

Township of Lake

Huron County, Michigan
September 15, 2009

Special meeting of the Lake Township Board called to order at 7:00 P.M

Smith, Fischer, McCallum, Hyzer, and Hartsell present along with approximately 47 guests. Pledge of allegiance.

Smith read: *"This public hearing is being held pursuant to Section 302, Duties of the Planning Commission, sub-section 302.2 of the Lake Township Zoning Ordinance which states, in part: 'Members may be removed by the Township Supervisor after hearing, with the approval of the Township Board.' The hearing was requested by Lou Colletta and Tim Lalley following written notification received at the Township Board meeting held on August 17, 2009 from supervisor Robert T. Smith of his intention to remove them from the Lake Township Planning Commission."*

Lou Colletta stated he received a letter of dismissal for failure to hold biannual election of officers on August 17th and at the August 26, 2009 meeting of the planning commission election of officers was done. He also stated that the Lake Township Zoning Ordinance refers to the planning commission as a whole insofar as election of officers and asked why the Township Board did not just remind the planning commission over the years.

Tim Lalley handed out copies of the Michigan Townships Association Pledge of Governance which he indicated was presented to the Township Board and played a video of a portion of the joint meeting of the Township Board and Planning Commission with DTE on July 20, 2009. Following the video, Lalley read the following statement:

"I come here tonight simply to address the charges against me of having made slanderous statements at the board meeting of July 20, 2009.

Webster's dictionary defines slander as 'the malicious oral utterance of false defamatory remarks.'

It is a fact that at the Lake Township board meeting on June 15th, an agenda item under new business was an MTA Principles of Governance Pledge. A pledge sent to every elected township board in the state. After being read by the township clerk a motion was made to accept the pledge. The township supervisor Smith, Treasurer Fischer and trustee Hyzer all voted no and the motion failed. No explanation was given for the no vote.

It is also obviously a fact that after viewing the recorded joint board/planning commission meeting that I never once stated that this board was unethical.

I feel the accusation of misfeasance against me is unfounded. The truth cannot be slanderous.

There is no more fundamental ethical value than honesty! We associate honesty with people of honor, and we admire and rely on those who are honest."

Gary Howell, an attorney from North Branch with 35 years experience in representing townships in Tuscola, Sanilac and Lapeer counties addressed the

Board stating that the Township Board is proposing to do something they should not be doing, that there is no legal basis for the proposed removal. He stated that State law supersedes the local zoning ordinance and that the state law does provide for removal after written charges. He stated a letter was sent to both Lalley and Colletta, but the letter erroneously cites the Zoning Enabling Act of 2006 and should have stated the Planning Act of 2008. The letter should have also cited either malfeasance, misfeasance or nonfeasance which are the only reasons for removal, but nothing in the letters mentions those words. He stated that planning commission members are appointed for three year staggered terms for the reason that it keeps the planning commission separate from the political whims of the Township Board and maintains some continuity within the township as administrations change. He stated that if the township board wants to replace members appointed by the previous administration, there is a legal way to do so – when their terms expire. Not this way.

Attorney Howell stated that by removing these men for unlawful reasons will send the wrong message to any future appointees, that if you disagree with us, we will drag you through a public hearing.

Howell stated that the charges against Lou Colletta were that he failed to hold elections. The Michigan Planning Enabling Act of 2008, Section 17, states a planning commission shall elect its officers. He stated that if anybody is in error, everybody is. The statute also states that there is the opportunity for reelection, so there are no term limits. Howell stated that Section 15 of the law has an explicit hold over provision which provides that if the township board fails to replace a planning commission member, he/she shall hold his/her office until a replacement is appointed.

Howell asked if the Township Board was concerned about the election of officers, why was nothing ever said? He also stated that at the most recent planning commission meeting, following notification of this failure to hold elections, Colletta was reelected as Chairman indicating that the planning commission members desired that he continue in that position.

As far as Tim Lalley, Howell stated that he is being removed for making slanderous statements, that the board is unethical. Howell stated that Lalley didn't say those words, that Lalley stated the board's refusal to sign the pledge made it almost fruitless to continue, not that he would not continue and that the township board minutes as corrected are not accurate. Attorney Howell stated he, himself, was puzzled as to why the township board refused to sign the MTA Principles of Governance since it was township people who drafted them. He stated that as a township attorney he believes it is in everybody's best interest to sign the pledge and the 25 townships he represents all did. He stated Lalley is being removed for having the guts to say, 'I think you made a wrong decision' and that is not malfeasance, misfeasance or nonfeasance but politics.

