliance is only an opinion, the Planning Commission did not share that opinion, and saying the Planning Commission recommended approval was not the motion. The motion was to move the issue to the

Township Board. She noted as the Township Board representative on the Planning Commission she felt since the Planning Commission had worked on it more than a year it was time for the Township Board to take it up, especially due to the litigation. She also commented that after seeing the land she does not think the site plan follows the ordinance.

Clerk Everett commented she does not think this plan meets the spirit of the ordinance; it could have been designed differently, it impacts the people who will still be there.

Treasurer Culp commented she felt no real changes had been made and it does not fit the area.

Trustee Taylor commented looking at the Master Plan this area was not to be developed in this way, even with all t's crossed and i's dotted as far as regulations that doesn't mean it should go in, it's a terrible situation and he would not be comfortable moving forward without consultation with the Township Attorney.

Motion by Taylor, second by Carr to table the request for Board consultation with the Township legal counsel. Carried 5-2 with Farmer and Ford voting no. Consensus was to table it to the June 28<sup>th</sup> meeting.

#### **CONDITIONAL REZONING – 4221 SOUTH 9<sup>TH</sup> STREET**

Planning Director Johnston presented a recommendation from the Planning Commission to approve a conditional rezoning for 10.82 acres from I-R Industrial District Restricted to I-1 Industrial District with the condition that the western 2 acres be developed with uses permitted in the I-R district and the remaining acreage be developed as a self-storage facility. She noted the property was formerly a lumber company, the recent development of transmission lines by ITC necessitated removal of two buildings, there is an ITC utility easement on the southern border of the parcel which goes from 102 feet at South 9<sup>th</sup> Street to 180 feet at the east property line and makes development of the site challenging.

Motion by Everett, second by Farmer to accept the conditional rezoning as recommended by the Planning Commission for First Reading and set Second Reading for June 28<sup>th</sup>. Carried 7-0.

#### **ZONING ORDINANCE TEXT AMENDMENTS SECTIONS 62, 66, 68 – SECOND READING**

Planning Director Johnston presented a recommendation from the Planning Commission to amend three sections of the Zoning Ordinance for Second Reading.

Section 62.000 Nonconforming Uses to address parcels, lots or building sites that were lawfully recorded but no longer meet Zoning Ordinance requirements.

Section 66.201 Schedule of Area, Frontage and/or Width Requirements to require higher density development be approved under the Open Space Community Ordinance to support the Master Land Use Plan and original intent when RR-Rural Residential District was adopted.

Section 68.300 Off Street Parking of Motor Vehicles to address the number of stacking spaces a drive in window should provide.

Motion by Farmer, second by Ford to adopt the text amendments. Carried 7-0.

#### **ZONING AND GENERAL ORDINANCE – REORGANIZATION & WEBSITE DEVELOPMENT**

Planning Director Johnston presented a proposal to reorganize the zoning and general ordinances to a more user friendly format and develop an Internet-based site. She advised four consulting firms were researched and recommends EnCode Plus, which would allow staff to amend ordinance language after adoption and go "live" with the changes immediately, the internal system will also archive old ordinance language and notes or minutes can be attached for historical record.

She advised she had prepared a presentation for the work session; since there was not time she will make the presentation available through e-mail.

She proposed working with Wade Trim for a cost not to exceed \$15,000 for the reorganization of the ordinances and EnCode to develop the website and upload the ordinances for a cost of \$15,565 with a yearly hosting and licensing fee of \$4,200. She requested the 2016 budget be amended in the amount of \$34,915; training is included.

Motion by Taylor, second by Culp to approve the expenditure and amend the Planning Department budget not to exceed \$34,915. Carried 6-1 with Carr voting no.

### **RESOLUTION OF INTENT – SEWER BONDS**

Supervisor Heiny-Cogswell presented a memo from Attorney Porter requesting the Board adopt a resolution to preserve its right to reimburse itself through bonding for the sewer work being done on North 10<sup>th</sup> Street and Atlantic Avenue and future projects; adopting the resolution does not authorize any debt but reserves the authority for the Board to issue bonds in the future.

Motion by Taylor, second by Heiny-Cogswell to adopt the resolution. Roll call showed Taylor-yes, Carr-yes, Culp-yes, Everett-yes, Farmer-yes, Ford-yes, Heiny-Cogswell-yes.

### **OTHER BUSINESS**

Trustee Carr commented she would like to discuss an ordinance to ban burning of leaves and grass clippings. She gave an overview of the committee work in 2009 and 2010 which recommended the ban; she noted the Fire Chief also supported the ban. She also noted the ban would include leaves and grass clippings only, not campfires or burning of clean wood. Consensus was to review the information collected by the committee to start a discussion on the issue.

### **BOARD MEMBER COMMENTS**

Clerk Everett advised the first Music in the Park concert at Flesher Field on June 12<sup>th</sup> was a success and the first Movies in the Park for this year will be on Thursday, June 16<sup>th</sup> at Township Park.

Supervisor Heiny-Cogswell thanked Parks Director Karen High for her work on obtaining a Michigan Arbor Day Alliance \$2,000 grant for tree planting.

There was no further business and the meeting was adjourned at approximately 9:20 p.m.

**DEBORAH L. EVERETT**  
Township Clerk

**Attested: ELIZABETH HEINY-COGSWELL**  
Supervisor