

**MINUTES SILVER CREEK TOWNSHIP  
PLANNING COMMISSION MEETING HELD ON JUNE 24, 2020**

Chairman Terry Harris called the Planning Commission Meeting to order at 7:00 p.m. on Wednesday, June 24, 2020.

The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Nick Barnes, Debbie Brown, Tim Feirick, David Grabemeyer, Terry Harris, John Tidey, Bill Zuhl

OTHERS PRESENT: Todd Herter, Recording Secretary Liberty Nevins, Robert Thall, members from the public

ABSENT: none

**APPROVAL OF AGENDA**

David Grabemeyer motioned to approve the agenda.

Motion passed by voice vote.

**APPROVAL OF FEBRUARY 26, 2020 MINUTES**

Nick Barnes motioned to approve the February 26, 2020 Planning Commission minutes.

David Grabemeyer seconded.

Motion passed by voice vote.

**REPORT FROM ZONING BOARD OF APPEALS**

Secretary David Grabemeyer recounted the events of the two previous Zoning Board of Appeals meetings. David explained that the first meeting regarded the request of Lyons Industries to have two signs at the front of their property. He stated that the request had been granted.

Terry Harris asked if the signs were directional or for advertisement.

David replied that the sign was an LED "help wanted" sign.

David explained that the second meeting consisted of a variance request on a corner lot. He elaborated that the request was for a twelve-foot variance for a one car garage, however the request was denied. He stated that a one-foot variance was approved instead.

**NEW BUSINESS – DISCUSSION WITH ATTORNEY ROBERT THALL – SHORT TERM RENTALS**

Terry Harris introduced guest Attorney Robert Thall. Terry explained that Robert Thall would be discussing short term rental ordinance. Terry questioned whether the Planning Commission had the authority to have Robert Thall begin a short-term rental ordinance.

Todd Herter stated that he believed the Planning Commission did not need to get permission for the task at hand. He said there were no contract issues.

Attorney Robert Thall introduced himself and stated that he had been working with short term rental and legislature regarding short term rental for years. Robert stated that short term rentals consist of thirty days or less and are especially important and popular on lakes. He said that most of the short term rentals in the area cover a full week or just a weekend, consisting of many people coming in and out of the rental over the time period it is rented out. He stated that this causes issues with noise, littering, and parking. Robert commented that he viewed the Silver Creek zoning ordinance, and that he thought it was good. He questioned if the ordinance was new or not.

Todd Herter responded that the ordinance was adopted in 2004.

Robert Thall stated that he assumed the lakes were in an R1 or lakefront zoning district. He said that he wanted to share the story of the Spring Lake supreme court case, in which the township decided to do short term rental regulation. He stated that the main reason for this was to put it in their ordinance that a short term rental is only less than twenty-eight or thirty days long. Robert stated that in this specific case, a person claimed they had grandfathered rights to continue with short term rental because they had been doing it prior to the ordinance. He said the issue went before the Michigan supreme court, and the court of appeals upheld the townships zoning and said it was not a grandfathered use by looking at the definitions in the zoning order. He stated that the supreme court upheld the court of appeals. Robert commented that from looking at the rental house and the definition of hotel, the rental was closer to a hotel, which is there for transient use. He stated that in summary the rental was ruled as a hotel and was not allowed in the township. Robert commented that the township definition for single family dwelling is an attached dwelling designed exclusively to be occupied for one family, rather than several groups of people. He stated that the township definition of hotel is a building containing sleeping or dwelling which may or may not be independently accessible from the outside with a garage or parking spaces on a lot and designed for occupiers or travelers. He said that if a person rented out their home for two days at a time, under the township definition, it would be considered a hotel. Robert mentioned an instance in Kalamazoo county in which a renter had been renting as a short term rental for fifty to sixty years, and it was ruled that it was grandfathered in because the timeframe extended past the current ordinance. Robert commented that in Silver Creek the ordinance could potentially state that there could be short term rentals in high density or commercial areas. He said that in Spring Lake, some short term rental houses could be rented for fourteen days but only up to two times per year. He stated that the Silver Creek ordinance could be updated by zoning and by a police power ordinance, in which rental licensing would be required. Robert said that in a case like that, if a person was interested in doing short term rental, they would have to get a license through the township board. He stated that rental registration is an option too, in which any rental property must be registered in the township which could also include inspections. Robert asked for comments on the issue.

Terry Harris commented that he believed more and more properties were being advertised online. He stated that the properties are sometimes rented out for eight to ten people which could technically include three to four families. He said that if each family brings a boat the lake the rental is on could become overwhelmed. Terry commented that the township may not have the personnel to keep tabs on the renters. He stated he believed there should be safety inspections at least once a year on rental properties.

