

WHITEWATER TOWNSHIP PLANNING COMMISSION
MINUTES FOR REGULAR MEETING
July 1, 2015

Call to Order at 7:00 p.m.

Roll Call: Dean, Hooper, Link, Lyons, Mangus, Miller

Absent: Lawson

Also in attendance: Recording Secretary, MacLean

Declaration of Conflict of Interest None.

Public Comment:

Glenn Savage, 9833 Pine Needle Lane, Williamsburg. This Ordinance was adopted in 1990. From what I've been told you are contemplating issuing permits to cut trees on their property. The ordinance was enacted in 1990 and has never been enforced for 25 years. I have cut trees for 40 years on my property and plan to cut trees. I have never done it (gotten a permit) and have never had to. If you are planning to enforce a rule that has not been enforced you may want to contact the prosecutor's office if you are contemplating enforcing to see what the ramifications are. Don't believe someone should be told if they can or cannot cut down trees on their own property. People have the right to keep or cut trees as they want on their property. Some people think trees are a beautiful thing. Some people think the lake is a beautiful thing and they don't want trees to obstruct their view on their property. Don't believe the government should tell the people if they can cut their trees or not. Getting government too involved in our personal daily lives. LINK indicates that whoever told Mr. Savage that we are going to be issuing permits to cut down trees is misinformed.

Kim Halstead 7923 Cook Rd., Williamsburg. Lake owners buy property so they can see the lake. They don't want a buffer. A buffer is supposed to hold back the water, a break wall will solve the problem. The trees do not do that. Lower property tax because this devalues property.

Kim Mangus: Reading into public record written by Steve Mangus, who is unable to attend today's meeting:
1214 Cero Drive, Traverse City, MI 49696. Regarding Article 27. Attached.

Ron Popp, 6237 Elk View Dr., Williamsburg. The reason this article has come to light is because of what was thought to be a managed vegetative strip in section 6.13 of the Zoning Ordinance. That managed vegetative strip protected lake front owners' property from massive excavation. Recently we've had people remove 11 feet of earth from the shores of Elk Lake to build themselves a beach. Come to find out Section 6.13 of our Ordinance pertains to solely to the Boardman River Watershed. Article 27 pertains to the Elk Lake Water Shed. So for the past 20 years a similar article has been enforced for protection of lake front owners. While we understand that Article 27 is far from perfect, we have people who want to build their homes in the water shed. If we do not have an application how can we grant them a land use permit, knowing, now that the articles that we have been following for the past 20 years pertains solely to the Boardman Water Shed. Thank you.

Mike Jacobson, Skegemog Point Rd. Don't care for the way the public comment works. We stand up here, we don't really know what you guys are going to talk about then you guys do whatever you do and we don't get to talk again until after you guys have made a decision. Feels the first public comment should be further into the meeting so it is not too late. Secondly, I'd like to say I am a very strong proponent of personal property rights. I've lived here my whole life. Family property for over one hundred years. My people (family) helped to make the settlement of Barker Creek. When I am paying taxes and not hurting anyone around me there is no reason for my neighbors or others to tell me what I can and cannot do. We have welcomed the new people to the township. The new people have come and made changes and then they say they don't want changes. This Master Plan you have been working on, the basic statement zoning is for (stopped sentence) When you tell people what they can do on their property it is not a matter of health, safety and welfare of the rest of the township. What I am doing on my property, as long as I am not creating a pile of pollution is not hurting anybody else. You cannot come on our property and tell us what we can and cannot do. It is your job to make sure we are not run over, that the people of this township are not run over by the influx that's coming in. Regarding this lake front issue, these people are supposed to be working with (Department of) Natural Resources. They've got a whole division for that stuff. We cannot touch anything on the water until they come and look at everything. So that stuff is already taken care of, you don't need to double dip it. LINK: If we don't notify the DEQ then who will? We have to notify the DEQ when people want to dredge the lake front to create a beach. The Corp of Engineers are involved because it is all part of

the Great Lakes. Our ordinance refers to the State Constitution which is all part of that so we have to help enforce it for the welfare of our community. We are not over reaching.

Public Hearing: None

Approval of Minutes:

June 3, 2015, Regular Meeting Minutes: Motion to approve by Hooper, second by Mangus . All in favor. Motion carried.

