

CHARTER TOWNSHIP OF COMMERCE
ZONING BOARD OF APPEALS
****SPECIAL** EDUCATION & DISCUSSION MEETING**
Thursday, January 23, 2020
2009 Township Drive
Commerce Township, Michigan 48390

A. CALL TO ORDER: Rusty Rosman, Chairperson called the special education and discussion meeting to order at 5:30pm.

ROLL CALL: Present: Rusty Rosman, Chairperson
Robert Mistele, Secretary
Clarence Mills
Bill McKeever
Rick Sovel (arrived @ 6:14pm)
Also Present: Hans Rentrop, Township Attorney
Jay James, Engineer/Building Official
Dave Campbell, Planning Director
Paula Lankford, Assistant to the Planning Director

Chairperson Rosman greeted others in attendance, including resident, Kylie Kutney, and Township staff members, Anne Allard and Ashley Wozinski. She explained that this is the ZBA annual education meeting. She discussed the various standards and protocol of the ZBA, which have been enhanced by prior educational meetings.

B. APPROVAL OF MEETING AGENDA

MOTION by Mills, supported by Mistele, to approve the Zoning Board of Appeals Special Education & Discussion Meeting Agenda for January 23, 2020, as presented.
MOTION CARRIED UNANIMOUSLY

C. APPROVAL OF MEETING MINUTES:

None.

D. PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA:

Chairperson Rosman – In the draft minutes from the Township Board, did I read that it went down in flames to approve selling liquor at gas stations?

Dave Campbell – Not exactly that, but I will do my best to summarize a long story. What was proposed was an amendment to our Zoning Ordinance to allow existing retailers, who sell just beer and wine, to upgrade to also sell spirits without going through the Township's current standards, which would require them to get Special Land Use approval. That Special Land Use approval would carry with it several criteria, the most notable of which is that we only allow two of those retailers within any one mile. The two retailers proposing that amendment were the Shell station on Union Lake Road, and the

Marathon, formerly Clark, station on West Commerce Road. They currently sell beer and wine, and wanted to also be able to sell liquor. To do so, they would need Special Land Use approval. If they were to apply for it, they would not receive it because they would not meet the spacing requirements. They wanted to change that rule to say that they were exempt, because they were already selling beer and wine before July 2017 when the Township put that rule into place.

The proposed amendment went before the Planning Commission twice, and before the Township Board three times. The final conclusion was that the Township Board, by a vote of 7-0, denied the text amendment. Therefore, Special Land Use is still required for a retailer who wants to add liquor, and they must meet several limitations, including the strictest of which is two per any one mile.

Chairperson Rosman – How is the new garbage service going?

Dave Campbell – So far I've heard that everybody is happy with the new carrier, GFL. The struggles we had were with the outgoing carrier, Republic, mainly with collecting everybody's old trash bins.

Discussion continued regarding trash services with GFL, the recent mailer sent to residents, and the GFL representative on staff at the Township who is handling calls from residents, which took the burden off of the Clerk's office.

E. UPDATE OF ACTIVITIES IN COMMERCE TOWNSHIP: None. *(To be discussed at the Regular ZBA Meeting to follow at 7:00pm)*

F. OLD BUSINESS:

None.

G. NEW BUSINESS:

ITEM G1: EDUCATIONAL UPDATE WITH THE TOWNSHIP ATTORNEY

Dave Campbell – Rusty and I talked about what would be best to cover for this year's educational meeting, and she felt that a good topic would be **an opportunity for the ZBA members to discuss any items in the Zoning Ordinance that they would like to see better addressed or enforced**. Rusty's examples were code enforcement of property maintenance, and I think particularly, she asked about vehicles parking on the lawn. Is that something that we allow, and if not, is there a way to improve enforcement? If we do allow it, is it something we want to change?

The other members of the ZBA may have other examples they would like to discuss.

Then Jay and Hans, with Jay being the one responsible for enforcing our Zoning Ordinance, and Hans being the attorney who represents us in court on those items that find their way to court, could have some input as to how to best address concerns or changes the ZBA might discuss.

That is what I hope we can spend the bulk of our time on for the educational meeting. I did also ask Hans to update us briefly on medicinal and recreational marijuana in the State of Michigan. Obviously this is a big topic and there is a lot of misinformation out there about what's legal and what's not. It's not necessarily a ZBA issue, but it is an issue of interest to anyone who represents a municipality.

