

**Whitewater Township Planning Commission
Minutes of 05/06/09 Regular Meeting**

Call to Order

Chairperson Zakrajsek called the meeting to order at 7:02 p.m.

Roll Call

Members Present: Boyd, Courtade, Lyons, Mangus, Savage, Miller, Zakrajsek.

Members Absent: None.

Also Attending: Planning/Zoning Administrator Meyers, Planning Intern Akers, Recording Secretary Pulver, and 9 others.

Set/Adjust Agenda

There were no additions to the agenda.

Approval of Minutes

Boyd moved, seconded by Mangus, to approve the 04/01/09 Regular Meeting Minutes. **Motion approved 7-0.**

Boyd moved, seconded by Courtade, to approve the 03/18/09 Meeting Minutes (Open House). **Motion approved 7-0.**

Conflict of Interest

None.

Public Comment

None.

Public Hearing: Sign Ordinance

Meyers stated notice of the public hearing was published in the Elk Rapids News on 04/23/09. Meyers did not receive any communications from 24 farmers who received letters indicating that the Sign Ordinance would be on the agenda for this meeting, although she noted several farmers were present in the audience. Meyers stated the letter included the draft Sign Ordinance with amendments (copy attached to minutes).

Zakrajsek opened the public hearing at 7:08 p.m.

Sandy (William) Rennie, 7700 Timberline Rd.

--Road right of way seems to be a gray area; some areas of road are nearly impossible to place signs. Actual highway signs seem to be in right of way or block clear view.

--Do not require written proof of permission; will be too difficult to get from several property owners.

--Will he be grandfathered under the ordinance and what about the other farmers?

Lynn DeLong, 722 Island View Dr.

--Does not see in draft ordinance that permission had to be granted.

Ron Popp, 6237 Elk View Dr.

--May want to define "agri-tourism" and may want to use the spelling used by State of Michigan ("Agro-" appears to be European-use).

- Could not locate Art. 10 in website version of Zoning Ordinance. Article deals with Agricultural Uses Permitted and addresses signs.
- Proof of permission could be argued as a contract and include other liability or may be difficult to terminate contract.
- Township should not have knowledge of what transpires between two landowners or what compensation may arise out of use of one's property; similar to hunting privileges?
- Application should not be required due to temporary nature of seasonal goods.
- Take a light enforcement view if signs are occasionally or partially encroaching in right of way or clear vision areas.

Mike Jacobson, 7031 Skegemog Point Rd.

- Do not make ordinance more restrictive with limit of 32 sq. ft. if you want to keep the rural character of the township; this is a conflict. Would be asking the only fruit stand on M-72 to reduce sign size; it will directly affect his business.
- Temporary signs should be allowed in road right of ways and using a permit process makes it harder to do business and be successful.
- Agri-tourism providers are bringing business and money to this area. Make it easier for someone to be successful in this area.

Discussion

--Meyers clarified that Sec. 17.14 requires land use permits. The fee schedule was revised late last year; however, no fee was assigned to obtaining agricultural signs. The purpose of the application is to know where the signs are and to whom they belong. From the Township perspective, the Township needs to know that a sign is allowed. In the event a person did not grant permission, there may be liability issues for the Township.

--All cases and eventualities can't be predicted; we should not be regulating something that is already regulated.

--Contact information should be on all signs which includes name, address and phone numbers.

--Signs placed in right of way or clear vision areas will be removed by the road commission or state highway department. If the ordinance specifically addresses the road right of way or clear vision areas, how will the Township be able to enforce? This will be difficult or impossible to monitor and enforce.

--Suggestion to allow farmers to register as agri-tourism providers which would give them permission to use signs as needed for the season.

Meyers noted we cannot make rules that are less restrictive than a state or county rules and regulations. She also noted that Art. 10 G. 7.b. addresses farm markets and not farm stands. Meyers also stated to the best of her knowledge, the farm market on M-72 includes signs that are all on their property and they are placed to direct traffic to the site as safely as possible.

Meyers recapped the response to some of the public comments:

--There are no fees for the application for a sign permit per the new fee schedule as adopted by the Township Board late in 2008.

--The provision for road right of way placement was included because we could not have less restrictive rules than the state or county. Meyers noted she tried working with the state and county to allow something to happen in the right of way and was told signs could go with the TOD which cost \$850 per year each way and additional costs for temporary businesses.

- The permit is required under Art. XVII, Administration of the Ordinance. Any structure shall have a permit and signs are defined as structures, however no fee applies.
- Art. X.G.7. will be reviewed for possible changes for consistency with the sign ordinance.
- Obtaining permission for a sign addresses liability concerns of the Township.

