

Republic Township Board
October 27, 2016
Regular Meeting Minutes

1. CALL TO ORDER:

Supervisor Johnson called the meeting to order @ 7:00pm....All Board Members were present.

2. SALUTE TO FLAG:

3. APPROVAL OF AGENDA:

Motion by Trustee Knapp with the addition of 8D, seconded by Trustee Feldhusen to approve, all in favor, motion carried.

4. APPROVAL OF MINUTES:

09/22/2016 Regular Meeting – Motion by Treasurer Koski, seconded by Trustee Knapp, all in favor, motion carried.

09/26/2016 Special Meeting – Motion by Treasurer Koski, seconded by Clerk Brancheau, all in favor, with Trustee Knapp abstaining, motion carried

5. PAYMENT OF BILLS:

Trustee Feldhusen made the motion to pay the bills, Trustee Knapp seconded the motion, all in favor, motion carried.

6. PUBLIC COMMENT:

Jim Brennan
Don Tapio

7. REPORTS:

- a. **TRUSTEE KNAPP** – Nothing at this time.
- b. **TRUSTEE FELDHUSEN**- We got some very nice publicity from the Mining Journal for the Campground, to recognize everyone's hard work, it bodes well for the Campground's future.
- c. **CLERK BRANCHEAU** – You can still get AV ballots
- d. **TREASURER KOSKI** – I agree with Tom on the Campground. And I don't know if anyone has noticed, but the South Republic sign has been repainted and looks very nice.
- e. **ASSESSOR** – Nothing at this time
- f. **SUPERVISOR** – Just a note that I believe that it was the Lion's club that did the repainting.
- g. **DPW** – Nothing at this time
- h. **FIRE/AMBULANCE** – Nothing at this time.

8. UNFINISHED BUSINESS:

- a. **Mine Rail Agreement** – Tabled for Next Board

- b. **Sewer Grant**– We have met with Rural Development, gone over the Letter of Conditions, interest is locked in @ 1.625%.
- c. **Veteran’s Memorial** – Tabled
- d. **Campground** – Punch list of final items will be given to the contractor. There were several items that we were able to do less expensively, so a credit will be applied of \$2,660.00. Motion to hold the final payment until spring by Treasurer Koski, seconded by Trustee Knapp, all in favor, motion carried.

9. NEW BUSINESS:

- a. **USPS Lease agreement**– Motion by Treasurer Koski, seconded by Clerk Brancheau to accept the agreement from The USPS, all in favor, motion carried.
- b. **Artensinger Garbage waiver request**–Since he carries his garbage back to Marquette, he feels he should not have to pay the fee. Motion by Trustee Knapp, seconded by Treasurer Koski to deny his request, all in favor motion carried.
- c. **PC Letter to CLWYC & Appointees** – Motion by Clerk Brancheau, seconded by Supervisor Johnson to send the letter written by the Zoning Administrator to CLWYC regarding illegal CUP. All in favor with Trustee Knapp abstaining, motion carried. We received two (2) letters of inquiry to be appointed to PC. Motion to appoint Don Tapio to the PC by Treasurer Koski, seconded by Clerk Brancheau, all in favor, motion carried. Motion to appoint Don Tapio to Zoning Board of Appeals by Supervisor Johnson was retracted and tabled until the next meeting. At this time Mr. Nannestad was invited to read the letter he had prepared for the Board from the Planning Commission, he declined and stated that copies were provided to the Board and they could read for themselves. Supervisor Johnson then explained to him that the closed session that was held at the last PC meeting was not legal and that a tape of that closed session was sent to the Attorney for review. The Attorney advised that it should be given to the County Prosecutor which Supervisor Johnson had done, and we would wait for the Prosecutor to do whatever he wished with it.
- d. **Zoning Administrator Permanent Appt.** – Motion by Supervisor Johnson, seconded by Trustee Feldhusen to appoint Terry Knapp as the permanent Zoning Administrator, all in favor with Trustee Knapp abstaining, motion carried.
- e. **GPS for 911 ID System** – We need another GPS unit to replace the one that has gone missing. We had asked for recommendations from Rob Spear, however, Trustee Knapp had used his new smart phone for the latest readings needed for an address and was informed that it was perfectly accurate. Trustee Knapp is suggesting that the Township purchase this exact phone for Diane Tapio. This will replace her existing phone and give her a GPS unit in one. Motion by Trustee Knapp, seconded by Treasurer Koski, all in favor, motion carried.
- f. **MCSWMA** – Tabled.
- g. **DEQ Settlement** – The penalty for the sewer spillage was read into minutes. Motion to accept the penalty by Supervisor Johnson, seconded by Treasurer Koski,

Roll Call Vote:

Supervisor Johnson Aye - Nay
 Treasurer Koski Aye - Nay

Clerk Brancheau X Aye - Nay
Trustee Feldhusen X Aye - Nay
Trustee Knapp X Aye - Nay

All in favor, Motion is carried.