Chairperson Rosman discussed her issues with people parking on the front lawn. Many people use their garage as a basement or a dumping zone, and they don't park their cars in there. If people are going to park multiple vehicles, and they of course have to be tagged in order to be legal, she thinks this should also extend to requiring people to park in a designated parking area, whether that be a paved area, or gravel, whatever. She feels it looks very junky to have people parking all over their lawn, and there's no reason for it.

Secondly, she discussed enforcement issues, and specifically a previous petition filed by one of two neighbors who were in a heated dispute. She went by the property recently on Appalachi Street and saw a solid fence between the two properties that was not approved. In light of this, she would like to see that the Township Board budget for a full-time enforcement officer to help clean-up, and also to prevent matters such as this.

Chairperson Rosman – He is not allowed to have that fence, is he?

Jay James – No, he is not.

Chairperson Rosman – He did whatever he pleased. There's more dollars coming into the Township with current developments, and I know we have more calls for services, but in my opinion, we are more than ready for a full-time enforcement officer.

Jay James – I can tell you that in the 2020 budget, my request for a larger budget for ordinance enforcement was approved.

Chairperson Rosman – I'd like our minutes to reflect that I feel very strongly that the time has come.

Jay James – I expressed that to the Board and they granted the increase. In the same breath, that does not mean we will see things like this illegal fence. Appalachi is a dead-end street in a dead-end subdivision, and unless you've got a reason to go out there, you'd never see that.

Chairperson Rosman – But we should be checking on our appeals that came before the ZBA, especially when we say no.

McKeever – There wasn't a variance granted for that property.

Chairperson Rosman – No, it was denied, and then he did what he wanted.

Open discussions continued regarding the illegal fence and one of the neighbors moving. Aerial maps were reviewed on the overhead as staff attempted to determine when the fence was installed.

Chairperson Rosman – We don't have that many applications, so we need to see that they're doing it properly, or that they're not doing what was denied.

McKeever – Well, that's just it. If they did receive a variance, then whatever they do is overseen by the Building Department.

Jay James – Yes, it's permitted. But what you're saying is that when they are denied, we need to go out and make sure they don't do it.

Chairperson Rosman – Right. **Another question I have is, before someone gets their certificate of occupancy, do they have to put up their street number on their house?**

Jay James – Yes.

Chairperson Rosman – I was by the new house on Lake Point and I never saw any street numbers on the house.

Jay James – It's required in the ordinance.

Chairperson Rosman – I was also by the house on Mimosa. It's a gorgeous house and he did a beautiful job on it, but there's no address there on the house either.

Jay James – I'll take that up with my inspectors and make sure they're checking.

Chairperson Rosman – What size do we ask for them to be?

Jay James – They've got to be a minimum of 6" tall.

Chairperson Rosman – Can we change it to 8"?

Jay James – We can do whatever you want, but I think the typical ones you buy in any hardware store are 6".

McKeever – 6" is on the large size as far as ordinances go.

Chairperson Rosman – Oh, it is? Okay. Well I also wondered, is there any way that we can suggest where it goes?

Jay James – In the ordinance, it has to be in a viewable area.

Paula Lankford – And in a contrasting color.

Jay James – When I was doing more building inspections, that was one of my pet peeves. Quite often the landscaping grows up and hides the numbers.

Chairperson Rosman – Can we address that in the ordinance? In an emergency, they might not be able to find the house.

Jay James – I can tell you that the Fire Department probably doesn't even use the house numbers. They might, but they have everything mapped out, so they know it's the 3rd house in on the left.

Discussions continued regarding guidelines for address numbers on a house in the building codes and in the code of ordinances.

The ZBA members took a brief recess at 5:50pm.

Chairperson Rosman called the meeting back to order at 6:05pm.

Dave Campbell – I asked Jay to **address the issue of parking on the lawn**, but also to address it in a broader scope as it relates to creating and enforcing standards for property maintenance issues.

Jay James – Although I appreciate your opinion, Rusty, personally I'm against it. I own property and if I want to park on my grass I should be allowed to. That being said, professionally, I would of course enforce whatever the Township requires to be enforced. However, I think that would be creating something that would be very difficult to enforce and would lead to other issues. One is that you might not like cars being parked on the grass, but now do you want massive driveways paved just because occasionally they might have more cars there? Two is, does it have to be paved or can it be gravel? Ultimately, during the spring, gravel gets pushed down into the ground and it becomes muddy. Then do we have to enforce that their driveway be maintained in good condition? Is that what the Township would want us doing?

