

**Lake Township Planning Commission  
Regular Meeting  
August 23, 2023**

**Approved Minutes**

The meeting was called to order at 6:00 by Siver at the Lake Township Hall.

**Roll call:** Keith Hoffman, Bob Siver, Tim Quinn, Tim Lalley all present. Nicole Collins absent.

Supervisor Valerie McCallum and Zoning Administrator Tory Geilhart were also present as well as 6 in-person guests and approximately 14 guests virtually.

**Approval of Agenda:** Motion made by Lalley to approve the Agenda, seconded by Hoffman. All ayes – passed.

**Approval of Minutes:** Siver advised of a correction to the July 26, 2023 Planning Commission Minutes under **Correspondence**; the Land Use Permit Report should have indicated June 2023. Motion made by Hoffman to approve the July 26, 2023 Minutes with the correction, seconded by Lalley. All ayes – passed. Motion made by Lalley to approve the July 27, 2023 Minutes of the Board of Trustees/Planning Commission Joint Meeting, seconded by Hoffman. All ayes – passed.

**Correspondence:**

- Building Permit Report for July 2023 - no comments
- Zoning Report for July 2023 – no comments
- Land Use Permit Report for July 2023 – no comments
- Short Term Rental (STR) Letters – Siver advised that by his count the letters reflect that 12 people support the STR amendment and two people are against the STR amendment.

Siver also advised that the July 23, 2023 Minutes of the Joint Meeting reflect that nine people stood up and voiced approval of the amendment; one person had previously spoken so there were eight new voices. Siver also advised that five residents voiced their opposition of which four had already spoken at the Public Hearing and 2 non-resident business owners also voiced their opposition and they had already spoke at the Public Hearing. The new voices were in approval of the amendment. Siver advised a list of the total correspondence has been added to the packet.

**Public Comments:**

Sandra Murphy – for amendment. Part-time resident of Lake Township; the cottage has been in the family since 1956. Has seen sense of community go down since three rentals on the street. Worked hard to develop community and have regular meetings every year; not an association but a loosely formed group with guidelines and rules. Has seen a big change in three years and it's not the community they were expecting to have going forward. Caseville and Port Austin have worked hard to keep out Holiday Inn, Marriott to maintain the small town feel in the community which most people enjoy. If STR's are allowed to go on, it will and has changed the climate in the township.

Dave Sommer – for amendment. Permanent resident of Lake Township. Two different situations; the single rentals on the water with their own beach versus the situation of a street with 15 different residences with three being rentals and a 50' easement of beach; last Saturday there were 27 non-residents of the subdivision and 2 residents on that beach. Sommer asked the PC members how many have first-hand experience with a rental where there is an excessive number of cars, the noise created, etc. Sommer stated the rentals are on vacation however those that live there are not and are impacted by the STR's. Sommer stated the PC needs to decide what the future of the community should look like.

Lalley stated that the PC does not make the decision; the PC make its recommendation to the Township Board.

Carmen Rybinski – against amendment. Resident of Lake Township for 26 years. She and husband owned AJ's Market for 22 years. It is difficult to sustain a business as it is and difficult to find places to stay. Local people really do not spend money; tourists spend money. Short time period for businesses to make money to sustain for whole 12 months. Has rental in Caseville; has not had any problems, people are respectful. Beaches are not private they are public; anyone can use the beaches. Detrimental to area if STR's are eliminated.

Robin Passman – for amendment. In Lake Township from May through September. Spends a lot of money in area. The rental that is the gateway to her community is disgusting looking. Everyone takes pride in their homes in the neighborhood but she doesn't know what is going on with that rental; it is full all the time and doesn't look good and it is discouraging.

Doreen Paganini – against amendment. Has Airbnb in Caseville. Feels most people keep up STR's and the value of other properties would increase. STR's are not detrimental to community; it helps tax base.

Darryl Celmer – against amendment. Already on record. Does the PC want to welcome others doing it the right way by regulating or to shun away. Has rented his place this year and has not had any issues. It would be foolish to ban STR's economically. Supports some type of regulation but not a ban.

Patti Noga – against amendment. Just bought cabin in Oak Beach last October; use for personal use and VRBO. Put \$20,000 into cabin; improved neighborhood by amount of effort put into it. Has no issues with renters or neighbors.

