

Speaker Township Informational Meeting Minutes

October 13, 2022

Meeting called to order **Maitland** @ 7:00 p.m., Five (5) Board members present

Pledge of Allegiance said

New Business:

Approval of adding two (2) members to the Planning Committee:

Maitland(Supervisor) advised that the Planning Commission is requesting to add two members, which would bring the total members to seven (7). The purpose is to have more representation for the township. Maitland advised this requires an amendment to the Planning Commission Ordinance Article II. **Motion to Approve the Amendment to the Planning Commission Ordinance Article II, Adding Two (2) members made by Murray, second by Stanley. Roll Call Vote: AYES: Sheldon, Stanley, Maitland, Cubitt & Murray. NAYS: 0. Motion carried**

Guest: Speaker Township Attorney Brian Garner (Taylor Butterfield, P.C.)

Public Comment: (SEE ATTACHED SIGNATURE SHEETS FOR PUBLIC REPRESENTATION)

Maitland (Supervisor) advised that the purpose of **Attorney Brian Garner's** presence is to answer questions of the Public in regards to the

River Bend Project. Public Comment is integrated within the question and answer section of the meeting.

Attorney Brian Garner started his presentation by passing out a Memorandum of information in relation to the questions that have been posed by the township residents at past meetings on the Zoning Ordinance Amendments and the River Bend Project.

Attorney Brian Garner reviewed each area of the handout and asked for questions to be held until the end of his explanation.

Maitland(Supervisor) did ask for those wanting to speak to come up to the podium and some residents did follow his request. However, there were many talking over each and shouting out comments, which made it difficult to keep order.

The public did consist of a few non-residents of the township. The major questions related changing the Wind Ordinance in regards to height, setbacks, etc. **Attorney Brian Garner** explained that a Special Land Use permit has been submitted by Liberty Power being a 60" binder that will be reviewed by the engineer, by himself and by the Planning Commission. A public hearing will then be held for the public to ask for "Special Conditions", but these conditions must be validated in order to request Liberty Power to comply. **Attorney Garner** encouraged those requesting "Special Conditions" to gather information and submit the requests to Planning Commission or to himself for review prior to the Public Hearing. It was explained that the review of the Special Land Use permit will take some time to be sure all requires of the township ordinance has been met.

At one point **Steinhoff**(Planning Commission Chairman) spoke about how he has changed his mind and feels that the township board needs to stop the windmills from coming in. He stated he heard something about a \$1,000,000.00 being given to the township for the community

and could \$20,000,000 be asked for. **Attorney Garner** advised against asking the windmill companies to give money to the township.

Maitland (Supervisor) stated that no money has been given to the township and the windmill company had made a comment at one of their informational meetings for the public that they have given money to other communities in the past to be used for the betterment of the community. There was much discussion that followed on changing the ordinance and **Attorney Garner** reiterated several times that the current ordinance must be followed for the current Special Land Use Permit, but could be changed for future permit applications. He did again state that "Special Conditions" can be added by the Planning Commission and he encouraged those conditions be submitted for review prior to the Public Hearing. The discussion was held on how lawsuits could be filed if the Special Land Use permit is denied and the company followed all the requirements of the Zoning Ordinance unless "Special Conditions" are added and they cannot comply with them.

Adjournment: **Motion to adjournment meeting made by Sheldon, second by Murray @ 8:50 p.m. Motion carried.**

Dawn M. Cubitt

Speaker Township Clerk

MEMORANDUM

TO: Speaker Township Board, PC, and ZBA Members
FROM: Brian M. Garner, Speaker Township Attorney
DATE: 10/13/2022
RE: Zoning Procedure and Conflicts of Interest

What is Zoning? "Zoning" is the division of land into distinct districts and the regulation of certain uses and developments within those districts. It is the process that a community employs to legally control the use which may be made of property and the physical configuration of development upon tracts of land located within its jurisdiction. A basic goal of land-use regulation is to segregate incompatible uses. *Dorman v Township of Clinton*, 269 Mich App 638; 714 NW2d 350 (2006). The power to zone must also be exercised with due regard to property rights. *Keller v Farmington Tp*, 358 Mich 106; 99 NW2d 578 (1959). A proper balance must be attained between the public interest on the one hand and private interests in property on the other. *Janesick v City of Detroit*, 337 Mich 549; 60 NW2d 452 (1953).