Mangus asked if a yearly permit could be considered where the farmer would sign that they have permission to place signs. Meyers stated she could discuss with Township counsel if the Planning Commission desired.

Public Comment

William (Sandy) Rennie, 7700 Timberline Rd.

--Sign placement is a challenging issue with road right of ways. He wants to make sure his signs are in the same place so people where know where and how to find him year after year. He finds that real estate signs placed in right of ways are frequently ignored by the enforcers and left in place.

--How badly do you want to save agricultural tourism in this area? Thinks Right to Farm Act may protect farmers in these instances. It may take a court case to find out.

Ron Popp, 6237 Elk View Dr.

--Prefers dimensional criteria in 30.20 to the requirements in 10.G.

The public hearing was closed at 7:48 p.m.

Reports

Correspondence

Meyers stated that the EPA public hearing for O.I.L. for consideration from Class II to Class I deep injection well has been moved to 05/19/09 at Mill Creek School. An informational only session will run from 5:00 p.m. - 7:00 p.m.; the Hubbell well will be discussed from 7:00 p.m. - 8:00 p.m.; and from 8:00 p.m. - 9:00 p.m. the new Acme Township Cherry Ke well will be discussed. That was the same meeting date as the Township Board so the Board meeting has been rescheduled to 05/21/09 in order to facilitate the public hearing.

Meyers provided her March 2009 Report (copy attached to minutes).

Meyers stated she participated in Clean-Up Day at Mill Creek School on May 2 and distributed 140 flyers for the Planning Commission Open House.

Meyers stated she received a good response from the latest e-mail distribution to the newsletter.

Meyers stated she received a proposal from Mr. Lucy to run a consignment-type establishment. The past approvals for that property were reviewed and they have all been retail sales, including outdoor sales. Parking may be an issue and the status will be reviewed on or about July 15. The business is called Bargain Den and seems to be successful so far.

TC-TALUS

Meyers reported that Corridors of Significance have been reviewed. She stated at TC-TALUS her concern regarding Corridors of Significance for the Grand Vision as they were all located in downtown Traverse City. A meeting was held today and two Areas of Significance for the Future were identified and will be studied: US-31 to the Casino and Elk Lake Road to Baggs Road.

Township Board Representative

Boyd thanked Meyers for her help on Clean-Up Day. He reported Supervisor Lake and Vaughn Harshfield were there from 7:45 a.m. until noon. Boyd stated 242 cubic yards of trash were removed from the Township. Boyd reported a successful Clean-Up Day for the Township and a great opportunity for residents to dispose of a lot of trash for virtually no cost.

Boyd also reported that federal stimulus grant applications have been submitted on a fire building and township hall. Funding from the Grand Traverse Band for the fire building is unknown at this time. A final set of plans is not yet ready to put to bid as yet and the cost is not yet known at this time.

Chair

No report.

Old Business

1. Bylaws Review

Meyers provided revised Bylaws and an accompanying memo (copies attached to minutes). It is the policy of the Township Board to approve its Boards and Commission Bylaws. The Township Board reviewed the Bylaws at their 04/21/09 meeting and made changes to the Bylaws as follows:

- The Township attorney and Planning Department staff will have the ability to participate in discussion of the Planning Commission.
- An affirmative vote of 2/3 of Planning Commissioners is required to recommend approval of the Master Plan or amendments or to amend the Bylaws.
- If a question of conflict of interest exists, the question shall be put before the Planning Commission.
- The Bylaws may be amended at any time following a recommendation of the majority of the membership of the Planning Commission and subsequent adoption of the Township Board.

It was noted that the 2/3 vote required for Master Plan, amendments to the Master Plan or Bylaws amendments conflicted with the majority vote required for amendment to the Bylaws.

The concern regarding the conflict of interest was discussed. The members on their own merit should acknowledge if a potential conflict exists. The members asked for the rationale of the Township Board and would like further clarification of the Board.

Mangus moved, seconded by Miller, to respectfully request the Township Board to reconsider retaining Sec. 6: Conflict of Interest in the Bylaws for the purpose of openness and transparency to the public; it helps the Planning Commission communicate amongst the members and helps to clarify gray areas within the law.

Motion approved 7-0.

Boyd suggested that one or more Planning Commission representatives attend the next Board meeting (05/21/09). Meyers noted scheduling may be difficult as it is the same day as the Citizen Planner training.

2. Sign Ordinance

Definition, Art. III Definitions

Discussion regarding definition of temporary sign. Future modifications should include all types of temporary signs. Examples might include banners for special events.