Sharon Debanò – against amendment. Supports regulations. Has 150' of beach frontage and a lot of ample parking. 5 star rental. STR great for community; jobs for house cleaner, grounds keeper. Needs help with taxes.

Ann Krzeminski – for amendment. Lives in area with seven cottages with right of road and deeded beach which is not public. If someone gets hurt on deeded beach, can be sued; not making any money but can be sued. Does not argue that STR's are kept up but people renting are not part of the community and do not respect the land; picks up garbage in her woods. Had bad experiences with VRBO's; campers on property, generators running.

Public Comments closed at 6:26 p.m.

**New Business:** None

**Old Business:**

**Short Term Rentals Draft Zoning Ordinance** - Siver advised that the Township attorney is available via telephone to discuss the STR ordinance with the PC members.

Clifford Bloom, esq. was contacted and joined the PC meeting via telephone; Siver introduced the PC members. Lalley referred Bloom to the points Bloom made when looking over the PC's draft zoning ordinance; specifically, the point that the zoning ordinance would need to be changed to allow STR's to legally operate in residential areas and if that was done, the STR's would be grandfathered in. Lalley asked if licenses were granted for 50 STR's in residential areas, for example, couldn't that use by right apply to that specific license which would have to be renewed every year; that wouldn't open up the floodgates to commercial enterprise throughout the residential district, it would be 'spot' zoning; is there a way to do that?

Bloom advised he has been practicing for 40 years and represents about 70 municipalities and about 45 townships. STR's in the last five years is probably in the top three most contentious issues he has been dealing with and townships are all over the board. In the past, STR's were almost certainly allowed within one or two of the business districts; the problem is the Lake Township zoning ordinance of the past is really unclear whether STR's were allowed anywhere else which is probably true 90% of the time in rural and semi-rural townships; in the past, STR's were on a small scale. Bloom stated over the last 15 years that have been about a dozen appellate court decisions dealing with STR's both in zoning ordinances and deed restrictions cases. There are generally three ways that townships are amending their ordinances to deal with it; some allow STR's as a right with pretty loose regulations, requiring licensing and parking regulations, a lite touch for regulating STR's; some municipalities have banned them completely; an increasing number, particularly on the west side of the state, will cap the number of STR's. In Lake Township, if the Board decides to ban STR's outside of the commercial business district, that will be an issue; if there is litigation, the court will have to decide. One other category is "grandparented" where it's lawful unconfirming if it's been done before zoning which rarely happens because most rural and semi-rural townships have had zoning for 40, 50, 60 years. Unless there is court action you really don't know who is legal and who is not legal.

Lalley stated that some people are nervous about opening up the residential area to any commercial enterprise; if a certain number are allowed to operate, the township will not be able to stop it. Lalley further stated that the PC did address that wherein a license would be issued and only so many licenses would be granted. With that license, the right to operate is given within that residential district but it's only good for the license for that year. If someone is renting a STR without a license, at least the township has some recourse. Bloom stated an illegal use does

not become legal with the passage of time. Bloom further stated that if the township does decide to allow STR's with a cap with a separate licensing ordinance, if a STR is made lawful the township cannot decide to stop the allowance of STR's. Lalley asked if the township drafted an ordinance to allow STR's and after a number of years the idea of STR's is not working like the township anticipated, can't that amendment be revoked. Bloom stated if the township allowed 30 STR's, for example, and decided that STR's are a disaster, the township is stuck with the 30 STR's; once something is made legal under the zoning ordinance, the township cannot revoke the lawful nonconforming status.

Hoffman stated that he has seen a number of municipalities that are reducing the number of STR rentals available and asked Bloom if he is aware of any such lawsuits where the municipality lost in reducing the overall number. Bloom stated he is surprised at how few lawsuits there have been but New Buffalo just won a lawsuit but it's only the first round; a moratorium was placed to lower the number of STR's and a group of STR owners sued in Federal Court and the moratorium was upheld but they have not arrived at the ultimate merits of the lawsuit yet. Hoffman asked if there are 100 licenses and 10 lose their license due to non-conformance with the ordinance, does that drop the number of STR's down to 90 or is it still 100? Bloom stated that it would probably be 100 unless the ordinance clearly states it ratchets down. Bloom further stated that a total cap can be placed for the entire township and caps can be placed for particular areas but it's normally first in time and people will have to prove when they started renting their property.

