

**Springfield Township
Planning Commission –Workshop Meeting
Minutes of May 6, 2004**

Call to Order: Chairperson Roger Lamont called the May 6, 2004 Workshop Meeting of the Springfield Township Planning Commission to order at 7:30 p.m. at the Springfield Township Civic Center, 12000 Davisburg Rd., Davisburg, MI 48350.

Attendance:

Commissioners Present

John Steckling
Paul Rabaut
Chris Moore
Ruth Ann Hines
Dean Baker

Commissioner(s) Absent

Roger Lamont
Gail Mann-Bowser

Consultants Present

Dick Carlisle

Staff Present

Nancy Strole
Collin Walls
Leon Genre

Approval of Minutes: None

Approval of Agenda:

Dick Carlisle asked to add as Item #2 under New Business, Master Plan Amendment discussion.

Vice Chairperson Steckling asked to change the Township Attorney Briefing to be first on the agenda under Unfinished Business.

There was unanimous consent to accept the agenda as revised.

Public Comment: None

Public Hearing: None

Unfinished Business:

1. Township Attorney Briefing

Attorney Greg Need noted that he would briefly discuss the making of motions and changes in land use legislation. Mr. Need explained a matter where the ZBA (not Springfield Township) denied a variance because the applicant did not show any hardship. The property owner took that Board to court and the judge asked Mr. Need if he attends the meeting of that Zoning Board. Mr. Need said, no. The judge proceeded to explain how the record was horrible and there was

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no way a judge could make a decision. He then reversed the decision of the ZBA and granted the variance.

Mr. Need said, any decision made by the Planning Commission is an administrative decision. Zoning decisions fall into legislative decisions and administrative decisions. Mr. Need said the Planning Commission should be aware that not just an unsuccessful applicant can take the Township to court but also people being affected by decisions made by the Planning Commission or ZBA. The test in court is whether the Township's decision was authorized by law and whether factual findings are supported by competent, material and substantial evidence on the record. Substantial means the Township must present some evidence that is sufficient to support their conclusion; it does not mean that evidence must be overwhelming. Another critical issue is when the judge makes a decision, he is limited to whatever evidence was presented to the Planning Commission. You cannot call witness and/or provide additional documents. However, rezoning decisions can be defended with planners and engineers, etc.

When making the proper record the Township body should keep in mind that decisions must be based on zoning ordinance standards. The record should note all the information that was received and reviewed in making the decision. Public input should be cited in the motion or decision only if the public input that is given relates to an ordinance standard. The worst thing a community can do is cave into pressure from angry residents and deny something that should be approved.

Mr. Carlisle of Carlisle/Wortman, commented that he has found that a lot of Boards or Commissions are afraid to rein in the crowd and bring them back on the issue. Mr. Need said it is helpful for the Chairperson to provide a good summary of what is relevant and what is not and what the standards are.

Mr. Need provided a copy of a sample motion to the Planning Commissioners that is a good example of how a motion should be stated.

Community sewer systems

Springfield Township adopted one of the first Community Sewer System ordinances in the State. The state regulation for years has required a developer to get approval from the MDEQ. As part of that approval, the Township had to pass a resolution where the Township would agree to take over the system if that system was not properly maintained. A few months ago a developer successfully challenged that requirement and got that regulation held invalid. Mr. Need said he is fairly confident that Springfield Township has a solid legal basis to continue to defend their ordinance regarding community sewer systems.

"Religious Land Use and Institutionalized Persons Act"

This is the second attempt by the Federal Government to put a burden on communities that want to regulate religious activities. A similar law was passed several years ago and held unconstitutional. Congress passed a statute that states that when you are making zoning and land use decisions, you are not allowed to substantially burden the free exercise of religion without providing a compelling justification for the burden. The standard of compelling justification is far higher than the general standards involved in zoning and land use decisions. The courts must

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uphold decisions of zoning when they are zoned reasonably. However, now compelling justification must be presented for the regulation. The statute does not define what religion is nor does it place limitations on this act.

School Zoning

Mr. Need explained that part of the school code gives to the Superintendent of Public Instruction control over the approval of site plans for schools. The State Superintendent's office does not employ anyone that knows anything about site plans nor has zoning experience, but under the statute, they approve site plans. Some schools have challenged attempts by their municipalities to regulate their activities beyond building related regulations. Last year the Supreme Court stated that the municipality has no zoning authority over a school building. Clerk Strole noted that there may be one exception under Phase II and NPDES, if a school facility is listed as a "Nested" Jurisdiction within a municipality.