Chairperson Rosman – Those are all valid points.

Jay James – I have always thought that the Township took the position that gave people a little more freedom with their property than other communities do. I think enforcing that would become very difficult. I understand that there are people that probably abuse it.

Chairperson Rosman – Let me ask you about septic and well. If they're parked on it, is that creating an issue?

Jay James – If someone parks over the septic, it could be creating a problem. It compresses it and it doesn't perk as well. Yet, the health department might allow paving over the septic, which isn't always good.

Chairperson Rosman – Do we have a regulation of how many boats and cars can be parked that are covered/winterized?

Jay James – As long as the vehicles are plated and insured, they can be parked on the property. Now if you're talking about restricting them from being able to be parked on the lawn in a required front yard, I would understand that; not stored but just parked. This would also bring up the question of people pulling off the road and parking on the grass. Is that then restricted or prohibited?

Dave Campbell – As far as parking RVs, boats, et cetera. Remind me Jay, you're allowed to do it in your side or rear yard?

Jay James – You can park recreational vehicles in your front yard between May 1st and October 31st. You can have boats on your trailers in the same period in your front yard. You cannot have a boat trailer in your front yard during the summer. It has to have the boat on it. We don't want them to put the boat in the water and then just park the trailer there all summer long. Outside of the summer months, parking is in the rear and side yards.

Chairperson Rosman – May I put in just one more request? I know budget and all that, but I wish you had a boat for enforcement because what goes on over on the lakeside is scary.

Jay James – We will budget for that next year. It's much more difficult to enforce, but Near Map helps a lot. We're able to see what is there, then go back in time to see when structures went up.

Dave Campbell – Near Map has been a great resource. We subscribe to the service and it's better than Google Earth because they update it once per quarter.

Chairperson Rosman – Okay, in looking at the clock, we need to move onto Hans' report. Thank you very much.

Attorney Rentrop – David asked me to look at three different issues. We've touched upon the first which was parking on the grass. The others were enforcement issues and also marijuana.

I did look at our Zoning Ordinance regarding parking issues. Generally, you've got two issues; location and also abandoned or junk vehicles. There are two sections that address it.

In Section, 28.04. *Residential Parking Standards*

Required off-street parking for single-and two-family (duplex) dwellings shall consist of a parking strip, parking bay, driveways, shared driveway, garage or combination thereof located on the premises they are intended to serve, subject to the following: A. No motor vehicle shall be kept, parked or stored in any district zoned for residential use, unless the vehicle is in operating condition and properly licensed or is kept inside a building.

That is what the required off-street parking states, so this is what people have to provide. This doesn't necessarily say that is what they must use. It's a little ambiguous as to enforcement. Additionally, as Dave pointed out, it talks about a parking strip which I thought was an interesting point.

Dave Campbell – Yes, we don't have a definition for what a parking strip actually is.

Attorney Rentrop – Right, and when I tried to look it up to see what a parking strip is commonly referred to, the best I could come up with was the strip of land that is

between the road and the sidewalk, and I was kind of surprised by that as well. I don't believe that Section 28.04 prohibits the kind of activity you've described.

Sovel arrived at 6:14pm.

Attorney Rentrop – The other section we looked at was Section 33.04.

In Section 33.04, *Open Parking and Storage of Vehicles, Boats, Travel Trailers, Machinery or like items*

The regulations set forth in this Section are intended to regulate the methods of storage, the types of materials that may be stored, and the accumulation of unusable, inoperable, or unsightly motor vehicles, machinery, or building materials ...

Likewise, it also states,

No motor vehicle shall be kept, parked, or stored in any district zoned for residential use, unless it shall be in operating condition and properly licensed, or kept inside a building.

It also says,

All travel trailers, boats, recreational vehicles, and similar vehicles owned by residents of the Township and stored on their individual lots, shall not be stored within any front yard and shall further comply with the requirements applicable to Accessory Buildings, Section 2003, insofar as distances from lot lines and easements are concerned ...

With certain exceptions for the boats as we just talked about. What's interesting about 33.04, it talks about inoperable or unsightly motor vehicles. I thought unsightly was an interesting word as it would be up to interpretation. I distinctly remember seeing an old Chevy Astro Van with a bumper sticker that said, "This Cadillac is deep undercover".

So, one man's trash is another man's treasure.

The other interesting thing, Dave, that you might want to take a look at is that there are some inconsistencies between 28.04 and 33.04. Those are housekeeping issues that we can clean up.