Hoffman asked Bloom's reaction to the decision by the Michigan Supreme Court in June 2020 related to Spring Lake Township where they actually vacated part of the Court of Appeals decision which some are viewing as a win for homeowners and VRBO's. Bloom stated, if he remembers correctly, the Court of Appeals made a mistake that other courts are making. That is, the definition of a family has been liberalized over the years; the courts have said you can't define a family as a husband and wife and so on. Bloom further stated this started about 40 years ago using the definition of conventional family or a socially cohesive unit that is not transitory. What the Court of Appeals did in that case is stated STR's are transitory and therefore not allowed. What the definition is is what is one family and the family has to be of long duration; the family can't be transitory. Bloom stated in 100 % of the cases where the decision is upheld outside of commercial, the STR can only be rented to one family; it cannot be rented for a bachelor party, to five students, to three families, etc.

Hoffman stated that any ordinance to be written needs to be well done and his concern with the current ordinance banning STR's is the reference to the decrease in property values. Bloom stated he should have been clear in that it relates to rural and semi-rural townships. Bloom stated that according to a realtor, the STR increases in value but the surrounding properties decrease in value in rural and semi-rural townships. Bloom stated he doesn't think it's true that STR's frequently depress adjoining property values in cities and villages but he thinks there is good evidence that STR's depress property values in rural and semi-rural townships. Hoffman stated research has been done and it shows the opposite but the point is that statements like that and statements based in perception and half truths shouldn't be in an ordinance. Bloom stated you never want to be incorrect but it is good to have findings in ordinances that will help to support an ordinance when in court. Bloom stated he would like to see the studies. Hoffman stated from his research by independent groups, they are finding something different. Hoffman stated he is not in favor of STR's but the issue needs to be addressed. How do you enforce the banning of STR's? If STR'S are allowed, restrictions and rules would apply and money would be coming in

to pay for staffing resources and gives the Township more ability to do what needs to be done. If banned completely, and the statement was made that if STR's are allowed we wouldn't have the staff resources, the township won't have the staff resources if banned because there will not be any additional money coming in. Hoffman further stated there has to be a way to balance this out, to have some control of what goes on; the percentage of problems with STR's is small.

Quinn stated the PC was tasked with putting together an ordinance that was passed on to the Board and Quinn thinks it was Bloom's recommendation to ban STR's and asked if that was correct. Bloom stated that was one of the three options he recommended; ban, cap or allow. Quinn stated the PC spent months on the ordinance and asked Bloom if it was his responsibility to come up new ideas or to make sure it is legal. Bloom stated he represents the entire township government working for both the Planning Commission and the Township Board; the Township Board makes the final decision and the Township Board was in favor of banning STR's. Quinn stated moving forward the PC was given the ordinance by the Board to approve or reject banning altogether STR's and the PC voted to allow STR's; how does the PC move forward because no matter what the PC does, it goes to the Board. Bloom stated it's rare where the PC and the Board are on different sides but the PC has to do what they want to do and make its recommendation to the Board.

Siver stated generally that those in favor of STR's argue from a financial standpoint and township residents not in favor of STR's argue from a quality-of-life standpoint. Siver asked when taking Public Comments and letters into consideration, particularly out of township people commenting, how much consideration is the PC obligated to give those people? Bloom stated the court says public opinion is a factor that is appropriately considered in zoning decisions. It is appropriate for PC members to weigh in their mind comments from people who live in the township perhaps more than others.

Siver stating going back to the value of STR's, taking a group of houses where 10 are non-STR's and the 11<sup>th</sup> one is a STR and the value of that STR goes up, should that be reflected in an assessment of those places. Bloom stated anything that affects property values should be reflected. Bloom further stated the other thing that comes up is that all STR's are equal for a lot of reasons and it's one thing to have a STR and argue it's not commercial when the family uses it half of the summer and rents it the other half versus someone who owns an STR and it's 100% commercial, the owner never uses it and may have never seen it; that complicates the issue. Some people argue that if they rent it out for a month or two, it's not commercial whereas someone who owns it 100% for commercial, maybe that is commercial.