June 17, 2015, Special Meeting Minutes: Mangus notes a possible missing comment regarding creating an application to avoid a possible public hearing. (No recording is available). Motion to approve with no change by Miller, second by Lyons. All in favor. Motion carried.

Correspondence:

Reports:

Zoning Administrator Report, Vey: Seven Land Use Permits this month, 17 so far this year. Lots of calls regarding environmentally sensitive areas from builders and landscape designers. Have been holding them off while waiting for an application and getting acquainted with the Ordinance. Zoning Board of Appeals case is scheduled for the 23rd regarding single lot, two homes – case that was held over from previous ZBA in May. There have been two land divisions and two more in the process. Getting acquainted with the township, the people and the ordinance.

Chair's Report, Link: None

Township Board Representative, Lawson: Absent

ZBA Representative, Lyons: No meeting.

Committee Reports: None

Additional Items: None

Old Business

1. None

New Business:

1. Draft Land Use Permit application Article 25 and Article 27. Understand Vey delegated the application draft to his “assistant” (not quite but. . .) We have a rough draft of an application. We are aware that this Article has not been enforced. At a minimum we need a check list of what is enforced. We need an application that is reasonable. Something that protects the people of the township. Not something to take people’s rights away. We have people who have called that are awaiting answers. Ordinances are on the books so this can be addressed. The tree cutting issue is simple, all you need is a soil erosion control permit and that is not necessary if it is less than an acre.

Mangus: Are we talking about enforcing the ordinance as it is written? Mangus understands it means we have to have a permit to cut down a tree on any size piece of property per Article 25.

Link does not feel that is what it says. Tonight’s work is addressing an application.

Mangus: As stated in the previous meeting minor items would come before the ZA, major items would come before the PC and that does not strike me as correct – that is selective enforcement. Three options: we enforce the whole ordinance, we enforce none of it or we amend the ordinance. Are we creating an application to enforce the whole ordinance?

Link: This addresses “Environmentally sensitive areas”. The ZA has to decide if something is an environmentally sensitive area. It is our interpretation or the ZA’s interpretation if something is sensitive or not. We are trying to address this issue and not put a moratorium on building until it is resolved.

Hooper: It has not been enforced, now we are trying to rectify the situation. We are trying to do some common sense stuff with the ordinance and work through it. I don’t think it will come back to hurt us.

Dean: This makes the hair on my neck stand up.

To the ZA: Do you feel you can use this as a basis?

ZA: Depending on how it is interpreted, Section C, description of soil types does cover the majority of the township. On the other hand, past practice comes into play if there is a court case. The book, the Ordinance is law. There is some middle ground. Enforce it now? Or by the interpretation of the PC?

Dean: Are we just going to ask the public to be patient with us while we address it?

Link: Page 97, Environmentally Sensitive LUP. Soil erosion permit is required from the County if you are developing property and disturbing the soil. Sewage treatment permit is required by the Health Department. Different land size thresholds are described. Cutting trees for firewood is different than cutting trees for development. Dean: Are we standing on ground that is reasonable and will we be able to talk to our neighbors. Page 97, under environmentally sensitive LUP... If you do not need a soil erosion control permit you don't need it. DISCUSSION: Popp: There appears to be a disconnect, is that we are automatically assuming that you will not review Article 27, ever. And that it will be implemented or planned implemented exactly how it is written. I don't believe that is the view of anyone in this building. But what we do need is the egg first. I have history with this group on the (Draft) Master Plan. I witnessed where we can discuss "is" and "the" for an hour, for days. So then if we have an application then we have a document that we can give the builders to start the planning stages. Meanwhile, that will give this group days to discuss the difference between "is" and "the". So if you feel you do not like the article, that is up to you to get public opinion and sculpt the article with their thoughts in mind but what do we tell the builder that wants to do it right now? We have no application, so does that mean that he cannot build? Trying to prepare the application so some builders can move forward now. Will the application look this way in 6 months, eight months? Probably not, because everyone in this building realizes that Article 27 does not fit every situation. Thank you for indulging me.

Dean: What is the timeline on this Article – when will come back to this?