Authority to Zone. The power to zone and rezone property is a legislative function (*Inverness Mobile Home Community, Ltd v Bedford Tp*, 263 Mich App 241; 687 NW2d 869 (2004)) and is a reasonable exercise of a government's police power. *Paragon Properties Co v City of Novi*, 452 Mich 568; 550 NW2d 772 (1996). Since political subdivisions have no inherent police power (*Rodney Lockwood & Co v City of Southfield*, 93 Mich App 206; 286 NW2d 87 (1979)), they have no inherent zoning power (*City of Livonia v Department of Social Services*, 423 Mich 466; 378 NW2d 402 (1985)) and may exercise only those powers to zone granted by the Michigan Constitution or delegated to them by the state legislature. *Rodney Lockwood & Co v City of Southfield*, 93 Mich App 206; 286 NW2d 87 (1979). Municipalities have the authority to regulate land use through zoning only because the legislature has specifically granted them that authority in the Michigan Zoning Enabling Act (MCL 125.3101 *et seq*); as such, a municipality may exercise zoning authority only to the extent authorized by statute. *Maple BPA, Inc v Bloomfield Charter Twp*, 302 Mich App 505; 838 NW2d 915 (2013).

Limitations on Zoning Regulation. Lawful uses of land may be prohibited in certain areas where the exercise of the police power bears a real and substantial relationship to the general welfare. *Detroit Edison Co v City of Wixom*, 382 Mich 673; 172 NW2d 382 (1969). However, public welfare is not to

be promoted at the expense of a property owner by regulations which are capricious or arbitrary in nature, and the use imposed on the property must be a feasible use. *Bassey v City of Huntington Woods*, 344 Mich 701; 74 NW2d 897 (1956). The power of a municipal corporation to enact zoning ordinances must not be exercised in an arbitrary (*Frericks v Highland Tp*, 228 Mich App 575; 579 NW2d 441 (1998)) or discriminatory manner. *Kropf v City of Sterling Heights*, 391 Mich 139; 215 NW2d 179 (1974). Legislative authorization to municipal corporations to zone does not justify arbitrary action or the unreasonable exercise of authority (*Hitchman v Oakland Tp*, 329 Mich 331; 45 NW2d 306 (1951)), and, in fact, the enabling statute contains a provision calling for uniformity. MCL 125.3201(2).

Exclusionary Zoning is Prohibited. A zoning ordinance which totally excludes an otherwise legitimate use carries with it a strong taint of unlawful discrimination and denial of equal protection of the law with regard to the excluded use. *English v Augusta Tp*, 204 Mich App 33; 514 NW2d 172 (1994). In other words, a community cannot effectively zone out legal businesses. *Truckor v Erie Tp*, 283 Mich App 154; 771 NW2d 1 (2009), appeal denied, 771 NW2d 742 (Mich. 2009). In fact, MCLA 125.3207 provides that a zoning ordinance or zoning decision may not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

Zoning Approval Process

1. ***Application for Zoning Compliance Permit*** (this is what starts the zoning approval process).
 - a. Must be applied for in writing with the Zoning Administrator,
 - b. Zoning Compliance Permits shall be issued by the Zoning Administrator whenever the proposed use complies with the provisions of this Ordinance, and
 - c. The Zoning Administrator determines what other requirements are need for the request to comply with the provisions of the Zoning Ordinance (i.e., special land use approval, variances, and/or site plan approval).
2. ***Special Land Use*** (this is a type of use that requires a little extra scrutiny before being permitted).

