

**THE CHARTER TOWNSHIP OF OSHTEMO**  
**Township Board Meeting**  
**July 12, 2016**

The Oshtemo Township Board public comment session was held at the Township Hall. Supervisor Heiny-Cogswell called the meeting to order at 5:00 p.m.

**PRESENT:**

Supervisor Libby Heiny-Cogswell  
Clerk Deb Everett  
Treasurer Nancy Culp  
Trustee Nancy Carr  
Trustee Dusty Farmer  
Trustee Zak Ford  
Trustee Grant Taylor

Also present were Township Attorney James Porter, Public Works Director Marc Elliott, Fire Chief Mark Barnes, Lt. Troy Faulk and 5 interested people.

**Kalamazoo County Sheriff's Department** – Lt. Troy Faulk provided information on recent activities in the Township.

**Discussion – Fire Department Staffing** – Fire Chief Barnes presented information regarding staffing issues advising the current system of paid on call driver/operators is no longer able to assure staffing at both fire stations. He presented a proposal to increase staffing by instituting a 24/7 minimum staffing consisting of 1 driver/operator and 1 firefighter at Station 1 and Station 2, implement typical fire service 24 hour shifts, transfer two current full time position driver/operators, one of which is also the administrative assistant to 24 hour shift positions, add four new 24 hour positions and one civilian administrative assistant position. His proposal also included a wage step process. This item will be taken up on the regular agenda.

**Discussion – 2015 Annual Audit** – Brian Krol, from Seber Tans, PLC reviewed the financial audit for 2015.

**Closed Session** – Motion by Taylor, second by Ford to adopt a resolution to adjourn to closed session to consult with legal counsel for purposes of discussing pending litigation because to do so in an open meeting would have a detrimental effect upon the Township's position and disclose matters protected by attorney-client privilege. Roll call showed Heiny-Cogswell-yes, Taylor-yes, Carr-yes Culp-yes, Everett-yes, Farmer-yes, Ford-yes. The Board adjourned to closed session at approximately 5:35 p.m. Motion by Taylor, second by Farmer to return to open session at approximately 7:05 p.m. Carried 7-0.

Supervisor Heiny-Cogswell called the regular meeting to order at approximately 7:10 p.m.

**PRESENT:**

Supervisor Libby Heiny-Cogswell  
Clerk Deb Everett  
Treasurer Nancy Culp  
Trustee Nancy Carr  
Trustee Dusty Farmer  
Trustee Zak Ford  
Trustee Grant Taylor

Also present were Township Attorney James Porter, Public Works Director Marc Elliott, Fire Chief Mark Barnes, Planning Director Julie Johnston, Lt. Troy Faulk and approximately 40 interested people.

**CITIZEN COMMENTS**

Ernie Best, 951 Oshtemo Trace, commented the Board should approve the Mystic Heights site condominium project.

State Rep. Brandt Iden provided information on recent activities of the State Legislature.

**CONSENT AGENDA**

Items on the consent agenda were:

- a) Minutes of June 28<sup>th</sup> regular meeting.
- b) Receipts & Disbursements Report

Motion by Taylor, second by Culp to approve the consent agenda. Carried 7-0.

**PUBLIC HEARING – INDUSTRIAL DEVELOPMENT DISTRICT  
ONE WAY PRODUCTS**

An application from Hinkle Properties, LLC and One Way Products located at 6500 West KL Avenue, to establish an Industrial Development District was before the Board for consideration. Attorney Porter advised the application and supporting materials were in order, the applicant is looking to construct a 25,000 to 30,000 facility, currently has 27 local employees and would transfer 8 to 10 from another facility and looks to add another four to six within approximately 2 years. He noted if the district is approved the applicant would be requesting an Industrial Facilities Tax Exemption as allowed by current Board policy.

In response to Board members' questions, Isaac Hinkle advised they manufacture and distribute cleaning and janitorial supplies, some with an EPA designation of "designed for environment".

Motion by Taylor, second by Everett to adopt a resolution creating an Industrial Development District at 6500 West KL Avenue. Roll call showed Everett-yes, Farmer-yes, Ford-yes, Heiny-Cogswell-yes, Taylor-yes, Carr-yes, Culp-yes.

