

**MINUTES SILVER CREEK TOWNSHIP
SPECIAL BOARD MEETING HELD ON JUNE 20, 2015
REGARDING ORDINANCE AMENDMENTS**

The special meeting was called to order by Supervisor Bill Saunders at 10:00 a.m. on Saturday, June 20, 2015. The Pledge of Allegiance to the Flag of the United States of America was led by Supervisor Saunders.

Supervisor Saunders advised that the special meeting was called for the township board to hear public comments on the proposed changes to the zoning and boating ordinances.

MEMBERS PRESENT: Supervisor Bill Saunders, Clerk Barbara Runyon, Trustee Joel Moore and Trustee Mike Glynn

MEMBER ABSENT: Treasurer Maureen Kuriata

APPROVAL OF AGENDA

Trustee Glynn moved, seconded by Trustee Moore, to approve the June 20, 2015 Special Meeting Agenda. Motion carried by voice vote.

PUBLIC COMMENT

Supervisor Saunders opened the floor for public comment.

Greg Ehman questioned if there wasn't a better way of notifying the public when something is going on in the township, possibly e-mails or sending notification with tax bills.

Tom Owens commented on the lake level due to heavy rains and wondered what the thoughts and strategy of the township is regarding this issue. Supervisor Saunders advised that the special meeting was regarding amendments to the zoning and boating ordinance only. He also indicated that everyone is experiencing a high water level, and it is a county drain commissioner issue, not the township.

Richard Lovato asked if there are any restrictions on the number of boats you can have on a pier. Supervisor Saunders advised that there are no restrictions on the number of boats you can have on a pier.

Cynthia Polk Muller asked what precipitated the discussion about this issue in the first place. Supervisor Saunders advised there were several reasons. The planning commission spent two years reviewing the ordinances and making them current with new state regulations.

Bonnie Hague questioned Article IV. Regulations regarding 100 square foot raft size and thought it had been eliminated. Supervisor Saunders advised that the Silver Creek Township Planning Commission has recommended that it be removed, but it cannot be removed until the township board takes action on the ordinances.

Reggie Lewkowski asked how and who is going to enforce the ordinances. Supervisor Saunders stated that it would be done by the police department on a complaint-driven basis, unless the marine patrol runs into a violation then they would handle it. Mr. Lewkowski questioned whether they had a copy of the ordinances and Supervisor Saunders indicated they did. Mr. Lewkowski asked if there has been any enforcement of the old ordinance. Supervisor Saunders replied that there has been.

Marty Kleva asked if there was anything added or being considered to be added to the ordinances other than what the planning commission has done. Supervisor Saunders said there were suggested changes in the zoning ordinance 6.03 for regulations on vacant lots.

Clerk Runyon stated that she would make additional copies of the proposed changes for anyone who had not already received them.

(Clerk Runyon left at 10:15 a.m. and the meeting resumed at 10:16 a.m.)

Supervisor Saunders stated under "Waterfront District" the old ordinance Section 6.02 F which was "private docks, accessory to residential uses shall be used only by persons and guests on the premises . . ." that is going to replace F in the new ordinance which just says "docks, piers . . ." these are suggested changes and is up to the board to make the final decision.

Bill Velcheck questioned whether there is a requirement as to whose boat is docked on the pier. Supervisor Saunders responded that it is the first name on the title. Mr. Velcheck questioned whether they were restricted to property owners of the title for mooring. Supervisor Saunders indicated that it is the first name on the title. Mr. Velcheck voiced his frustration that the website had not been updated with the proposed amendments, and had hoped to be able to find it under "public hearings". Clerk Runyon indicated that both the old and the new are on the website. Mr. Velcheck questioned that there are no restrictions as to how many boats but there are restrictions as to owners. Supervisor Saunders answered in the affirmative.

Joe Scaleri questioned 4.3 of the boating ordinance regarding private and public dead-end roads and asked what the Michigan law is and who has jurisdiction on monitoring it? Supervisor Saunders stated that 4.3 makes reference to property which is divided by a road, where it was one parcel and a road was put through it; it belongs to the riparian owner. Mr. Scaleri, asked about Rainbow Beach, and Supervisor Saunders responded that it was a private organization.

Tim Hall asked that the board consider the recommendations which he provided to the township earlier in the week, and that they be included in the minutes as follows:

TO: Chairman Saunders
Members of the Silver Creek Board of Trustees

From: Tim Hull
55358 Indian Lake Road

RE: Hearing regarding the Draft Zoning Ordinance of 1/28/2015 and the Boat Regulation Ordinance of 1/28/2015

Date: June 10, 2015

Please accept the following comments, thoughts, and requests regarding the revisions to the Township Zoning Ordinance and the Boat Regulation Ordinance. I am submitting these in advance of the meeting to be held on June 20, 2015 for your review prior to that date. Thank you in advance for your consideration of the following.