- a. Special Land Use requests must be a written application submitted to the Planning Commission containing all the required information and a scaled drawing (this is not the Site Plan),
 - b. Special Land Uses can only be approved after a Public Hearing, which requires 15-day notice in the newspaper, to the petitioner and owners of the subject properties, and to all owners and occupants of properties located within 1,500 feet of the subject properties,
 - c. Special Land Use requests shall be approved if the request is in compliance with the standards stated in the zoning ordinance,
 - d. The Planning Commission can place reasonable conditions on the approval of the Special Land Use request, and
 - e. These conditions cannot be changed without the approval of the Planning Commission.
3. **Site Plan Approval** (this is the Contract of how the project will be built).
- a. Site Plan submitted to Zoning Administrator,
 - b. If it meets the requirements, the Site Plan is then referred to the Planning Commission,
 - c. The Planning Commission can consider a Site Plan at any regular or special meeting called for that purpose (there is no requirement for a Public Hearing),
 - d. Site Plans shall be approved if they meet the requirements of the Zoning Ordinance, and
 - e. Once approved, the Site Plan shall not be altered without the consent of the Planning Commission.
4. **Zoning Compliance Permit** (this is given when the Zoning Administrator verifies that the development was built per the Site Plan).

Law Regarding Zoning Compliance Permit

"The legislative body may charge reasonable fees for zoning permits as a condition of granting authority to use, erect, alter, or locate dwellings, buildings, and structures, including tents and recreational vehicles, within a zoning district established under this act." MCL 125.3406(1).

"A zoning compliance permit shall be acquired from the Zoning Administrator before any construction is undertaken or any structure is moved within the Township and before any change in the use of any land, structure, or building is undertaken." Speaker Township Zoning Ordinance 4.01.00.

"A zoning compliance permit shall be issued by the Zoning Administrator whenever the proposed use complies with the provisions of this Ordinance." Speaker Township Zoning Ordinance 4.01.02 (emphasis added).

Law Regarding Special Land Use Approval

"A request for approval of a land use or activity **shall be approved if the request is in compliance with the standards stated in the zoning ordinance**, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes." MCL 125.3504(3) (emphasis added).

"The standards shall be consistent with and promote the intent and purpose of the zoning ordinance and shall insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall also insure that the land use or activity is consistent with the public health, safety, and welfare of the local unit of government." MCL 125.3504(2).

17.02.00 STANDARDS

Request for special land use shall be granted or denied based on the following standards:

- A. The location, size and character of the proposed use shall be in harmony with and appropriate to the surrounding neighborhood.
- B. The proposed use shall not result in the creation of a hazardous traffic condition.
- C. The site layout, intensity of use, and time periods of use shall not be such as to create a nuisance to dust, noise, smell, vibration, smoke or lighting.
- D. All specific requirements of the zoning district where the proposed use would be located shall be complied with.

"Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically

desirable manner. **Conditions imposed shall meet all of the following requirements:**

- (a) Be designed to **protect natural resources, the health, safety, and welfare, as well as the social and economic well-being**, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
- (b) Be **related to the valid exercise of the police power and purposes which are affected by the proposed use or activity**.
- (c) Be **necessary to meet the intent and purpose of the zoning requirements**, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards."

MCL 125.3504(4) (emphasis added).

"The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner."
MCL 125.3504(5).

Law Regarding Site Plan Approval

"Site plan submission, review, and approval **shall be required for special land uses....**" MCL 125.3501(3) (emphasis added).

"If a zoning ordinance requires site plan approval, the **site plan**, as approved, **shall become part of the record of approval**, and **subsequent actions relating to the activity authorized shall be consistent with the approved site plan**, unless a change conforming to the zoning ordinance is agreed to by the landowner and the body or official that initially approved the site plan." MCL 125.3501(2).

"A decision rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes." MCL 125.3501(4) (emphasis added).