**MYSTIC HEIGHTS SITE CONDOMINIUM – STEP I – TENTATIVE PLAN APPROVAL**

Supervisor Heiny-Cogswell advised this item was tabled from the two previous meetings, noting this has been one of the most difficult issues before the Board; she noted the Board took action at the June 28<sup>th</sup> meeting and need to follow up in writing.

Attorney Porter commented the Board needs to follow the Subdivision and Site Condominium Ordinance; there has been a lot of reference to the Land Division Act and he wished to clarify why it cannot be the basis for a denial. He advised the act does not overrule the ordinance but states that the decision must follow ordinances and adopted rules of the Township. The Land Use Plan is not an ordinance nor published rule; while it gives general direction it is supposed to dictate what happens in the zoning ordinance. He commented while there is agreement the zoning ordinance may not reflect everything we want with regards to the Land Use Plan, and past requests to previous planners did not bring forth what they should have to the Board which has unfortunately placed the Board in a difficult position. He further commented that most would agree the applicant meets all the specific provisions of the Subdivision and Site Condominium Ordinance with the exception of Section 290.005, VD.3.d. (2) which refers to natural features but it must kept in perspective that the section says the plan should preserve in so far as possible natural features; the current ordinance allows 40 lots on the site. He also commented it is his job is to give the best advice possible keeping the entire Township in mind; the Board needs to make sure their decision is supported by competent material and substantial evidence on the whole record and it cannot be arbitrary and capricious; many of the specific provisions have been met by the applicant, and while what would be best described as a vague section of the ordinance, some would argue they have not met. He advised that in his opinion with 30 years of municipal law experience and insurance counsel Jim Straub with 40 plus years of experience, the Board has been told with the changes proposed by the applicant and with the further requirements that have been recommended to the Board, he does not believe there is competent material and substantial evidence upon which to base a denial. He further advised that in advance and in consultation with insurance counsel a draft resolution has been presented regarding reasons for rejection which is required per the ordinance and also required by ordinance and State law requirements for tentative approval.

Supervisor Heiny-Cogswell recited from the resolution.

**REASONS FOR REJECTION**

1. The proposed condominium project plan for the 40-Unit Site Condominium Development does not, insofar as possible, preserve the existing natural features which add value to the residential development, specifically, preservation of the woods and protection of the natural terrain of the property per Section 290.005 V.D.3. d.(2).
2. The proposed condominium project plan fails to address the concerns of the Board regarding erodible soil conditions, particularly on the eastern portion of the property which has very steep grades.
3. The proposed condominium project plan fails to address the concerns raised regarding the density of the proposed project in light of the severe impact on the natural features which will result from the extensive grading required for development of each building site in order to allow for: a septic field, reserve septic field, a well, and home construction.
4. The proposed plan fails to adequately address the issues of water run-off and soil erosion.

## **REQUIREMENTS FOR TENTATIVE APPROVAL**

1. Re-design and combine Lots 11 through 17 from seven lots to five lots in order to mitigate the concerns set forth above (See Attachments B and B-1).
2. Perform a tree survey within the 20-foot tree preservation area along Lots 1 through 9, Lots formerly known as 13 through 16, and 19 through 22, in order to allow the Developer to show the grading location of the meandering ditch proposed within that setback area, and identify which trees, if any, which will be removed in order to construct the meandering ditch.
3. Stake and preserve the 20-foot rear buffer area along Lots 1 through 9, those lots formerly identified as Lots 13 through 16, and Lots 19 through 22.
4. Prior to Step 3, the Developer commit to performing a tree survey after the staking is completed in order to identify those trees over 12 inches in diameter which are to be preserved pursuant to Note 13 of the tentative preliminary plan for Mystic Heights Site Condominium.
5. Plant or identify existing trees surrounding the drainage basins and develop a landscaping plan which would provide for the planting or protection of existing trees -- 30 feet on center -- surrounding both drainage basins.

Public Works Director Elliott commented what the drafted requirements and modifications do much better to manage the adverse impacts to the area of most concern which is where the slopes are steepest and construction would be most difficult when taking into consideration the amount of grading that would be needed to provide septic fields.

