

THE CHARTER TOWNSHIP OF OSHTEMO
Township Board Meeting
June 28, 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 Attorney James Porter, Township Engineer Marc Elliott, Planning Director Julie Johnston, and 1 interested person.

Motion by Taylor, second by Farmer 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 Carr-yes, Culp-yes, Everett-yes, Farmer-yes, Ford-yes, Heiny-Cogswell-yes, Taylor-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 Attorney James Porter, Township Engineer Marc Elliott, Planning Director Julie Johnston, Fire Chief Mark Barnes, and approximately 30 interested people.

CONSENT AGENDA

Items on the consent agenda were:

- a) Minutes of June 14th regular meeting
- b) Receipts & Disbursements Report

Motion by Ford, second by Culp to approve the consent agenda items. Carried 7-0.

CONDITIONAL REZONING – 4221 SOUTH 9TH STREET – SECOND READING

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 9th Street to 180 feet at the east property line and makes development of the site challenging.

Motion by Farmer, second by Everett to approve the conditional rezoning. Carried 7-0.

MYSTIC HEIGHTS SITE CONDOMINIUM – STEP I – TENTATIVE PLAN APPROVAL

Supervisor Heiny-Cogswell advised this item had been tabled from the June 14th meeting in order for the Board to meet with Township legal counsel; this took place during the earlier closed session. Planning Director Johnson provided an overview of the project.

Attorney Porter advised he has been in discussion with the Township's insurance counsel, insurance carrier and agent as the Township is currently in litigation regarding Mystic Heights. He advised it comes down to a matter of interpretation, the law is clear that if a statute or ordinance is clear, there is no interpretation; you

simply apply it. If there are vagaries in the law then it is left up to interpretation; and believes the only issue raised at the Planning Commission and Township Board was whether or not this development complied with sub-section V, D.3.d. (2), which states existing natural features, which add value to residential development and enhance the attractiveness of the community such as streams, watercourses, historic spots, woods, natural terrain habitat for threatened or endangered species and similar irreplaceable assets should be preserved insofar as possible in the design of the project. He commented to the best of his understanding the applicant has complied with every other provision in the ordinance, the only issue is whether they comply with this provision. The Planning Commission passed a recommendation on to the Township Board, therefore, it is up to the Township Board to make that determination; their goal is not to determine what they think it means, their goal is to discover what was meant when the language was adopted. They have to also construe the ordinance as a whole and in a reasonable fashion to carry out the objective sought to be achieved by the general structure of the ordinance itself, the intent of this ordinance is to review and approve subdivisions and site condominiums. When reading or interpreting an ordinance, specific provisions take precedent over a general provision, a specific provision would be how many lots are allowed under the ordinance. Mr. Porter commented preservation of natural features insofar as possible he would argue is a bit subjective or vague; under Michigan law the only thing the Board can consider with regards to what it wants to base decision on is ordinances and published rules of the municipality. He also commented regarding references that have been made regarding the Master Plan, a recent Court of Appeals' case ruled the Master Plan is not a rule in the Land Division Act; the Board must address the subdivision and zoning ordinances. Attorney Porter also provided information on the current and possible future legal implications including damages to the developer that the Township's insurance may not cover.

Supervisor Heiny-Cogswell commented she would encourage the Board to work with the Attorney to bring to the July 12th meeting a proposal for a three to four-month moratorium on any new developments and consider new ordinance language. She noted these steps would not solve the current situation. She further commented there are private property rights involved, the Township nor the neighbors own the property, much of the vegetation not pre-settlement, the moraine has highly erodible soils which the development will impact, providing level septic systems could be difficult. She further commented Step 2 would need to provide means to identify trees over 12 inches which have been indicated on the plan to be preserved; a tree survey would enable the Township during construction to help with enforcement.

Patrick Lennon, representing the developer advised they are committed to the preservation of the trees and understand they would be subject to oversight and would be willing to work with Township staff.

Trustee Taylor commented this is not what the Township wanted to see but the Board is in a tough spot, the ordinance he thought would preserve Snake Hill is trumped by another ordinance. He also commented the Township is facing serious litigation, not sure if insurance will cover it, the ordinance is vague; this is a very hard choice but the risk to the Township is too great, there could be serious legal damages and the development will happen anyway.

Trustee Farmer commented she appreciates Attorney Porter's opinion and legal counsel.

Clerk Everett commented it is unfortunate; she wished the developer was willing to work a bit more to come up with something more in keeping with the neighborhood; while the ordinance does allow 40 lots, that does not mean it is the best fit. Ms. Everett read the provision in the ordinance related preserving natural features and felt the proposal did not meet these requirements. She also commented that there was criticism that it is all about the money; the reluctance of the developer to even consider something else leads people to that conclusion. She further commented there would still be a profit with 20 or 30 lots and described the Pine Acres development as a comparable where topography was also challenging. Ms. Everett further commented the plan appears to maximize the profit which they have a right to do, but the developer will make money and go away; that is not being a good neighbor. She also commented the Board has to consider the damage a protracted legal battle will cause all the residents of the Township.

Trustee Ford commented he would reiterate his former statement that this is a travesty, not what the Master Plan calls for, and while not a legal basis to deny the proposal, it does not take a lot of common sense to realize this is not what was intended to be there, this is about greed, the developer would make a profit or less, they do not want to comply with the vision of the community; he does not feel the plan follows the ordinance and will vote no.

