

# Lake Township Planning Commission

## Public Hearing and Regular Meeting

March 27, 2013

### Approved Minutes

Paul Golsch, Chairman, called the Planning Commission meeting to order at 6:30 P.M.

Pledge of allegiance. Roll Call. Jerry Pobanz, Dave Szumlinski, Paul Golsch and Clay Kelterborn present.

#### **(Public Hearing on proposed zoning amendments opened at 6:33 P.M.)**

Chairman Golsch read the existing 304.2 **Violations and Penalties** including Sections A – E and then read the suggested changes to Sections C and D as proposed by the Township Attorney. The board discussed the changes suggested by the attorney.

Chairman Golsch opened the floor to public comment.

Lou Bushey questioned the phrase “and other sanctions” in 304.2 D:

Szumlinski also was concerned with the issue of sanctions. He said sanctions could be anything, an extra fine or a lien on your property. Golsch said he did consider the term too open ended.

Supervisor McCallum explained that with sanctions it is up to the Board to establish a schedule. Previously Lake Township had a Municipal Civil Infractions ordinance and that ordinance defined Sanctions. When the Zoning Ordinances were redone in 2007, municipal civil infractions were not incorporated in the present Zoning Ordinances. By way of answering the question of sanctions, McCallum read the definition of sanctions as provided in the townships original Municipal Civil Infractions Ordinance, Ordinance No: 2000-03.

Someone asked how they can be sure enforcement will be fair. Does one person get preferential treatment over another?

Golsch said he didn't like the term “may” when it comes to enforcement. “Shall” would be better, because it means the township has to enforce. Kelterborn pointed out that by making the language “may” instead of “shall”, it speeds up the process of compliance; the Zoning Administrator can do much of the enforcement instead of going to the attorney every time.

Szumlinski wants the attorney. The attorney should write letters and do alternative follow ups and seek injunctive relief.

Kelterborn said the change was an effort to decriminalize violations by turning them into civil infractions. Szumlinski said he thinks it means the attorney has to go to court.

McCallum stated the Zoning Administrator brought the issue to her. He is the township's primary enforcement arm against ordinance violations and the commission should ask for his input.

Zoning Administrator Treder stated he currently writes letters notifying residents that they are in violation of an ordinance but they can be ignored since they have "no bite". He normally gives the resident 30 days to respond to him. The way the ordinance is currently written, the township has to go to the attorney to force compliance. Because of the costs involved, many minor violations are not enforced properly. By making the ordinance violations municipal civil infractions, Treder stated he can follow his procedure of writing letters to see if the resident will comply and in cases of non-compliance, he can then ticket the violator and take the violator to court, much like the enforcement of a traffic violation. Then the court can decide, depending on the severity of the violation, based on the sanctions schedule provided by the township.

Szumlinski asked if Treder gave everyone 30 days. Treder explained it varies a bit based on the resident. Some comply right away, some don't.

Kelterborn iterated that the Township Attorney's new proposed language modifies the language of the original ordinance slightly, adds a sliding scale of fines and allows for enforcement of violations by the township by making them civil infractions. Making violations into civil infractions means that the township will have greater flexibility in enforcement. The current ordinance addresses only violations and makes the use of an attorney mandatory in the compliance process. This costs more money and doesn't allow for other methods of enforcement such as use of the Zoning Administrator as an enforcement arm of the Township. In order for the Township to give tickets, it has to have a municipal civil infractions ordinance. This would allow the Township to enforce civil infractions with a fine. The Zoning Administrator would go to court where the judge would decide on a fine within the range specified by the Township.

Treder said he sends out a notice when a violation occurs. After 30 days, if they have not contacted him, Treder sends out another letter. Currently, Treder has no authority to enforce civil infractions. Treder mentioned the garage sale limit of three per year and the fact that some have garage sales all year round and the ordinance cannot be enforced at this time.

Tory Geilhart, the Building Inspector, said that Treder needs to be able to enforce the ordinances. By adopting the civil infraction ordinance, the township would save money and get a greater level of compliance.

Szumlinski did not think the proposed language was clear enough and wanted more definitive information in the ordinance as to what type of sanctions and what type of

ticket. Treder explained that he has tickets, he is just unable to use them without an ordinance and showed the commission his ticket book.

Yvonne Bushey thought that this should not have been a public hearing since the commission was not prepared to discuss the issue. This should have been a regular meeting with a working document.