Robert Thall agreed that it was an important issue because rentals become places of commercial use. He stated that if a police power were in use, there could be a fee for rental registration that could be paid every two years. He said information could also be included, such as who the homeowner is, how many bedrooms the rental consists of, how many

people the rental sleeps, a drawing of the parking situation, and an added component of an inspection that the fee of the rental registration could pay for. He stated that it is important to keep record of those type of things for issues in the future.

David Grabemeyer questioned what the liability would be on the township if a fire or something detrimental happened to the rental property.

Robert Thall responded that townships typically have government immunity, which means they cannot be sued except for in limited situations. He stated that as long as the ordinance in place was followed, there would be no basis to sue on.

John Tidey commented that he was involved in a commercial inspection for apartments in Niles. He stated that the inspections are annual and are put on by the fire department. He said he believed the ordinance could be adapted to be somewhat like how he described the Niles ordinance to be.

Robert Thall agreed. He stated that some municipalities do not file for inspections, rather they register the property every couple of years. He said he thought it would be smart for the ordinance to contain inspections.

Nick Barnes questioned Todd Herter if the township had received many complaints on overcrowding and parking issues in the 2020 season.

Todd Herter responded that the complaints had been minimal. He stated that when the Planning Commission in February 2020 was held about the Nevins property, he got the idea that the local public did not want transient people on the lake.

Debbie Brown commented that many properties are listed online and people buy and rent them quickly. She said she also took away from the February Planning Commission meeting that the local people did not like when a rental house would have twenty people going in and out versus the two people that would normally live there.

Terry Harris commented that as property values continue to decrease, more and more people buy properties and rent them out.

Todd Herter shared that he believed the master plan should be taken into consideration. He stated that the plan says the lakes should keep a cottage-like feeling.

David Grabemeyer stated that sixty or more years ago, it was rental houses that started up the area.

Todd Herter responded that sixty or so years ago, people were different and more considerate on the lakes.

Terry Harris agreed.

Todd Herter stated that he agreed with David Grabemeyer on the subject that fifty to sixty years ago rental houses were practically all that was around. He restated that people back then had more respect for others, and that respect nowadays is gone.

Terry Harris questioned Robert Thall if there was a way to control the intermingling of commercial and residential properties.

Robert Thall stated that an enforcement letter could be sent.

Todd Herter commented that a mass mailing would be the best way to notify the entire township.

Robert Thall agreed, and stated that he had done that in other municipalities previously. He said it was important to put registration in place so that people would register their property. He questioned the Planning Commission about what they thought about having rentals rented out twice a year up to two weeks or for two weeks out of the year. He stated that doing so would give the owner some relief and that it would not turn the property into a commercial facility.

Terry Harris questioned Robert Thall if there was a definition on a rental being fifty percent of commercial use.

Robert Thall responded that it was said in Spring Lake that the property could be rented to unrelated individuals or that the property could be rented up to fourteen days but only up to two times a year. He stated that he would be more comfortable with the township allowing limited short term rental rather than none at all, because he knows that the limited short term rentals had been upheld in the past in Spring Lake.

Terry Harris asked Todd Herter for comments.

Todd Herter stated that he thought the fourteen-day timeframe was fine. He commented that it gave the surrounding people of the rental property relief for a while. Todd shared that he thought it would be wrong to deny short term rental completely. He stated that he thought the fourteen-day timeframe would be fair.

Terry Harris agreed.

Robert Thall commented that it puts a lot on the township to place enforcement actions because they are not cheap. He stated that it is important to reinforce litter and noise ordinances so that there are mechanisms if the renters behave poorly during their stay.

David Grabemeyer questioned that if a renter rented out property for two separate weekends and for two days each, if they would only get to rent out their property for four days of the entire year.

Robert Thall responded that the timeframe would be for two separate times up to fourteen days.

Todd Herter commented that if a rental was limited to fourteen days of being rented, it would not be considered commercial. He stated that he did not think inspections or registration would be required in that case. Todd said that when a rental is rented out for around thirty days a year, that is when questions arise about inspections and registration.

David Grabemeyer commented that if a property was rented out twice a year at fourteen days max, he didn't think inspections and registration would be necessary.

Robert Thall stated that a registration would give information on who the property owner is and contact information. He said it could be a requirement to have short term rentals registered just so that some basic information would be provided.

Debbie Brown questioned what the incentive would be to register. She stated that it would be interesting to see what would entice the renters to be honest.

Robert Thall stated that if a rental is not registered, there can be a penalty. He commented that an idea could be to give people a ninety-day timeframe to get their rental registered, and if they do not, it would be an ordinance violation, and they could be fined.