Presently, I don't believe our current Zoning Ordinance specifically addresses the parking issues you've discussed. If you wanted to do it, I believe you could make a change to the ordinance to enforce those types of regulations, to delineate where parking is permitted and where it's required if you choose to do so, however I do think enforcement would be a challenge.

Chairperson Rosman – I understand. Thank you for looking into it. And Jay, you made a lot of valid points too.

Dave Campbell – **Are there any other issues that anyone has seen when you're out and about?** Any areas where you think we could be doing a better job, whether it's creating new standards, or enforcement of standards that we already have?

McKeever – **Maintaining the landscaping and irrigation** that we required them to put in initially.

Dave Campbell – In commercial settings?

McKeever – Yes. Once it's in, it's not given a second thought, and it's overgrown, or dead.

Attorney Rentrop – Technically speaking, you're right and that should be addressed. Most often, the landscaping is set forth in the approved site plan, and so if they fail to maintain that, they're in violation of the site plan.

McKeever – Even as things die off and people just simply remove them, I know municipalities that will come back and say, "That's part of your approved plan. It has to go back."

Attorney Rentrop – And that is subject to enforcement.

Dave Campbell – What we do have in place now is that we require a 2-year landscaping bond, a performance guarantee. We hold a certain sum of money through two growing seasons to ensure the required landscaping is still in thriving condition. To your point, after two years, if things start to die off we don't have a big hammer to swing. We can write violations, but it's not as if we're still holding money at that point.

Attorney Rentrop – To your point, the violation process is laborious and time consuming.

Sovel – There are some areas where I think we have too much landscaping where I think we should have none, such as where the parking lot turns into the road. That's for two reasons; one for sightlines which are blocked by overgrowth or berms, and the other reason is that there isn't enough space to plow snow piles in the wintertime.

Dave Campbell – Is it too much landscaping, or is it planting the right species so they don't get overgrown?

Sovel – It's a combination. When we look at the landscaping, we do it in the summer when it looks nice. The problem is that in the winter, that's where the snow goes. A lot of times that kills the landscaping, and sometimes the site plan is such that there is no other place they can put the snow other than in the landscaping, unless they give up parking spaces.

McKeever – The salt also causes issues.

Sovel – We need to pay more attention to what happens in the winter months. **The Planning Commission needs to have site plans designed to allow part of the site for snow, with no other plantings in the area except maybe grass.**

Chairperson Rosman – One of the things we talked about was a full-time enforcement officer. That's the type of thing that would be in their portfolio to check.

Sovel – I'm suggesting that we shouldn't fully landscape a property. We should leave some areas as grass only so that the snow can be plowed there.

Jay James – **There are a few things in the ordinance that I plan to stress this year.**

1. To have dumpsters enclosed; either they are not in proper enclosures, or they're not in an enclosure at all. I'd like to get those taken care of.
2. To address party store signage. It has gone out of control. I have stopped and talked to several party store owners. This is one of my pet peeves.
3. To address clothing donation bins. We attacked that last year and they were gone for at least a few month. It has continued in cycles. When they disappeared in Commerce, we heard that Waterford got an infusion of them. They probably addressed it, and they circulated through other communities before working their way back here.

Open discussions took place regarding enforcement of clothing donation bins, the property owner's responsibility for removal, citations issued, and the necessary consent for removal. Challenges arise with determining the responsible party.

Attorney Rentrop discussed the enforcement process. First is to determine, is there a violation? This is a critical step in the analysis. It sounds simple, but it isn't always simple. One, there are some gray areas as to whether it's an actual violation or not. Two, it may be a distance or setback requirement that is difficult to determine. And three, a determination needs to be made whether it's a nonconforming use that may have a lawful right to be there. These are all questions that need to be asked before a ticket can be written. Jay James works with the attorney's office to do an analysis and figure out what actual violation is occurring.

The next step is to write a citation, and again Jay works with the attorneys to address the proper codes and language to use for the citation, which are called municipal civil infractions. They are a civil action, which means they are non-criminal, so they are essentially a complaint. The complaint then goes to the court. As with the donation bins, it is sometimes difficult to determine the responsibility party, or who to write the ticket to. It can be tricky, as it could go to the company, the manager, the store owner, the property owner, et cetera. Jay writes the ticket and serves it upon the person, either by mail or in person. A copy goes to the court, and the court sets a date for a hearing.