Moved by Boyd, seconded by Courtade, to recommend to the Township Board the following definition of temporary sign to be included in Article III Definitions of the Zoning Ordinance:

"Temporary Sign" shall mean a sign not installed or intended for long term use. Examples of temporary signs include signs which announce a coming attraction, a sale or bargain, a community or civic project or other special events that occur for a limited period of time.

Motion approved 7-0.

Art. XXX Sign Regulations, Sec. 30.20

Discussion regarding obtaining property owner permission (written or not). The sign owner should include their contact information if problems arise.

Public Comment

Mike Jacobson, 7031 Skegemog Point Rd.

A business owner will probably not put any signs on property without permission from the landowner; it is not good business.

William (Sandy) Rennie, 7700 Timberline

--Sign ordinance should be written with the intent of the business owner to succeed; don't make it difficult or impossible to comply.

--Directional signs are more important than any other advertising method for him to get business.

Ron Popp, 6237 Elk View Dr.

Does not want to have to re-apply for sign permit if he decides to change location.

Additional discussion regarding obtaining permission and proof of permission. Meyers stated that when the permit is signed, the applicant is acknowledging that they have met all of the requirements. By including the contact information of the sign owner, they will be accountable and can be contacted. Meyers also stated this ordinance can be monitored during the growing season to see if modifications will be necessary later. She anticipates most farmers will do their best to comply.

Moved by Boyd, seconded by Miller, to recommend to the Township Board approval of Sec. 30.20 as follows:

30.20 Temporary Off-Premise Sign(s) for Advertising the Sale of Agricultural Products including Agritourism.

Up to five (5) temporary, off-premise, way-finding signs shall be permitted that direct travelers to seasonal sales of agricultural products and related activities. Said signs shall conform with all state and county road regulations and shall be placed on private property with permission from the property owner(s).

Signs shall not exceed thirty-two (32) square feet each and may be printed on both sides. Signs shall be removed immediately following the end of the appropriate season.

Temporary Off-Premise Agricultural Signage shall not be counted against the hosting property owners.

All signs shall bear the name, address and telephone number of the sign owner.

Motion approved 7-0.

Moved by Mangus, seconded by Boyd, to recommend to the Township Board approval of Sec. 30.22 as follows:

30.22 Signs Prohibited

O. Which is an off premise sign unless otherwise allowed within this Article.

Motion approved 7-0.

Meyers stated she will forward amendments as recommended to the County Planning Commission to hear on 05/19/09.

3. Open House Discussion

Mangus stated she liked the way the Open House was held on 03/18/09. The next Open House is set for 05/20/09 from 5:30 p.m. - 8:30 p.m. Meyers noted her reason for attending the Clean-Up Day was to get out and talk to township residents to inform them of the Open House and also to talk to people that she hasn't yet had the opportunity to talk to regarding township issues they may have.

Meyers noted a citizens survey conducted by Oakland County was distributed by e-mail to Planning Commissioners. Several sample master plans were also included for review. Some of the points and questions asked in the survey might be good models to use.

Boyd stated we are still in the process of hearing from the public and finding out what their interests are, rather than asking specific questions on certain topics. The agenda should be left open at this point to find out what people like and don't like.

Mangus stated it took some prodding to get some people to open up at the Open House; would like to have a few questions that everyone would ask to get responses on common items and leave enough leeway for additional commentary. Meyers suggested using the three questions originally asked in the initial notice. Meyers also noted some seasonal/weekend residents asked that a future open house be held on a Saturday. Mangus suggested open houses be held every other month into the future as the Master Plan and survey are being developed. The budget may not allow for every other month; possibly an open house could be held quarterly.

Boyd noted a potential conflict with the Open House on 05/20/09. The DTE Energy natural gas kick-off event will also be held on 05/20/09 at Hi Pray Park. Meyers will arrange to have brochures available at the kick-off party to possibly direct residents to the open house afterwards.

4. Accessory Structures.

Meyers presented a memo and draft zoning ordinance language (see attachments). Supervisor Lake requested that the Planning Commission readdress the issue after a ZBA decision from last summer. A new application was submitted with additional information. Township counsel indicated case law allows for a re-hearing if the ZBA chooses to re-hear a case based on new information provided. The ZBA voted 3-2 to re-hear the case and also approved the variance request with a 3-2 vote.

MTA and Township counsel suggested the portion of the ordinance dealing how the ZBA addresses issues and how to address use variances. It was recommended by MTA counsel that use variances be addressed in our ordinance as well as accessory structures.

The draft is similar to the proposal previously submitted except that a provision addressing agricultural buildings was included to allow for agricultural buildings on property with no dwelling.

A definition for a shed was also added, which was changed with the building code of 2003. Under the new building code, sheds are exempt from building permits.