Link: It will be a long time if we have to debate each thing. We talked about starting with some easy articles to recodify and we were thrown right into this because it is an issue of developing property right now. Our LUP is delinquent. As soon as we develop the application we will use it to compare against every other Article. The application is the backbone. Article 25 says we put processes in place.

Mangus believes it is a selective enforcement issue.

Link believes the ZA can determine what is environmentally sensitive.

Hooper: You have to have a soil erosion permit from the county – it is already being done. Why are we doing what is already being done. Don't believe the township is being disserved by not enforcing since it is already being done.

Link: What if the county does not enforce it? Is it up to the township? All we are looking for is a check mark to see if the builder has met the county and state requirements.

Hooper: Why do we make people jump through the same hoops multiple times?

Link: Why did the county issue a temporary occupancy permit on a property that does not meet their own rule? They are not enforcing their own rules.

Hooper: Not saying we need to throw it all out. It is already being done for us. We can come back and look at this in the future.

John Lucsy, 7898 Cook Rd., Williamsburg. What brought this all about? Link let him know he will have to investigate that outside of this meeting. Agree with Mr. Hooper, I get all the permits and then I have to have it again from the township. There is lots of duplication.

Glenn Savage: We had trees removed from the property, was told I didn't need a permit but my brother needed a permit to remove the stumps from the county. Couldn't close, get an occupancy permit from the township because grass was not growing in the winter. We got a temporary permit from the county.

Mangus: Are their differences between the application and special use permit? The special use permit already covers all of this. Special use permit covers everything on the list.

Statement by Mangus while waiting on copies being provided by Popp. My hope is that we will not keep this in its current form. Mangus has come up with a sample version of an environmentally sensitive ordinance that could be reviewed for future discussion. It is a combination of several townships' ordinances.

Back to the application: ZA: It is not as difficult as it may look. A lot is instructions on technical drawings and how much of that needs to be applied.

Link: Sees a completely different application. The first two pages have basic information that applies to any application.

Mangus: So are we by-passing that Site Plan Review means it comes before the PC?

Link: No. We are going to address when that happens.

Popp distributes existing LUP application.

The ZA states that he goes through the permit, step by step with the homeowner and/or the contractor. Typically there is something missing or more information needed.

Discussion comparing current LUP. Questions that would trigger an environmentally sensitive review. Remove the Article/Ordinance verbiage. Add site characteristics: how close to water, wetland, slope, soil types, etc. The ZA can

make a determination if a soil erosion permit is required. What is their plan to deal with it? Ours is a second check for the county for Soil Erosion. Add a box “does this trigger an environmentally sensitive review?” And then, referring to commercial properties, “does that require an impact statement?” We can determine when an environmental impact statement is required. ZA needs a check list.

Link asks if Assistant ZA Popp caught the previous comments. Popp indicates he is here as Supervisor Popp tonight. Dean: Clarification, is the new draft meant to be only applied to Article 27? No. This is to replace LUP application to see if it triggers additional requirements. Article 25 refers to site plan review and special uses.

Link defers to Supervisor Popp: The special use permit is well known, this is the application that is used also to have to complete an LUP. Could the draft application cover both the special use permit and the LUP? With the correct questions thus simplifying the process, eliminating the duplicate questions on the multiple permits. There are some different questions and different requirements with a Site Plan Review, with a Special User Permit and with a LUP. This (the draft application form presented by Popp) keeps things consistent, makes everyone submit similar drawings and makes plans more easily understood.

Link: We are making sure that everything is covered that is being addressed in the permit application. We don't need the Ordinance language in the application. We need to simplify.

Mangus: Combine the two applications that are currently in use into one to start.

Link will come back with a draft for the next meeting.

Hooper: We are trying to get past Article 27 in the short term so the ZA can do his job. We are not trying to enforce 27 verbatim. Link: (rephrasing for Hooper) According to my understanding of 27 we will enforce it verbatim.

Hooper: We will not end up in court with this.

Link: You can enforce the ordinance without getting a permit to cut trees down if soils are not disturbed.

Link reads page 97.

DISCUSSION: page 97 soil erosion permit or county health office or provide evidence yourself. Specific size of land being affected.