The hearing is an opportunity for the Township and counsel to meet with the individuals and get a sense of where the case is going. At that time, a couple things can happen. One is that the resident agrees to clean it up. They are usually allowed 30 days, and Jay will follow-up. The other thing that happens is that they don't get it cleaned up. Then when they come back to court, they might receive a one-week extension, but they're told it is the last opportunity. If they still don't do it, a formal hearing is held before a judge. It's like a mini-trial with no jury. The judge will enter an order stating whether they are in violation or not. More often than not, the person does not show up at court, in which case a default order is entered, giving the Township what they want.

Another thing that can happen is to get a stipulated order, which also happens quite frequently. That's where counsel writes up an order stating they have 30 days to comply, and if they don't do it, the Township will come in on the property and do it for them and charge the property owner. A lien can be filed against the property if they fail to pay the costs fines and fees. Staff is always very cautious with stipulated orders.

Jay James and Attorney Rentrop discussed an incident and enforcement of a stipulated order that occurred last year.

Chairperson Rosman – Which court do you go to?

Attorney Rentrop – 52-1 District Court in Novi.

Dave Campbell – What sort of duration are we talking about with that process you just described? I know each one is different.

Attorney Rentrop – Yes, they're very different and it depends on the person and the violation, but from beginning to end, it's about 5 months. You're almost never able to resolve it at the first meeting.

Discussions continued regarding enforcement, the timeline for the violation process and placing liens against a property.

Attorney Rentrop briefly reviewed the ever-changing marijuana laws in the State of Michigan. He explained that if someone had a question, he would not have an answer for them at this time as the laws are that complicated.

Marijuana is under three laws now; there is the Michigan Medical Marijuana Act (MMMA), which was voter approved in 2008. There is the Michigan Marijuana Facilities Licensing Act (MMFLA) which was from about 5 years ago, and then there's the Michigan Regulation and Taxation of Marijuana Act (MRTMA). That's the most recent from last year which basically legalized marijuana.

Attorney Rentrop elaborated on each of the marijuana laws and the differences between them. He also discussed court cases and decisions, some of which are still pending, on numerous cases related to these laws and how that relates to the Commerce Township Zoning Ordinance, which still restricts marijuana growing operations, that are in excess of 12 plants, to industrial zoning areas. He still awaits the decision of the Michigan Supreme Court which will impact the current Zoning Ordinance.

He discussed the MMMA medical marijuana caregivers, secondary problems that large grow operations can cause, especially in residential areas, and how the changing laws and court decisions are creating challenges for control and enforcement. He explained the MMFLA which was originally intended for big corporations who would spend a lot of money on a license and have big grow facilities has been eroded by allowing caregivers to supply dispensaries. Commerce Township opted out of MMFLA.

Then along came the MRTMA, which has blown everything else up because now, marijuana is legal, and now you can opt-in or opt-out as to whether you have growing operations and/or dispensaries. You can't regulate consumption, except to the extent of smoking bans as with cigarettes. This has changed a lot of things and created conflicts between caregivers, licensed facilities, dispensaries and their suppliers.

The Michigan marijuana laws continue to change daily, so frequently that it is difficult for attorneys to keep up.

Dave Campbell – For the time being, Commerce Township has opted out of any of the recreational licenses. I heard it explained this way and it made the most sense to me: *We're not going to play the game until we know what the rules are.*

Discussions continued regarding opting in or out of the facilities licensing, and the fact that communities who opted in under the MMFLA may be forced into the recreational licensing. The law is unclear, especially with regard to opting back out. Other items addressed were existing growers in the Township who are caregivers, lack of action by law enforcement with regard to growing because it's now legal, people growing in their back yard legally as long as it's in a locked enclosure, and the nuisances associated with these activities.

Attorney Rentrop noted that nowhere else do we treat anything with this high regard. For example, signage is a first amendment free speech issue, and even speech can be regulated as to time, place and manner of speech. That's all the Township wants to do with marijuana is to regulate it. There's no way that marijuana should be more protected than free speech. That just doesn't make any sense.

Chairperson Rosman noted the time and that the next meeting would begin in 10 minutes.

H. OTHER MATTERS:

None.

I. CORRESPONDENCE:

None.

J. PLANNING DIRECTOR'S REPORT:

None.

K. ADJOURNMENT:

- **NEXT REGULAR MEETING DATE: THURSDAY, MARCH 26, 2020**

MOTION by Rosman, supported by Mills, to adjourn the meeting at 6:51pm.

MOTION CARRIED UNANIMOUSLY

Robert Mistele, Secretary