Comments and suggestions for your consideration during your hearing Saturday, June 20, 2015 and subsequent work regarding the 01/24/2015 draft of the Silver Creek Township Zoning Ordinance:

Section 1.02 Purpose: Please change the language underscored in the proposed draft dated 1/28/201 to "...protect land and bodies of water from improper use; ..." as this suggested language offers a more considerate and positive minded (i.e. not authoritarian) intent of the Township for creating a zoning ordinance that is in the best interests of the residents of the Township. Use of the word "limit" in this sentence suggests the Township will allow a certain amount of misuse of land and bodies of water, but the public is left not knowing what forms of misuse will be allowed and by whom.

Section 2.17 Definition of Public Nuisance: Please change the term "obnoxious" to "noxious." The proposed Zoning Ordinance includes a definition of "public nuisance." Within that proposed definition we find the term "obnoxious." The language of the definition should follow what is commonly accepted by the legal community as pertaining to "a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community." [The Free Dictionary by Farlex: The Legal Dictionary, on-line.] Use of the term obnoxious [defined as "offensive or objectionable" in the same legal reference] opens the door to complaints of a lesser standard if a township resident finds a particular land use to be "objectionable" to one's personal tastes or senses. "Noxious" refines the understanding of a public nuisance.

In general, it would seem wise that any use of the term "nuisance" in the proposed Zoning Ordinance be ascribed to mean a "public nuisance." It is common knowledge that use of the term "nuisance" in

ordinances has become the go-to phrase for those who practice law. Individuals who can find no other legal reason to file a complaint rely on use of the term "nuisance." Good law is that which confines such complaints to those issues which can be generalized as being offensive or dangerous to a community as a whole and not just offensive to the senses of an individual. Townships should avoid writing language into ordinances that involve the Township in the private disputes of individuals or neighbors to avoid the costs of legal entanglements.

Section 6.02(G) Permitted Uses: The proposed language includes the phrase "subject to the adoption of the Boating Ordinance Draft dated 01/28/2015." The Planning Commission voted on September 24, 2014 to recommend the Boating Ordinance of September 14, 2014 to the Silver Creek Township Board. It would seem improper to include that phrase without some sort of public explanation. Can we assume that the Township Board is now formally considering the Boat Regulation Ordinance dated 1/28/2015 solely, and that the similar document dated 9/24/2014 that was passed to the Township Board by vote for consideration is now not being considered?

Comments and suggestions for your consideration during your hearing on Saturday, June 20, 2015 and subsequent work regarding the 01/28/2015 draft of the Silver Creek Township Boat Regulation Ordinance:

Section 1.1 Intent and Purpose: The first sentence of this section appears to this reader to be grammatically incorrect. Please consider the following adjustments (underlined) in line 4:

"...and benefits to the Township residents, and that it is..."

In line 10, we find the infamous term "nuisance." As described above, the term "nuisance" can cause problems. Further, it is a stretch to declare that a nuisance condition will exist simply if there are no regulations as set forth in this Ordinance. Therefore, I suggest that the statement which includes the term "nuisance" be rewritten as follows:

"It has further been recognized that the lack of regulation may result in impairment of these important and irreplaceable natural resources of the Township, and may further result in the destruction of property values and threaten the public health, safety, and welfare of all persons making use of lakes within the Township."

Section 4.1 Rafts, Trampolines, Swim Platforms, and Ski Jumps This section continues to have a size limit of 100 square feet on swim platforms. The Planning Commission had indicated an interest in removing that size limitation. Members of the public have previously argued that this size limitation is far too restrictive. Please remove that limitation.

Section 4.3 Parks, easements, and Common Areas There is an extra "." at the end of the first sentence.

Section 4.3 Exception It appears that the reference to "this Section 4.2" in line 6 is misstated. Or should the word "this" in the same line prior to "4.2" be eliminated?

Section 4.5 Moorage

Unless the term "nuisance" is defined in the Boat Regulation Ordinance as a public nuisance, the phrase "or create a nuisance" in line 5 must be eliminated to avoid further legal challenge to the Township regarding the Boat Regulation Ordinance.

Tim Hall also talked about a recent United States Supreme Court decision which states that a zoning administrator must clearly state the reasons for their decision.

Fritz Olthof asked if it meant that his son-in-law couldn't have a boat on his property. Supervisor Saunders indicated that family members were allowed, and clarified that it was only his interpretation of the ordinance, not the Courts.