Kelterborn stated that this topic has been discussed over the past year. Treder said he had discussed the problem with all the members at some time. Golsch asked if it was in writing. Treder said while he discussed the need frequently with the members, he did not give them anything in writing. Kelterborn said the topic had been discussed by the Board of Trustees. Treder said that enforcement is one of his responsibilities and was stressed in his training course for Zoning Administration. Szumlinski said he had never heard of any of this before.

McCallum stated that the Planning Commission and Zoning Administrator need to work together, that the Township Board will work on specifics on a municipal civil infraction ordinance and that if the Zoning Administrator is giving input that this is something that will be beneficial, that he can use it as a tool to make the job more efficient, the planning commission should listen to him.

Treder asked if the Planning Commission couldn't move forward with this because he needs to be able to enforce the ordinances.

Yvonne Bushey told the Commission to stick to the point, this is a public hearing that the planning commission was not prepared for and the public hearing should be closed.

Golsch asked for a motion to close the public hearing. Kelterborn motioned to end the public hearing and Szumlinski seconded.

**(Public Hearing closed at 7:20 p.m.)**

Szumlinski motioned not to adopt the ordinance the way it is written and send it back to the attorney for more clarification on issuing tickets and sanctions. Golsch seconded.

Kelterborn stated that we can still send it to the County for their input while we are waiting for more information from the attorney, that the Zoning Administrator has been waiting for months for something. Szumlinski said the Commission couldn't send it to County since the Planning Commission doesn't agree. Golsch wanted further clarification. He said that the Commission is being asked to act on faith that the Board of Trustees will pass additional legislation that they haven't produced for inspection and he is concerned that this language is too liberal as to what could be done to a person in violation.

kind of enforcement or language for the Zoning Administrator's to issue tickets. Vote on Motion. Pobanz and Kelterborn - Nay Golsch and Szumlinski - aye. Motion failed.

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Submitted by Nell Jacniacki

Kelterborn motioned to send the proposed amendment on to the Huron County Planning Commission for input and in the meantime solicit input from the attorney. Pobanz seconded. Pobanz, Kelterborn and Golsch - Yes. Szumlinski - No. Motion carried.

Golsch suggested tabling a recommendation on the ordinance until additional input is provided from the County Planning Commission and Township Attorney. Motion to table recommendation on ordinance to April meeting in order to gather additional information by Golsch. seconded by Kelterborn. Vote: All ayes – motion carried.

**Approval of minutes:** Board noted spelling mistakes. Correction under approval of agenda with additions. Kelterborn motioned to approve the minutes with corrections, seconded by Szumlinski. All ayes - motion carried.

**Approval of Agenda:** Kelterborn asked whether the Planning Commission would have public comments prior to discussing items on the agenda. Szumlinski stated it was problematic, since public comments could not be limited to agenda items. Motion by Kelterborn to approve agenda with public comments prior to conducting business and in correspondence requested that the Attorney’s letter on decks be added.

Golsch said the letter could not be introduced since the letter had not arrived one week prior to the meeting as required in the By-Laws.

Motion to have public comment prior to discussion of agenda items by Kelterborn, Seconded by Pobanz. Vote: Pobanz and Kelterborn – aye. Golsch and Szumlinski – nay. Motion failed.

**Correspondence:** None.

### **Old Business:**

**Recording Secretary:** Hiring of Recoding Secretary, no ad yet, only posted last week. Township will be advertising for Extra Office. Golsch commented it would be good if she could also be the recording secretary for the Planning Commission and ZBA. Kelterborn motioned to table the recording secretary issue, supported by Szumlinski. All ayes – motion carried

**Deck Size:** Golsch read letter from attorney and opened the discussion.

Attorney suggested that a new footnote for front yard and setback be added to Section 407, Dimensional Requirement Table, amended definition for “structure” and recommended removal of Sections 702 (G), 802(G) and Section 1310.1.

Treder recommended eliminating the word “deck”. Szumlinski concerned that by replacing “deck” with “structure” someone might put a garage in the front yard by the seawall. Szumlinski wants to define types of structures to clarify structure. Example, a deck is a flat surface so many inches off the ground Golsch concerned that if a deck is

defined as structure, allowing a structure can be built to the seawall, what would prohibit other structures such as a boat house?

Kelterborn asked what has caused the problem with building decks. Golsch responded that it is the 300 square feet limitation. Kelterborn suggested going back to the way the ordinance was prior to the limitation. Szumlinski questioned what if someone is at 35% of lot coverage. Kelterborn said that is what the Zoning Board of Appeals is for and the reasons for lot coverage are for septic and replacement fields plus isolation between well and septic. The township does not have water and sewer so therefore the lot coverage is important. Kelterborn stated that the ZBA can look at the individual lot to see what the impact of certain modifications is on a non-conforming lot. Golsch asked why a deck should be part of lot coverage when it does not create an impervious surface.