Siver stated that the first proposed ordinance had a licensing fee which now seems low. If that is the direction that the Township goes, is the Township bound by the fees set? Bloom stated that assuming the Township enacts a cap in the zoning, which is typically done in two different ordinances; the zoning ordinance defines what an STR is and includes the cap and a few other things, all the other issues are a separate ordinance; is the license for one year or three, fees, parking on site, etc. Siver asked if there is any limitation on fees, fines that can be set? Bloom stated he doesn't recommend doing a license every year, his recommendation is every two or three years. Bloom stated the administrative fee would be what it costs to administer the program. Bloom further stated that the Township really cannot impose a fine without going to court and it is almost always a money loser. Bloom stated the Township can charge reasonable administrative fees to cover the cost to administer the program.

Hoffman stated he has seen a new trend, however not in Michigan, where on top of the licensing fee, municipalities are also charging a 5% tax based on what the homeowner renting it out is charging. Hoffman asked Bloom whether he has heard about this. Bloom advised that he suspects those states have state laws that allow that; Michigan does not.

Lalley stated there was a public comment from a property owner wondering if an AirBnb tenant came onto her property and got hurt, can she be sued? Hoffman stated there were two issues; she owns acreage and if the renter goes on her property and gets hurt, she believes she can be sued. The second component is she is part of a group of 15 homes that have a deeded easement; if someone rents out their house and that renter is on that deeded easement and gets hurt, would all the individuals in that easement be liable? Bloom stated generally if it's a trespasser, the property owner is not liable unless grossly negligent. As far as a joint easement, put the STR aside, if there are 15 families that use the easement and one gets hurt, all the other 14 are going to be sued; a renter steps into the shoes of the owner of the property.

Lalley stated the issue of owners who do not live in the area was previously discussed; the STR owner lives in California, for example, and bought a cottage strictly for commercial purposes as opposed to someone who owns a cottage and rents it out two to three weeks every summer to help pay taxes. Can the Township be selective of who it allows? Bloom stated the way to do it is STR's are allowed, not considered commercial use, as long as they are not rented out to third parties more than 90 days per calendar year, for example, and he believes that would be upheld.

Call with attorney ended at 7:20 p.m.

Lalley asked that since the ordinance was passed back to the PC, what is it about the ordinance that the Board wants the PC to change? McCallum stated the submission to the Board was incorrect; the PC needs to make its recommendation to the Board.

Siver stated the PC needs to decide whether to recommend the amendment to the Board, which means to ban STR's, not recommend the amendment, or recommend with changes. Hoffman stated the ordinance is problematic and if STR's are banned, how is it going to be enforced? Hoffman stated he cannot support the ban as it is. Quinn stated he would like to go back to the original ordinance the PC put together and put more teeth into it but he cannot support the ban as it is. Lalley stated he cannot support the ordinance; the PC was tasked with making compromises to make it work for the majority of people. Siver stated there has been outpouring of support for the amendment.

Motion by Hoffman not to recommend to the Board the draft zoning ordinance to ban short term rentals, seconded by Quinn. Three ayes, one nay – passed.

Siver opened up the meeting to public comments for any issues regarding STR's or other issues.

Dave Sommer referred to the definition of family. He stated there are three rentals on his road; one has two buildings rented out and there is always more than one family, another is a trailer that is rented and two weeks ago there were eight ladies, non-related. The renter wants to make a profit so they need a group of people going together in order to pay what is charged; it is always groups of people, not just one family. Sommer also asked how many STR's are in the township. Siver stated 35; McCallum stated there are more and more every day. Lalley stated the draft ordinance addressed the number of people and vehicles allowed at a location; there are currently

no controls in place but the draft ordinance had controls in place. Sommer stated as far as enforcing, you can call the township on Friday night and by Sunday night, the damage is done. Lalley referred to a letter submitted where the writer stated you should never have to put up with noise a neighbor/renter makes; Lalley stated what if it is a neighbor who lives there all year round? Sommer stated he has had that situation and the police were called and it has made a difference but by the time you get the police involved with a renter, it's too late. Hoffman stated the draft ordinance has a three strikes system in place and the registration can be revoked if there are three complaints.