Trustee Carr commented that unfortunately for some and fortunately for others, the Board needs to follow the ordinance; the Planning Commission a year ago didn't and she recalls in other instances, others have been told that the ordinance must be followed.

Trustee Farmer commented as a member of the Planning Commission, they did follow the ordinance and in response to Trustee Carr's question concurred the plan was not approved.

Trustee Taylor commented the Board two weeks ago rejected Step 1 and was required to state the reasons; the reasons given are fair but also feels the requirements given for approval are fair, moving from 40 lots to 38, preserving more trees and landscape, it is a compromise and the Board should consider the resolution. He further commented the Board is in a tight spot, the reasons for rejection and requirements are a step in the right direction, hopefully there can be a meeting in the middle.

Clerk Everett commented her concern is while she thinks the reasons for rejection are valid and she is not satisfied with the alternative plan, the legal issue is a great concern. She also commented that if Attorney Porter thought there was any chance of prevailing he would be fighting the good fight and has done so on other matters; her conclusion is the Board has no choice and she is sorry the ordinance had not been updated.

Supervisor Heiny-Cogswell commented she concurs with Clerk Everett, the new planner is being very proactive and has put in place new ordinance language to address this issue; it does not help those concerned now but the Planning Commission will be working on updating the Land Use Plan and the ordinances. She advised there is currently a position open on the Planning Commission if anyone has interest.

Motion by Taylor, second by Farmer to adopt the resolution regarding reasons for rejection and requirements for tentative approval. Roll call showed Farmer-yes, Ford-no, Heiny-Cogswell-yes, Taylor-yes, Carr-yes, Culp-no, Everett-yes.

### **ZONING ORDINANCE TEXT AMENDMENTS SECTIONS 24, 39, 66, 76 – FIRST READING**

Planning Director Johnston presented a recommendation from the Planning Commission to amend four sections of the Zoning Ordinance.

Amendment to Section 24.205 would require multi-family developments to provide a dumpster enclosure area large enough to contain both a standard trash receptacle and a recycling receptacle.

Amendment to Section 39.406 would change the development standard of a business and research park to require 50 percent of the entire development retained as open space which could be developed as dedicated open space that is owned and maintained by an association, provided on each individual parcel, lot or building site within the development, or a combination of the options but in no case shall an individual parcel, lot or building site have less than 20 percent open space.

Amendment to Section 66.201 would provide that parcels, lots or building sites which meet the regulations of Section 62 which addresses nonconforming uses, may be issued a building permit provided all other requirements of the ordinance are met.

Section 76.190 would permit temporary signs for the duration of a construction or maintenance period with a maximum of 12 months.

Motion by Heiny-Cogswell, second by Everett to accept the amendments for First Reading and set Second Reading for August 9<sup>th</sup>. Carried 7-0.

#### **BTR 2.0 GRANT SUBMISSION**

Planning Director Johnston presented information regarding the Economic Development Administration (EDA) grant for funding of infrastructure for WMU's BTR 2.0 project. She noted the Board had previously approved financial support required to submit the grant application, and after further discussions with WMU and bond counsel and review of the Township budget, the determination was the Township budget would support an amount of \$656,600 for road, water and sewer construction. She advised the information was presented to WMU who accepted the contribution and reiterated their desire to continue working with the Township as a co-applicant for the EDA grant. She requested the Board consider approval of financial support for the BTR 2.0 project in the amount of \$656,600 for infrastructure development and authorize the Supervisor to sign the grant application as co-applicant with WMU. In response to Board members' questions, she noted the funds could come from sewer and water reserves or bonding, however, at this amount bonding would only be practical if combined with other projects, and the likelihood of receiving the grant is good. She also noted funds would be recouped by sewer and water connections. There was also discussion since roads are included, some of the funding could come from the general fund; final determination of the funding sources can be made after the grant approval process.

Motion by Farmer, second by Taylor to approve financial support in the amount of \$656,600 for BTR 2.0 infrastructure and authorize the Supervisor to sign as a co-applicant on the grant application. Carried 7-0.