Terry Harris suggested that the Planning Commission should talk about how they want to move forward, and that they come up with some recommendations for Robert Thall to look at.

John Tidey commented that he had previously spoke with the township supervisor for Chikaming who had recently adopted an ordinance which resulted in few problems. He stated that the Planning Commission could possibly look into that ordinance and see if they liked what it contained, since Chikaming is similar environment.

Terry Harris questioned Robert Thall if the Planning Commission should write a whole new ordinance or just update the existing one.

Robert Thall responded that the zoning ordinance would just need to be updated. He stated that the township board could decide if they wanted to do the registration part or not.

Todd Herter questioned if something along those lines could be a special land use.

Robert Thall responded that it could potentially be a special land use, however a special land use permit would be necessary. He stated that a bed and breakfast would be considered a special land use. He said that if the Planning Commission were to go for the fourteen-day ordinance, it would just be a use of residence. He said if it were for more than that, it would be considered a hotel.

Terry Harris suggested that Robert Thall should make some recommendations on how he would update the current ordinance.

David Grabemeyer commented that he would like to see Robert Thall come up with something in writing that the Planning Commission could view before their next meeting.

Robert Thall asked when the next meeting would take place.

Terry Harris responded that the meeting would be held on July 22, 2020.

Robert Thall stated that he could put something together for the Planning Commission to look at a week before the meeting.

Debbie Brown stated that under the current special land uses, there are bed and breakfast establishments.

Todd Herter commented that for a bed and breakfast, the owner must reside there.

David Grabemeyer asked Todd Herter if a bed and breakfast was a stipulation.

Todd Herter responded that it was.

Robert Thall stated that it just depended on what the area's ordinance said.

Terry Harris questioned if everyone was alright if Robert Thall moved forward with working on the ordinance.

Nick Barnes and Debbie Brown stated that it would be a good idea.

#### **DISCUSSION WITH ATTORNEY ROBERT THALL – MARIJUANA**

Robert Thall commented that he had previously worked on a case regarding marijuana as well. He said he was recently involved in a case in which caregivers were regulated on their usage, licensing, and location. He said there are requirements on how marijuana is grown whether it be for medical purposes or adult usage purposes. Robert stated that if medical marijuana is being grown, the caregiver or patient is allowed to grow the product in a closed lock facility, meaning it must be locked up and secure, and not visible from a neighboring

property. Robert shared that recreational marijuana establishments could be controlled, but that individual growers could not. He stated that there could be up to twelve plants in a home. He said that since adult use marijuana is allowed to be grown in homes, there is nothing that can be done about it.

Debbie Brown asked if marijuana was grown under adult use if it had to be in a closed lock facility.

Robert Thall responded that if the adult was twenty-one or older, they could grow twelve plants on the premises. He stated that he did not know what “premises” was referring to, the residence, or a potential shed. He said that he would argue the marijuana must be grown within the home.

Todd Herter asked Robert Thall what it meant for the township to opt out. He asked what the township would be opting out of and whether it meant anything or not.

Robert Thall responded that if a municipality opts out, they do not allow any facilities or commercial establishments for marijuana. He stated that you are automatically opted out of medical marijuana facilities, unless you make a point of opting in. He asked if Silver Creek was opted in or not.

Terry Harris responded that Silver Creek had opted out.

Robert Thall stated that the opt out does not stop caregivers from growing marijuana as long as it is in an enclosed locked facility.

Todd Herter asked if there was a limit to the number of caregivers that could be in a municipality.

Robert Thall responded that there is no limit. He stated that if a grower is both a caregiver and a patient, they are allowed to grow twelve plants for themselves, and can provide marijuana to five patients, therefore they could grow up to seventy two plants on their property. He stated that in the Silver Creek ordinance, it must be within the principal residence. Robert shared that he believed that statement was not supportable any longer because of a change in the definition. He said that provisions regarding the odor of marijuana could be put in the ordinance.

Todd Herter stated that in the current ordinance, there is nothing in the marijuana section that deals with odor. He commented that a homeowner in Silver Creek had called in a couple times recently asking for help complaining about the odor of their neighbor’s marijuana.

Robert Thall asked Todd Herter if he knew if the grower was a caregiver or an adult use grower.

Todd Herter responded that he thought the grower had a caregiver’s license, but that it looked like they had two hoop houses in their backyard.

Robert Thall asked if the grower had complied with the home occupation permit.

Todd Herter responded that they did not comply. He suggested that it should be looked at on how to get compliance from growers.

Robert Thall shared that he believed there could be a way for properties to comply with the zoning ordinance.

Todd Herter stated the Planning Commission will have to have a meeting with attorneys Robert Thall and Roxanne Seeber.

Robert Thall left the meeting.