Kelterborn asked how many people are currently waiting for the bigger deck size. Treder mentioned several that were waiting. Golsch asked if any were over lot coverage. Mark stated that one would still need a variance for lot coverage but the others had large lots.

Kelterborn again stressed the impact on water quality. Szumlinski said if a lot was conforming in the past it should be conforming now.

Pobanz pointed out Ordinance 705.2 which states that no building can be built less than 35 feet from the ordinary high water mark. Some discussion about high water mark. DEQ says it changes at point of elevation. Bushey says the HWM never changes.

Szumlinski motioned to table this until he had time to review. Kelterborn amended the tabling motion with condition that township attorney will be contacted with certain questions. Definition of deck as a specific structure; what is problem with having definition of deck, porch, patio or slab? Prohibition of other structures other than decks? And 705.2 35 feet from HWM, could ordinance say to the seawall or the ordinary HWM?

Treder questioned about freestanding decks without homes as exist in Whippoorwill Subdivision and what can be done for that area? Kelterborn suggested an overlay for the area. Golsch asked who creates the overlay? Kelterborn thought the Planning Commission would be the body to set the overlay.

Szumlinski motioned to table until we get more information specifically from attorney for definitions, overlays and the problem of defining a deck and how to address prohibition of structures other than decks in time for the April meeting. Kelterborn seconded. Vote: all ayes – motion carried.

### **New Business:**

**Port Austin Fireworks Ordinance:** Pobanz indicated he gave the Board of Trustees a copy of the Port Austin Fireworks Ordinance.

**Amend 307.2 delete line E. proposed project for non-conforming lot:** Golsch wanted to amend this section in order to keep the commission from reviewing every site plan. Kelterborn commented on the benefit of having another set of eyes on it. Colletta was asked by Golsch what happened in the past when he was on the Commission. Colletta stated that the process was slowed down but the second set of eyes prevented many errors.

Golsch thought stream lining has its advantages. Treder thought he had a good grasp of residential but would like a second set of eyes when it comes to commercial or industrial issues.

Geilhart questioned whether there was a motion to stop looking at site plans since the procedure was changed.

Colletta said he remembers the Commission saying they did not need to look at site plans, but he did not consider the decision legitimate.

Golsch agreed with Kelterborn that a workshop with the Planning Commission and Township Board including the Zoning Administrator and Building Inspector to review the ordinances would be a good idea. Kelterborn motioned to hold the combined workshop. Golsch seconded. Vote all ayes – motion carried.

Motion to table the amendment of 307.2 by Golsch. Kelterborn seconded. Vote all ayes – motion carried.

### **Public Comment**

Lou Colletta stated that agenda should be adhered to.

Geilhart asked what the quickest way to changing the deck ordinance would be. The current process has been going on forever while people wait with their building projects. He asked whether the commission could make a few compromises to get the job done and suggested using what the attorney wrote for the time being and possibly make changes later. He stated that before we know it, it's going to be October again and right now people are putting off building because they don't want to pay for a variance.

McCallum also stated that people are waiting. Kelterborn said the commission could set a public hearing for the April meeting. Golsch and Szumlinski want everyone to agree.

Colletta considered this a pressing issue and stated that the commission could hold a special meeting. McCallum said people are getting annoyed with the township and it gives the appearance that the township is not moving on the deck issue, but would rather take people's money by requiring a variance. If the commission wants to tailor the ordinance at the public hearing, they can do that, and then the township may have an amended ordinance by the end of May.

Kelterborn recommended holding a public hearing in April and using the currently proposed language and make any changes at the public hearing. Pobanz also wanted a public hearing for the April meeting. Kelterborn motioned to remove deck ordinance from table. Pobanz seconded. Roll call vote – Kelterborn, Pobanz, Golsch – aye Szumlinski - nay.

Kelterborn motioned to schedule the proposed language for a public hearing in April. Pobanz seconded. Vote all ayes – motion carried.

Kelterborn motioned that we have Township Attorney here at the public meeting in April. Pobanz seconded. Vote all ayes – motion carried.

Kelterborn motioned to adjourn, Szumlinski seconded. Vote all ayes – motion carried. Golsch adjourned the meeting at 8:55 PM.

Nell Jacniacki,

Recording Secretary