Discussion

-- Qualified agriculture by affidavit is determined by the assessor and is land actively farmed.

--Take accessory structure/storage buildings ordinance back to 1997 ordinance; i.e., allow without a residence but meet all other setback/side yard requirements of the dwelling. Want to be able get new people to come to the area to buy property and build storage buildings prior to construction of home or cottage in the future.

--Do not want this Township to become the dumping area for storage buildings. Will affect home owners property values if neighboring lots only have storage buildings on them, although subdivision or PUD can include as restriction.

--No other townships in this county allow; in other communities they are considered a part of a temporary structure and given a time limit to build within a certain amount of time and posting of a bond is required.

The matter was tabled to gather more community input from the upcoming open house.

5. ZBA Ordinance

Meyers stated township attorneys are preparing language for consideration by the Township Board to approve a general ordinance to not allow the Zoning Board of Appeals (ZBA) to grant use variances. The current zoning ordinance does not address the authority of the ZBA to grant or not grant use variances. Meyers stated a zoning ordinance is necessary which complies with the Zoning Enabling Act to provide the ZBA with more structure to perform their duties. The current zoning ordinance does not address such things as how to deal with re-hearings, time limits, stays, appeals, etc., and also limits the jurisdiction of the ZBA to certain items. Meyers presented draft language to the ZBA at their last meeting (copy attached to minutes). The ZBA recommended that the Planning Commission consider it and recommend adoption by the Township Board.

Moved by Mangus, seconded by Savage, for the Whitewater Township Planning Commission to hold a public hearing at 7:00 p.m., on Wednesday, 06/03/09 at the Whitewater Township Hall, 5777 Vinton Road, Williamsburg, Michigan, to gather public comment and consider recommendation of revisions to the Zoning Ordinance, Article XVIII, Board of Appeals.

Discussion regarding the difference between a use variance and a dimensional variance. Accessory structures have been addressed in a use variance situation; setbacks are addressed in dimensional variances. Some communities use a "hardship PUD" under certain conditions where the property could not be used for its current zoning. A hardship PUD could possibly be considered in severe or unusual use variance cases.

Meyers stated that MTA counsel and Township counsel recommend that we do not allow the ZBA to grant use variances. As a township, we have the right to not allow use variances; villages and cities do not have that right.

Roll call vote: Boyd, yes; Courtade, yes; Lyons, yes; Mangus, yes; Miller, yes; Savage, yes; Zakrajsek, yes. Motion Approved 7-0.

New Business

1. Sheer's Salon Extension Request (James E. Snider, Jr.)

Meyers stated she received an e-mail from Mr. Snider requesting another 6-month extension on his site plan for the salon on Old M-72. Mr. Snider was not present. Discussion regarding providing an incentive for him to complete work or provide visual improvement on the site. There is evidence that work has occurred towards the rehabilitation of the building. Question was raised regarding progress made toward opening the salon. The salon and the house are the same building.

Meyers stated she has received several complaints regarding the condition of the yard. It was difficult to assess and do code enforcement because of the deep snow. Meyers visited the Snider's and asked that they clean up the site and there has been some progress.

Discussion:

- Would expect to see clean-up continue with dramatic results being shown if he needs to reapply for an extension
- Alternative is citation and court action, which will be expensive to the Township.
- Difference between appearance on the outside and progress toward the actual construction and operation of a salon.

Moved by Boyd, seconded by Lyons, to grant one more six-month extension based on the fact of the amount of extensions already granted.

Roll call vote: Courtade, yes; Lyons, yes; Mangus, yes; Miller, yes; Savage, yes; Zakrajsek, yes; Boyd, yes. Motion Approved 7-0.

Public Comment

Ron Popp, 6237 Elk View Drive

- Accessory structures: if you ask the people what they want and then not act on what they want, watch out.
- Eliminate use changes if there are no use variances allowed.

Continuing Education - Wind Energy

Marty Dillon presented information regarding wind energy (see attachment) and made the following points:

- Current Township height restriction for structures is 35 ft., which will prohibit the very tall (600 ft.) or commercial towers from being allowed, however 100 ft. is recommended for use by residents to supply energy to their own home.
- There are misconceptions about the income provided and there is a difference between commercial and residential entities.
- If the proposal for the fire building uses energy star rating for their appliances, they will be looked upon more favorably for stimulus grants.

Discussion regarding impact of view from property.

Meyers noted that County Planner John Sych will be providing more information regarding residential and commercial wind energy in the future.

Motion by Boyd, second by Courtade to adjourn the meeting at 10:07 p.m. Motion approved 7-0.

Respectfully submitted,

Patricia Pulver, Recording Secretary