

**SPECIAL BOARD MEETING
Lake Township
July 25, 2013**

Supervisor, Valerie McCallum called meeting to order at 12:30 p.m. Pledge of allegiance recited. Roll called: Valerie McCallum, Dorothy Fischer, Clay Kelterborn, Dede Russell. Absent-Dale Hartsell. Guests: approximately 20.

This meeting was called as the result of a Huron County Court hearing, Chasney-Yates versus Lake Township Zoning Board of Appeals, held July 22, 2013. Lake Township lost the decision. This meeting convened to decide whether to appeal within the allotted 21 day court limit, or to accept the decision.

McCallum read proposed court decision, which has not yet been signed and entered:

“ Section 5.06 of the 1992 Zoning Ordinance did not require that Lot 69 and Lot 70 be combined or merged into a single parcel.

Lot 69 and Lot 70 were conveyed to separate owners in 1998 and thereafter were not under common ownership.

Under Section 5.24 of the 1992 Zoning Ordinance, Lot 70 is a legal nonconforming lot of record that can be used for a dwelling without a variance for lot area or width.”

McCallum presented a history of the original variance stating a similar case regarding a 2004 appeal had been upheld based on Sec. 7.02, as amended in 2000, of the 1992 Zoning Ordinance. Also, our current Zoning Administrator had previously conferred with other sources, including MSU Land Use and they concurred with the Township's position. If it is decided to appeal, the main detriment is the legal cost, and there is no guarantee, if we won, that the appellant would not continue to appeal to the Supreme Court. One deficiency in our Zoning Ordinance is the lack of a definition of “common ownership”. If we would chose to pursue an appeal it could possibly cost \$5000-\$12,000. McCallum emphasized that according to our attorney, this decision was based on the 1992 Zoning Ordinance and it is not likely that we would be defending that ordinance again. He stated our 2000 zoning amendment is much stronger in regard to nonconforming lots.

Public Comment:

Arlene Bowman stated she was at the hearing and felt the judge listened to both sides but the attorney for the other side was much better. She also stated, the Judge said this is an isolated case due to the 1998 deeds and she does not feel we should appeal.

Dave Szumlinski was also at the hearing and he thought our lawyer was not as effective as the attorney for the defendant.

Larry Crews asked if our attorney was ever asked about the chances of winning?

McCallum responded that there would be three different judges in the Court of Appeals. Our attorney said it is a 50/50 chance to win and he would not recommend pursuing it due to the cost to the Township and the fact that we would be defending an old ordinance.

Larry Crews said he had personally investigated similar cases and found our chances to win would be 5 to 1, not in our favor.

Approved minutes

Len Pilato asked what do we actually win, if we win?

McCallum stated that we uphold our ordinances and our ZBA Board.

Len Pilato asked, how is it advantageous for the Township otherwise?

McCallum explained one of the purposes of merging smaller lots was due to the lack of sewer infrastructure. Many of the small lots originally platted were for cottages. It is common practice in many lakefront communities with septic to require smaller lots to merge.

Len Pilato expressed that he now understood that there was more at stake than just this court case.

Jeanne Henry stated that as a member of the Zoning Board of Appeals, their job is to uphold the ordinances. In regards to this original request for a variance to build on the smaller lot, the Board had looked at the sequences of dates and the chronology of circumstances and still believed it to be a correct decision to deny the request. She also stated she would not recommend pursuing an appeal. She would like to see a definition of "common ownership" included in the ordinances.

Lou Colletta asked if a previous similar lawsuit that had been settled in court in our favor could be brought back?

McCallum answered no, their opportunity to appeal expired 21 days after that decision.

Lou Colletta asked if this sets precedence for future variance requests of lots smaller than 100 feet?

McCallum answered that this decision was due to deeds drafted previous to the 2000 ordinance. It would not be likely there would be many, if any, cases under the same circumstance, particularly with quit claim deeds prior to the year 2000.

Dave Szumlinski asked if our lawyer gave us odds of winning before this hearing? Did he give any advice to pursue or not?

McCallum said no, a lawyer would not be able to do that. It is up to the Township.

Pat Prystup asked what our cost was?

McCallum answered that we have not received a bill yet.

Kelterborn stated that \$5000-\$10,000 is common. He also stated when a variance is challenged, the Board must support their ZBA. We have a responsibility to defend and support these court costs.

McCallum agreed, and stated we have a choice now to pursue or not. She expressed disappointment with the ZBA Chairperson, Louis Bushey, who was quoted in court as having stated at the original variance meeting, "I don't know why we're even here."

Yvonne Bushey stated she is not in favor of any further legal action.

A guest asked if we even have \$12,000 to pay for an appeal?

Approved minutes

Dorothy Fischer said it is not in the attorney budget, but funds can be adjusted to cover costs.

Dede Russell said it was a good meeting to discuss the situation and hear the opinion of the Township residents, as well as answer questions the public has. It was necessary for all of us to be advised as to what had happened and what our future choices were.

Prystup asked had the opposing defendant sued for their attorney fees, also?

McCallum answered no.

No further comments. Public comment time closed.

Township Board Comments:

Dorothy Fischer: "We should drop it."

Kelterborn asked if we are compromising our opinion of our ordinance if other cases come up?

McCallum said no and stated our attorney felt it would be rare that these circumstances would ever come up like this again.

Russell agreed that further pursuing in court was not in the favor of the Township.

Kelterborn made a motion to not proceed with an appeal. Seconded by Fischer. All in favor-aye. Motion carried.

Motion made by Kelterborn to adjourn. Seconded by, Fischer. All in favor- aye. Motion carried. Meeting adjourned 1 p.m.

Submitted by: Claren Russell, Clerk