Howell stated that the bottom line is that neither charges are a valid basis for removal under the law, that it is a violation of the state law and the township board is also denying his clients their constitutional rights and urged the township board not to remove them.

McCallum read letters received from John and Ruth Depner and Dan Depner in supporting Colletta and Lalley and requesting the township board not remove them from the planning commission.

Smith opened the meeting to public comments.

Bob Siver, Maris Fravel, John McCallum, Jeanne Williams, Jeanne Henry, Paul Beck, Paul Miller, Charles Henry, Bob McLean and Clay Kelterborn spoke in support of Colletta and Lalley, stating that they are men of integrity and it would be a shame to dismiss them, it is a deliberate intent to malign their character and a warning letter should have been sent, that the zoning ordinance is looked upon highly by realtors and others and was written by thoughtful people, that the reason for removal has to do with the push for wind turbines in the township, that the draft wind ordinance is the best piece of legislation in the entire county and Colletta and Lalley have done a fine job, that by removing these two, the township board will continue driving a wedge through the community, both Colletta and Lalley are thoughtful individuals who care about the community, ask the right questions and use due diligence. It was also mentioned that they have donated many hours volunteering at the township recycling program and for many other things. Another concern was the liability the township may incur for a wrongful dismissal that may impact the township and residents financially.

Pat Smith stated that Lalley cut off the video before making the statement that "as a company I would be very careful about working with a board that pledges not to be honest." Lalley replayed the video to show the portion referenced by Smith.

Neil Rohner and Pat Przystup offered comments stating that any connection to wind turbines are off base, that the purpose of the meeting is because one person violated his duties as chairman and another is accused of slander and any other discussions are not relevant.

Lalley commented that he is not sure how one can separate ethics and honesty and asked whether it is possible to be ethical without being honest.

Attorney Walt Salens, representing the Township Board, stated that he disagrees with Attorney Howell, that he does not believe the letters had to specifically state or describe the malfeasance, misfeasance or nonfeasance. He stated that any concern over liability and associated costs is not a factor since anyone can sue anybody for anything and it is up to the court to make a determination. He stated he provided the township board with the definitions of malfeasance, misfeasance and nonfeasance and it is up to the township board to make their decision. He stated he cannot influence their decision. When asked, he gave the following definitions: Malfeasance being the commission of an unlawful act, misfeasance

being the omission of an act, and nonfeasance being the failure to do something which a person ought to do.

Attorney Howell stated that he and the Township's attorney disagree very slightly and gave the definitions of malfeasance, misfeasance and nonfeasance as cited in Black's Law Dictionary as follows:

Nonfeasance is the omission to perform a required duty. Howell stated that Lalley did not commit any nonfeasance and that the charge of nonfeasance by Colletta in failing to hold election of officers is a duty of the planning commission, not the chairperson.

Misfeasance is the improper performance of a duty and Howell stated there is no allegation of that.

Malfeasance is an evil doing, illegal conduct, a wrongful or unlawful act.

Attorney Howell asked the township board to be very careful in making their decision inasmuch as the federal constitution and federal law prohibits violating their civil rights.

Smith closed the meeting to public comments and asked the board what they would like to do. McCallum stated that the township board has no legal basis for removing Colletta or Lalley. **Motion by Fischer to retire Colletta from the planning commission, seconded by Hyzer.** Roll call vote: McCallum and Hartsell – No. Smith, Fischer, Hyzer – Yes.

Motion by Fischer to dismiss Mr. Lalley, seconded by Hyzer. Roll call vote: McCallum and Hartsell – No. Smith, Fischer and Hyzer – Yes.

Motion by Smith to appoint two new members to the planning commission. McCallum stated she did not believe that could be done at this hearing. Township Attorney Salens advised Smith that he could not make the appointments at this hearing.

Attorney Howell stated he is deeply disappointed, that this was a very devious action and that although he respects their right to take a vote, it was improper.

Motion by Fischer to adjourn, seconded by Hyzer. Motion carried. Meeting adjourned at 7:55 P.M.

Valerie McCallum, Clerk