"A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted

local unit of government planning documents, other applicable ordinances, and state and federal statutes." MCL 125,3501(5) (emphasis added).

"In determining whether to approve, modify, or deny a site plan, the Planning Commission shall consider the following:

- A. Adequacy of traffic ingress, egress, circulation and parking.
- B. Adequacy of landscaping to protect adjoining properties and enhance the environment of the community.
- C. Location and design of proposed structures so as to ensure that detrimental effects on adjacent properties will be minimized.
- D. Adequacy of storm drainage.
- E. Location and design of signs so as to prevent highway visibility obstructions, driver distractions, encroachments, and adverse effects on the community environment.

Speaker Township Zoning Ordinance 16.03.00.

Law Regarding Conflicts of Interest

Public Act 318 of 1968, as amended, found at MCL 15.301 *et seq* applies only to legislators and state officers.

Public Act 316 of 1968, as amended, found at MCL 15.321 *et seq* applies to all *public servants* and *public entities*.

Pursuant to MCL 15.328, "[t]his act does not prohibit a unit of local government from adopting an ordinance or enforcing an existing ordinance relating to conflict of interest in subjects other than public contracts involving public servants."

Public Act 196 of 1973, as amended, found at MCL 15.341 *et seq* does not apply to political subdivisions, except for MCL 15.342b (regarding whistleblower protections).

"Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the planning commission. The member is disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members of the planning commission...Unless the legislative body, by ordinance, defines conflict of interest for the purposes of this subsection, the planning commission shall do so in its bylaws." MCL 125.3815(9).

Speaker Township Informational Meeting Sign in Sheet

Date: 10/13/22

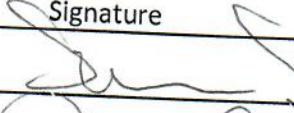
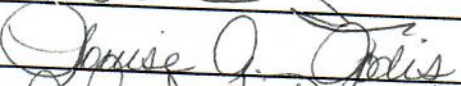

Printed Name

Signature

John Jodis

Louise Jodis

Charles Binkett

Speaker Township Informational Meeting Sign in Sheet

Date: 10/13/22

Printed Name

Signature

Jody P. Kura

Jody P. Kura

James Brown

James Brown

Matthew Bular

Matthew Bular

Mary Bular

Mary Bular

Russ Bular

Russ Bular

Johnathan Bular

Johnathan Bular

Beth Cylerman Moss

Beth Cylerman Moss

FRED MOSS

FRED MOSS

E. Sollars

E. Sollars

Speaker Township Informational Meeting Sign in Sheet

Date: 10/13/22

Printed Name

Signature

MARK FAIRMAN

Mark Fairman

Geord Pathic

Geord Pathic

Sue Moskwa

Sue Moskwa

Jmes Moskwa

Jmes Moskwa

CAROLYN PATHIC

Carolyn Pathic

Patrick Bower

Patrick Bower

Speaker Township Informational Meeting Sign in Sheet

Date: 10/13/22

Printed Name

Signature

Carolyn Fairman

Carolyn Fairman

Marilyn Strickler

Marilyn Strickler

Barbara Falk

Barbara Falk

PAUL FALK

Paul Falk

Rochelle Stevens

Rochelle Stevens

Speaker Township Informational Meeting Sign in Sheet

Date: 10/13/22

Printed Name

Signature

Bella Hoffman

Bella Hoffman

Roger Van Damme

Roger Van Damme

Speaker Township Informational Meeting Sign in Sheet

Date: 10/13/22

Printed Name

Signature

Brenda Murray

Brenda Murray

Jan Priess

Jan Priess

Speaker Township Informational Meeting Sign in Sheet

Date: 10/13/22

Printed Name

Signature

FRED MURRAY

Fred Murray

Bonnie Sproul

Bonnie Sproul

David Sproul

David Sproul

Ben Steinhoff

Ben Steinhoff