Treasurer Culp commented she wished the developer had been willing to work with the Township and neighborhood to have fewer lots. She also had concerns that septic systems will be difficult to place on some of the lots.

Attorney Porter reviewed the options available to the Board; tentatively approve the development, tentatively approve subject to conditions, or set forth in writing reasons for rejection and outline requirements for tentative approval.

Motion by Heiny-Cogswell, second by Carr to approve Step 1 conditioned upon a tree survey of 12 inch and larger be provided as part of Step 2 with mechanics worked out with staff and attorney, and condition that as part of Step 2 request the developer to address issues of erodible soils, tree clearing, and septic fields, and consider the possibility of fewer lots.

Roll call showed Taylor-yes, Carr-yes, Culp-no, Everett-no, Farmer-no, Ford-no, Heiny-Cogswell-yes. Motion denied 4-3.

Attorney Porter and insurance counsel James Straub advised the ordinance requires written reasons for rejection and conditions under which approval would be granted.

Motion by Taylor, second by Everett to table further discussion to formulate exact conditions for denial and/or approve the request. Carried 6-1 with Carr voting no.

Supervisor Heiny-Cogswell advised this will be placed on the July 12th meeting agenda.

PROPERTY LINE ADJUSTMENT – COUNTRY CLUB VILLAGE

Planning Director Johnston presented a request from the owners of Lot 34 at 559 Sunrise Circle, and Lot 128 at 741 Club View in the Country Club Village plat to adjust the property line at the rear of the properties; the owner of Lot 34 has agreed to sell a portion at the rear of the lot to the owner of Lot 128. Such lot adjustments require Township Board approval.

Motion by Taylor, second by Carr to approve the lot line adjustment. Carried 7-0.

FIRE STATION BAY FLOOR REPAIR

Fire Chief Barnes presented information regarding an issue with of an area of the Station 1 bay floor which is sinking; believed to be from erosion underneath. He advised Township maintenance and engineer have been consulted. Chief Barnes advised bids were received from three local contractors for the work which will entail removing a section of the concrete to determine the cause. He recommended accepting the low bid from James Fulton at \$22,300 and a contingency of \$10,000 for possible unknown repairs that might be necessary when the concrete is removed. Township Engineer Elliott advised he concurs with Chief Barnes' assessment.

Trustee Carr commented a more thorough assessment should be done due to the cost.

Motion by Farmer, second by Culp to approve an expenditure up to \$33,200 and amend the budget accordingly. Carried 6-1 with Carr voting no.

DISCUSSION – OPEN BURNING ORDINANCE

Board discussion continued on the issue of open burning of leaves and grass brought forward at the June 14th meeting by Trustee Carr. Fire Chief Barnes provided the historical information on the issue including work done by a study committee in 2010, and statistics on number of burning permits issued and complaints taken from 2012 through year to date. Lengthy discussion ensued regarding the health and safety issues related to burning leaves, banning the burning of leaves and grass in plats, the entire Township, or selected areas, possible means of disposal including services available through trash haulers, curbside pickup, or drop off at the Township. It was noted there was an effort to provide public education as a result of the committee work in 2010 on means of leaf disposal.

Motion by Carr to amend the opening burning ordinance to ban burning of leaves and grass, and exclude campfires and clean wood, died for lack of support.

Supervisor Heiny-Cogswell noted a study had begun to explore sole source trash removal, disposal of leaves and grass could be included with a goal of bringing information back to the Board on August 9th.

USDA- RURAL DEVELOPMENT GRANT & LOAN PRE-APPLICATION

Public Works Director Elliott advised in working under the Board's previous direction to explore options for funding sanitary sewer infrastructure, it came to Supervisor Heiny-Cogswell's attention the Township could be eligible for funding under the USDA-Rural Development program. He noted to determine eligibility for a grant or low interest loan, the Township must submit a pre-application. He noted some of the program

qualifications are based on median income and population in a particular sewer district. Proposals were requested from consultants to develop the pre-application, two were received and he recommends Prein & Newhof's proposal in the amount of \$1,250 due to the long term relationship and their familiarity with the Township; the second proposal in the amount of \$15,500 is from Fleis & VandenBrink. There was lengthy discussion regarding the difference in the cost and scope of the proposals. Supervisor Heiny-Cogswell noted Fleis & VandenBrink brought the possible source of funding to the Township's attention and provided many examples of their work in this area.

Motion by Heiny-Cogswell, second by Ford to authorize the Supervisor to enter into the agreement with Fleis & VandenBrink in the amount of \$15,500 for the USDA-RD pre-application for neighborhood sewer extension funding. Carried 5-2 with Carr and Farmer voting no.

OTHER BUSINESS

Chief Barnes advised the Board a member of the Fire Department suffered an electrical shock at a recent fire event when he stepped on a fallen electrical wire hidden by tall grass; he noted the firefighter suffered no lasting injury but this is an example of what firefighters encounter in the course of duty.

Treasurer Culp requested the Board add First Source Bank to the list of approved depositories for Township funds.

Motion by Culp, second by Taylor to add First Source Bank to the list of approved depositories. Carried 7-0.

BOARD MEMBER COMMENTS

Supervisor Heiny-Cogswell commented she participated in Kayak for Light event partnered with a visually impaired resident of the Township who was appreciative of the non-motorized facilities planned for Drake Road.

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