Adult Uses

Many communities have tried to exclude these uses from their jurisdictions. The courts have held that, for First Amendment reasons, they cannot do this. They have allowed communities to regulate uses when they can point to some secondary effects of adult establishments. For example, if you can demonstrate that a concentration of adult uses will lead to crime, blight, decline of property values, etc., you have the ability to disperse adult uses and regulate some aspects. However, it is fairly clear you cannot prohibit that kind of use and will most likely, be held unconstitutional if challenged. Mr. Need said you cannot exclude the uses but you can limit them to a few areas within the Township.

Zoning Moratoriums

Approximately two years ago, the U.S. Supreme Court decided a case that imposed a development moratorium that ranged for over three years. The property owners challenged this as being takings of property. They claimed that because the moratorium took so long it was an absolute taking. The Supreme Court rejected this. The municipality must look at why the moratorium was put in place, what ills were being sought to be addressed, what the community did during the time of the moratorium, etc. As long as you can meet all those tests, you can enact a moratorium and halt development for a specific and limited period of time without automatically being required to pay compensation for that period of time.

Commissioner Rabaut asked if public comments can be limited to citizens or property owners of the Township? Mr. Need said, no. However, it can be regulated to a period of time or a portion of the agenda.

Zoning Amendments

Mr. Carlisle commented that we are in the process of amending the cluster regulations to consider the open space zoning requirement that was recently passed through the legislature. There is another piece of legislature passed recently that states that when you have PUD regulations and there is open space required, it does not have to be provided on site. The open space requirement can be met on a non-contiguous piece of property. This really is a de facto transfer of development rights.

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Vice Chairperson Steckling commented that this discussion was helpful and confirms that when we do have plans it is nice to come prepared with a motion and requirements.

New Business:

1. Master Plan Amendment

Mr. Carlisle explained that in the rezoning of sub-areas, there were a couple of areas where the Planning Commission recommended a modification of the Master Plan. He does not recommend doing these changes concurrently. Amendments to the legislation several years ago require a more extensive notification period. Mr. Carlisle recommended that we keep these Master Plan amendments on the record but because of the time and expense of the procedure, perhaps we should wait and batch the amendments all at once.

Commissioner Rabaut said he does not want to be in a position of taking actions that are contrary to the Master Plan as this would weaken our position when we want to comment on other site plan developments. He would be willing to move forward but only in areas that are consistent with the Master Plan.

Commissioner Baker commented that the work is good and helps clean up issues for the future. However, he would like assurance that by moving forward, we would not be opening up ourselves to critique or creating a basis for challenge. He is comfortable in moving forward with items that do not involve Master Plan changes.

Vice Chairperson Steckling said it seems logical to move forward with the four that are consistent and get a report back from Carlisle/Wortman regarding the two remaining items.

- **Commissioner Hines moved to proceed with publication for Public Hearing on Parcel areas #2, #19, #23 and #25 and that we request a recommendation and further review by Carlisle/Wortman on areas #5 and #9 in terms of consistency with the Master Plan and how we want to proceed and at this point not pursue a Master Plan Amendment. Commissioner Rabaut supported the motion. Vote on the motion. Yes: Steckling, Rabaut, Moore, Baker and Hines; No: none; Absent: Lamont and Mann-Bowser. The motion carried by a 5 to 0 vote.**

2. Office Services

Mr. Carlisle said no action was taken at the last meeting on amending the Office–Service description.. He has been working on revising the C-1 and C-2 zoning districts which are related to the Office/Service. There were some minor format issues to insure consistency. Commissioner Hines noted for example, a CVS store with a pharmacy would be allowed in Office/Service but a party store would not. Mr. Carlisle said there we can define pharmacies or we can broaden the use. He said we may also want to treat these as a Special Land Use.

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Vice Chairperson Steckling said he would like to include pharmacies but make it the type you see in a doctor's office. Mr. Carlisle said, essentially restrict the usage. He asked if we would want to allow a CVS type of store in the OS district? The Commissioners said, no.

Mr. Carlisle said he would revise the language per the discussion this evening and present it back to the Planning Commission at the next meeting.

Other Business:

1. Priority List

Section 16.06, Enhanced Screening Public Hearing is set for May 17, 2004. Office Services and C-1 and C-2 discussion will be back for discussion at the May 17, 2004 Business Meeting. Zoning Review by sub-area is tentatively set for May 17, 2004. Tree Preservation plan discussion is to be determined. Hamlet of Davisburg discussion is set for June, 2004. Township Attorney briefing is complete.

Adjournment:

Hearing no other business, Vice Chairperson Steckling adjourned the meeting at 9:45 p.m.

Susan Weaver, Recording Secretary