### **PLANNING COMMISSION DISCUSSION – CORNER LOTS**

Terry Harris commented that the ordinance needed to be revised regarding the corner setback proposal. He shared that his only concern with it would be the matter of visibility. Todd Herter commented that if there is a lot that is eighty feet or less in the Waterfront District, the rear lot setback is eight feet. He said that on lots greater than eighty feet, the rear lot setback is twenty feet. Todd asked David Grabemeyer if he was on the Planning Commission when they were developing the ordinance.

David Grabemeyer responded that he believed that he was.

Todd Herter stated that in that aforementioned meeting, there were two individuals who were adamant on the thirty-foot side road set back. He said in the last year, there have been four variance requests for corner lots, and each one required a Zoning Board of Appeals hearing. He said that in one case, if the Zoning Board of Appeals had not granted the request, the property would have been taken away because only nineteen feet would have been left for something to be left on. Todd stated that he believed fifteen feet provided balance, because it provides visibility and gives corner lot owners relief. He stated that if a subdivision were being built today, according to the ordinance, the corner lots would be compliant.

Debbie Brown commented that fifty years ago corner lots had either no garages or one car garages.

Todd Herter said that some houses on corner lots have been there for thirty to forty years. He stated that during the present, there is nothing that can be done about the houses' location on their corner lots.

David Grabemeyer said that there are likely not many corner lots that do not have some type of house on it.

Todd Herter responded that he thought there were two corner lots in Sarabyn Subdivision on Steve Road that did not have any structures on them, but that they are owned by the property owners nearby. He said that the empty corner lots resulted in giving the property owners a large piece of property.

Terry Harris asked Todd Herter if he remembered what the determination of the Zoning Board of Appeals was on the corner lot cases that were brought before them.

Todd Herter responded that the first three cases were granted, but that in the last case the applicant was denied and was given a lesser variance.

Bill Zuhl asked Todd Herter if the fifteen feet was from the right of way or from the road's edge.

Todd Herter responded that the fifteen feet does not include up to the road. He stated that in some cases, the property line goes up right to the edge of the road. He said that the fifteen feet comes from the property line.

David Grabemeyer commented that every situation could be different depending on where the road is in location to the property line.

Todd Herter agreed with David Grabemeyer's comment.

Terry Harris stated that the ordinance should be updated according to Todd Herter's recommendations.

Todd Herter said that the verbiage could be in the description of the double frontage lots.

David Grabemeyer questioned Todd Herter if he could remember there being issues in other districts.

Todd Herter responded that the issues have always been related to Waterfront.

Terry Harris stated that the ordinance could be updated and then placed before the Planning Commission.

The Planning Commission members agreed.

### **PLANNING COMMISSION DISCUSSION – NEVINS' CAMPGROUND PROPERTY**

Terry Harris suggested that the Planning Commission should talk about the Nevins' campground property. He stated that the discussion would be about the property changing to Waterfront District from its R1 designation.

Todd Herter stated that the front cottages were connected to the sewer, and that all properties connected to the sewer are supposed to be Waterfront District. He stated that the cottages behind the front were not connected to the sewer. He shared that he thought the entire property should be Waterfront District.

Terry Harris asked what the implications were for making the change.

Todd Herter stated that there would be no implications.

Debbie Brown commented that being in the Waterfront District would better describe the property.

David Grabemeyer asked Todd Herter if the campground was up and running and viable.

Todd Herter responded that the campground was somewhat operational. He stated that a few of the trailers were in use and that there had been some upgrades on the property.

David Grabemeyer stated that there were more trailer units on the property than he thought and asked if they were connected to the sewer.

Todd Herter responded that they are a part of a septic system. He said he believed the number of campsites are determined by the state.

Debbie Brown made a motion to change the campground lot, both the Nevins and Minnick properties, from the R1 designation to a Waterfront District lot.

Nick Barnes seconded.

Bill Zuhl mentioned that it would not be a good idea to change zoning map lines without letting the public know. He suggested that a public hearing should be held to inform the people.

Debbie Brown questioned whether or not the change would affect taxes.

Bill Zuhl responded that the change would affect what the owners would be able to do with their property.



Terry Harris stated that there would likely be a public meeting about the matter at hand before any changes would be made.

Todd Herter stated that he would ask Robert Thall what his thoughts were on the issue as well.

Debbie Brown motioned to table the issue.

Nick Barnes seconded.

The Planning Commission members agreed.

Terry Harris mentioned that the next Planning Commission meeting would be held on July 22, 2020.

**ADJOURNMENT**

David Grabemeyer motioned to adjourn.

Debbie Brown seconded.

The Planning Commission members agreed.

Meeting adjourned at 8:43 p.m.

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Liberty Nevins, Recording Secretary