Robin Passman stated the number of families contained in a home and the number of cars concerns her. Siver stated the Township has an ordinance that addresses parking. Passman further stated she has contacted the Township on other issues and you may have to wait a couple weeks to have issues addressed.

Sandra Murphy stated that there have been comments about contacting the STR owner if there is a problem with a tenant of the STR; Murphy stated she doesn't want to have to police income making property.

Michael Manenti stated the court cases are still being fought but if STR's are banned, how will it be enforced? Manenti further stated if you have licenses and revoke that license, how will it be enforced? Manenti is for the property owner to a point but he is of the opinion that investors will come in and turn property into permanent STR's and it will get worse. Manenti stated he doesn't have a problem with a property owner renting his property for a period of time to help pay the taxes. McCallum stated ordinances come about because there is a need and the enforcement often times comes about because of a complaint; the Township has the ordinance to fall back on when someone calls with a problem and the Township can enforce the zoning ordinance.

Kevin (unintelligible) is opposed to the ban on STR's and referred to the discussion regarding taxes and stated STR's pay taxes as well and in most cases pay non-resident taxes which is double resident taxes; this should not be overlooked as the STR's are paying their share of the taxes.

Public Comments closed at 7:52 p.m. and Siver announced a break.

The meeting was reconvened at 8:05 p.m.

Hoffman referred to LandPlan's January 20, 2023 letter item #6, **Increase flexibility to allow applicants to build on existing "nonconforming footprints," such as enabling the erection of a second story on an existing nonconforming dwelling (setback encroachment), with appropriate restrictions to minimize impacts on neighboring lots.** Geilhart stated he would like the PC to consider allowing someone to tear down and rebuild house on the exact same footprint whether the existing structure is conforming or not. Geilhart further stated regarding second stories on a non-conforming structure, the County will allow a second story on a non-conforming first story as long as the second story does not leave the existing footprint. Hoffman stated there are four scenarios; a one-story non-conforming, allow to tear down and rebuild on the existing footprint on target sight. Hoffman stated the second scenario is a one-story non-conforming and the owner wants to build up on the non-conforming structure; at that point it has to meet all current setbacks. Geilhart stated that can be restrictive and possibly look at allowing the second story if at least half of the setback is met. Geilhart further stated that people are forced

into expanding in every direction they can which covers more ground instead of going up leaving more land and room for septic, tile fields, etc. Geilhart stated that any second story build has to conform and he has shot down a lot of requests and he is encouraging flexibility; possibly a sliding scale on ridge height. Hoffman stated building a second story on the existing footprint can be problematic because of what it potentially can do to neighbors and the PC might want to possibly look at an option of allowing half the distance of what that setback might be (Geilhart provided an illustration on the board). Lalley stated he likes the idea of keeping the side yard setback stricter for a second story and using a sliding scale on ridge height. Hoffman stated that front, rear and side setbacks need to be identified and there are specific scenarios that the PC needs to address. Siver stated he agrees with Lalley on side yard setbacks as that can be most intrusive on the neighbor. Quinn asked if there should be any flexibility based on the size of the lot? Geilhart stated the previous ordinance had an 80 percent rule; if you had a non-conforming lot, you only had to meet 80 percent of the setbacks for the front and side yard. Quinn stated he means the opposite; more restrictive the smaller the lot, the larger the lot allow more flexibility to build further off the lot line. Hoffman asked if there would be an issue in another scenario; a two-story non-conforming house being demolished and the owner wants to build a two-story house on the existing footprint. Lalley stated it is his opinion that if there's a two-story house there and the owner wants to rebuild on the existing footprint, it should be allowed. Siver stated it is a new house and it is incumbent to meet the current setbacks. After further discussion, the PC tabled item #6.

**Public Comments:** None

Motion made by Hoffman to adjourn, seconded by Lalley. All ayes – passed.

Meeting adjourned at 9:11 p.m.

Next meeting Wednesday, September 27, 2023 at 6:00 p.m.

Submitted by Lisa Clinton