Joe Velcheck, asked for clarification. He has a single-family residence on the lake with a pier, are there restrictions on who can park their boat on the pier. Supervisor Saunders indicated that he believes family and guests are allowed but should be using or residing in the home. Mr. Velcheck indicated that on the previous link it specifies "property owners" and asked for clarification so he wouldn't be fined. Trustee Glynn asked which ordinance he was referring to, and he was not certain. Clerk Runyon provided him a copy of the ordinances for his review, so that he could direct the board to the ordinance was referring to.

Bob Meagher questioned how the township can regulate a pier when they can't regulate a seawall. Supervisor Saunders explained that the township has the authority to regulate the number of boats per state law.

Jan Fehland questioned how it applies to someone with an LLC or a trust. Supervisor Saunders believes that is an attorney's opinion. He advised that there's no perfect ordinance, any ordinance can be contested, and the judge's ruling stands.

Emmett Thiessen questioned proposed changes to the zoning ordinance Chapter 6, 6.02F. The first sentence says, "In addition to retaining the existing language in Chapter 6; 6.02F (with modifications)." He questioned what the "modifications" are. Supervisor Saunders indicated the modification is changing the language to read "shall be used only by persons and their guests residing on the premises."

Bill Velcheck asked if there are restrictions to guest parking or is there anything that says guests are only allowed for a ten-day period. Trustee Glynn indicated no.

Larry Biesboer questioned whether there is a definition of "guests." Trustee Glynn said that the planning commission had discussed the definition of guests for many hours. He then reviewed the ordinances and found it was not been included. Mr. Biesboer believed it should be included. Supervisor Saunders asked for clarification from the planning commission.

Walter Lehmann from the planning commission said that the definition of "guests" had been discussed at length, and it was agreed to take the definition from Black's Law Dictionary.

Trustee Glynn indicated it was a good suggestion and should be considered as an addition.

Greg Ehman questioned whether it would cover people who rent. Supervisor Saunders stated that there was a description for rental in the ordinance. Trustee Glynn believed renters were considered a business arrangement rather than a guest. Mr. Ehman questioned whether it would be legal for guests to keep a boat on the dock. Supervisor Saunders indicated yes.

Boyd Timm inquired whether a jet ski shore station is considered a dock. Supervisor Saunders responded that it is not considered a dock but is considered a lift.

There was no other public comment, and the public comment of the meeting was closed at 10:37 a.m.

BOARD DISCUSSION

Clerk Runyon indicated that she agreed with Mr. Biesborder that the definition of "guest" should be included and be considered at the next meeting.

Trustee Glynn wondered with the extensive changes in the 6.03 "Special Land Use Standards" if the board should send it back to the planning commission to review. The consensus of the board was to go forward without planning commission review.

Trustee Glynn also thanked Mr. Hall for his suggestions.

Clerk Runyon commented that the county planning commission had also found a change from "obnoxious" to "noxious" in definitions.

Supervisor Saunders addressed 4.5 of the boating ordinance "all moored watercraft shall be maintained in good repair, afloat, and free from defects which might pollute the waterways or create a nuisance." He believes it should be taken out of the ordinance; the township doesn't have anyone who can make such inspections and report if it's in good repair or has defects without guidelines. Clerk Runyon questioned whether it was controlled by the DNR. Trustee Glynn said that in the very least it should say "public nuisance," but believes it is vague. Clerk Runyon noted that the Planning Commission recommends deleting "or create a nuisance." Supervisor Saunders would like the entire sentence removed.

Clerk Runyon questioned 4.5 in the boating ordinance which reads "expressed written approval" wondering who receives the written approval. Trustee Glynn believed that the expressed written approval would be provided to the moored watercraft, or, in the alternative, could be furnished if and when requested by a police officer.

Clerk Runyon supported the proposed change under "Special Land Uses-Special Standard GG. Private Dock on vacant parcel," indicating it would address the key hoing issue.

Trustee Glynn expressed his concern over how the township can dictate who can use dock space if multiple parties purchase vacant property.

Supervisor Saunders noted that they would have to apply for a Special Land Use Permit with the planning commission and they can designate who uses the pier.

Trustee Glynn agreed that it would then come to the Planning Commission at that time for review.

PUBLIC COMMENT

Supervisor Saunders asked if there was any further public comment. There was no further public comment.

ADJOURNMENT

There was no further public comment. The meeting was adjourned at the call of the Supervisor at 10:44 a.m.

Barbara Runyon
Silver Creek Township Clerk

Dated: June 24, 2015
To be approved at the July 8, 2015 meeting