#### **AMENDMENT – INTERLOCAL AGREEMENT STATE BUILDING CODE INSPECTION SERVICES**

Supervisor Heiny-Cogswell presented a resolution to adopt an amendment to the interlocal agreement that formed the Kalamazoo Area Building Authority (KABA) which would provide language for a separation agreement between the members.

In response to Trustee Carr's questions, Attorney Porter advised the Township's reasons for withdrawing are concerns regarding how some proceedings took place at the board level by some board members and concerns regarding permit fees which led to a breakdown in the level of confidence by Oshtemo and Cooper townships. Supervisor Heiny-Cogswell advised the monies returned to the Township are restricted by State law to be used for building code inspection services and property maintenance issues; the Board will be asked to consider a proposal to form a new authority with Cooper Township.

Supervisor Heiny-Cogswell advised the three other members, Comstock, Kalamazoo, and Cooper Township boards have adopted the resolution.

Motion by Everett, second by Farmer to adopt the resolution amending the interlocal agreement. Roll call showed Ford-yes, Heiny-Cogswell-yes, Taylor-yes, Carr-yes, Culp-yes, Everett-yes, Farmer-yes.

#### **SEPARATION AGREEMENT REGARDING BUILDING CODE INSPECTION SERVICES**

Supervisor Heiny-Cogswell presented a resolution to approve a separation agreement to withdraw from the Kalamazoo Area Building Authority (KABA). She noted the Board had in April directed the Supervisor and KABA board representative Clerk Everett to work toward a separation agreement; the Supervisors of the four member jurisdictions met weekly and the member jurisdiction attorneys and KABA attorney provided input for the agreement.

In response to Trustee Carr's questions, Clerk Everett advised it would be difficult to refund fee monies for individual permits, one of the first items for a new authority to consider will be to structure a different fee schedule than the current KABA schedule, a new authority would most likely start with one building inspector and perhaps one part time, the trade inspectors are contracted and most have expressed a wish to work with both KABA and a new authority.

Supervisor Heiny-Cogswell advised October 5<sup>th</sup> is the separation date and customer service will be paramount in a new authority.

Motion by Everett, second by Ford to adopt the resolution approving the separation agreement. Roll call showed Culp-yes, Everett-yes, Farmer-yes, Ford-yes, Heiny-Cogswell-yes, Taylor-yes, Carr-yes.

#### **FIRE DEPARTMENT STAFFING CHANGES**

As discussed at the earlier work session, Fire Chief Barnes presented information regarding staffing issues advising the current system of paid on call driver/operators is no longer able to assure staffing at both fire stations. He also provided past, present and projected statistics related to personnel, call volume, and revenue, noting call volume has steadily increased while available staffing and revenue has not. He presented a proposal to increase staffing by instituting a 24/7 minimum staffing consisting of one

driver/operator and one firefighter at Station 1 and Station 2, implement typical fire service 24 hour shifts, transfer two current full time position driver/operators, one of which is also the administrative assistant to the 24 hour shift positions, add four new 24 hour positions and one civilian administrative assistant position. His proposal also included a wage step process. He advised the increase in staffing would require a budget adjustment from reserves of \$122,000 for this year.

Lt Tom Fletcher commented has been a paid on call member for 24 years, the department has changed, the Township has grown, the paid on call members have full time jobs and other commitments, young people brought on at some point look for full time opportunities with benefits. He further commented the department is at a crossroads, if we do nothing there will be issues providing the expected services, as a taxpayer he feels the proposed changes are the right thing to do.

There was discussion that while reserves will fill the need for the next couple of years, revenue sources will need to be looked at to maintain the increase in staffing.

Motion by Taylor, second by Ford to approve a budget amendment of \$122,000, hire four full time driver/operators, and one civilian administrative assistant. Carried 7-0.

#### **BOARD MEMBER COMMENTS**

Clerk Everett reminded all that Music in the Park at Flesher Field will be on July 17<sup>th</sup> .

Supervisor Heiny-Cogswell advised there is an opening on the Planning Commission.

Trustee Taylor expressed condolences those affected by the recent shootings in VanBuren County.

There was no further business and the meeting was adjourned at approximately 9:20 p.m.

**DEBORAH L. EVERETT**  
Township Clerk

**Attested: ELIZABETH HEINY-COGSWELL**  
Supervisor