ZA: It is not an “or” it is an “and”. To determine if a permit is or is not needed they have to fill out an application.

Mangus notes the introduction paragraph covers all soil types in the township as environmentally sensitive and therefore requires PC approval according to Article 25. Application now and amend the article later – should be sooner than later.

Link: To the Commission: Should we address the ordinance right now or make an application change so we can move forward?

ZA: Even though there is insurance, the ZA would be held liable for interpretation of the ordinance.

Dean: Question to ZA: According to your interpretation does the township need to worry about this now? That because this has been brought to light, that somebody bulldozed 11 feet of Elk Lake, all of a sudden we will have neighbors tattling on neighbors?

ZA: It has not happened yet. No additional complaints have come forward. “Shall be considered. . .” does not leave room for interpretation.

Lyons: Change “Shall” to “May”. “May” allows for interpretation.

Link: Reading from page 95 (Article 27). Discussion.

Link: We will make progress on the whole ZO by addressing this application.

If the application addresses each issue then there is no selective enforcement going on. Intent of the regulations is to guard.

We and the ZA have to address the health, safety and welfare of the community. Just because it is an environmentally sensitive area does not mean it cannot be addressed in the permit application.

Mangus: The application cannot supercede the law. The answers always lead the applicant back to the PC.

Dean: When answers to the questions require further action, and you get to “C” page 99, “intent” goes away. It is the letter of the law.

ZA: Sees “environmentally sensitive” as being something to be noted and then determine if it is detrimental.

Mangus: Article 27 references Article 25 which specifies that it requires a Site Plan Review, Special Land Use Permit or come before the PC.

ZA: It can be gotten through, there may be a permit needed. The application helps move the process along. It determines the threshold of when a Site Plan Review is necessary and when it comes before the PC.

Dean: If an Article 27 application triggers a special use permit or a site plan review it refers to Article 25 which specifies going to the PC. That is the letter of the law. Should parts just be struck out?

Mangus notes that the sample that she passed out addresses the “shalls” to “mays” along with a couple other things but still addresses environmentally sensitive issues referencing other ordinances in an attempt to keep everything from having to come before the PC.

Link: The application is addressing the requirements of the PC. Move forward with an application. This is not the permanent fix. This is temporary until we can get to the ordinance itself. Article 6 only applies to the Boardman.

Link: We can determine what comes before the board and what the ZA can do.

Article 25, first statement indicates ZA or PC. Then further into it, it only references the PC not the ZA.

Dean notes that there appears to be a disconnect and that is just one of the issues that needs to be addressed in the ZO itself. Link sees this as pointing in the direction of the system that is already in place.

Lyons notes that the PC review can be waived by the ZA if all information is provided. However, the final decision is noted to be by the PC. It does appear the initial intent is for the ZA to determine then it just stops and refers only to the PC.

Hooper: We keep twisting and turning on 27, should it just be thrown out?

ZA: If it is a matter of working through this or putting a moratorium on everything. A moratorium is a disservice to the community. We need to work with this.

The issue has come up because the ZA (Interim ZA, Popp) looked to Article 6, which only applies to the Boardman River. The properties in question are on Elk Lake. It has become an issue and we need to get some credibility into it. Intent is to get through this so we can move forward. If the ZA is comfortable with the process we are working through then we can work with it.

To Popp: Has the previously referenced people gotten an LUP? Popp: They have an LUP for what was shown on the site plan. Landscaping was not shown on the site plan. Landscaping information was not asked for on the application.

Hopefully we will have an application in place that can be used in a month.

We will implement the Ordinance as it is until we can address it.

Look to do an Article 27 application separate from an Article 25 application process.

Everyone will entertain a permit application in the next board packet.

Tonight we came up with an understanding of where we are going.

2. Next Regular meeting August 5, 2015: Application

Public Comment: Jacobson, clear there are issues that need to be dealt with so the ZA can do his job. It is clear that the wording in the zoning is brutal. I heat and cook with wood. The way it is written I have to come here and get a permit to cut wood for living purposes. Rewriting the ordinance does need to be addressed.

Commission Discussion/Comments:

Adjournment: 9:13 p.m.

Respectfully Submitted
Lois MacLean,
Recording Secretary