- h. Assessors Agreement – For Supervisor Johnson to stay on as Assessor until February 28, 2017 is tabled.
- i. Repeal Ordinance 2013-9 – Liquor Control Ordinance to start the process of repealing, Tabled
- j. Language Access Plan – This is for Rural Development to satisfy a requirement of the new Sewer Grant. Motion to approve as written by Treasurer Koski, seconded by Trustee Knapp, all in favor, motion carried.
- k. Assessor Education – Tabled.

10. PUBLIC COMMENT:

Carol Kellow
Jim Brennan
Tom Stankus
Don Tapio
John Ulrich
Marilyn Helmila
Faye Mattila

ADJOURNMENT: Supervisor Johnson adjourned the meeting @ 8:42 pm.

Sworn and Subscribed to by:

Marilyn Brancheau 11-17-16
Marilyn Brancheau, Clerk Date

William K. Fahey
Stephen O. Schultz
Mark J. Burzych
Stephen J. Rhodes
Stacy L. Hissong
Ross K. Bower
Helen L. R. Mills
Lauren K. Dutcher
Christopher S. Patterson
Michael J. Cole
Steven L. Koski
John S. Brennan
Bruce R. Maters
Anthony C. Gentner
Stephen A. Dele
Matthew A. Kuschel



FAHEY
SCHULTZ
BURZYCH
RHODES PC

ATTORNEYS AT LAW

October 23, 2016

Gary Johnson, Supervisor
Republic Township
279 Kloman Avenue
Republic, MI 49879

via email to:
republicsupervisor@northpines.net

Dear Gary:

Re: Chief Lake Wilderness Youth Camp (CLWYC) Conditional Use Permit (CUP)

At your request, this letter addresses the present status of the CLWYC CUP. The basis for our opinion expressed below includes the: (1) Republic Township Zoning Ordinance, (2) initial July 20, 2009 CUP granted by the planning commission, (3) planning commission's September 19, 2011 clarification of the CUP, (4) amended CUP adopted by the planning commission on September 8, 2014, and (5) August 8, 2016 planning commission minutes, indicating that the planning commission granted an "extension" of the CUP on that date and a previous "extension" on August 27, 2015.

We are also advised that, despite the passing of more than seven (7) years since its CUP was first granted, CLWYC has to date failed to complete its project beyond the construction of various building shells. The continuing failure of CLWYC to complete the improvements approved by the initial CUP is what led the planning commission to amend the CUP in 2014 to impose clear time deadlines with which CLWYC was required to comply. We are advised that CLWYC has failed to date to satisfy the following firm deadlines set by the conditions imposed by the CUP as last validly amended in 2014:

- (1) The installation of a well water system, rough electrical, mechanical, plumbing and framing have not been completed, even though Condition 8 of the last CUP amendment required their completion by *September 8, 2015*; and
- (2) Copies of all permit and license applications and actual permits and licenses were not forwarded to the Zoning Administrator by *October 8, 2014*, as required by Condition 4; and
- (3) CLWYC failed to provide the Zoning Administrator an updated letter of financial responsibility by *October 8, 2014*, as required by Condition 9.

The September 8, 2014 CUP amendment, which was negotiated by the planning commission and representatives of CLWYC, including CLWYC's attorneys, clearly provided in Condition 10 that: "*Failure to comply with this permit and the conditions herein will result in revocation of*

the planning commission's approval of this permit." It is very clear that, after CLWYC failed for so many years to make substantial progress on the completion of the use approved by the initial July 20, 2009 CUP, the planning commission gave CLWYC one last chance in the 2014 CUP amendment to complete the work on the CUP by the dates stated in that CUP amendment, or its failure to do so *"will result in revocation of the planning commission's approval of this permit."* By again failing to meet the amended deadlines, CLWYC thus caused its CUP to be revoked as of September 8, 2015, at the latest.

The time limits on the conditions imposed by the 2014 CUP are expressly authorized and required by Sec 703(B) of the Zoning Ordinance, which relevantly provides that: "All conditions shall be clearly specified in writing and the *petitioner has one year from date of hearing to comply with all specified conditions.*" CLWYC did not comply with this mandatory Zoning Ordinance requirement.

Sec 1203(F) of the Zoning Ordinance also provides that: "Construction of a building or commencement of a use shall be substantially begun *within twelve (12) months of the date of issue of a permit or said permit shall become void.*" In this case, there is no evidence that CLWYC even commenced any of the work on the above-cited conditions imposed by the 2014 CUP before September 8, 2015, which was one year after the 2014 CUP amendment was granted. Certainly, CLWYC did not obtain any of the building permit approvals or health department approvals that were necessary to commence that work. Thus, under this section as well, CLWYC's 2014 amended CUP became "void" on September 8, 2015, at the latest.

CLWYC (and perhaps even some members of the present planning commission) may mistakenly contend that the planning commission "extended" the deadlines imposed by Sec 703(B) of the Zoning Ordinance and expressly stated in the 2014 CUP amendment by granting "extensions" in 2015 and again in 2016. However, the planning commission's 2015 and 2016 "extensions" were clearly unauthorized, invalid, ineffective and void, because they were granted without first giving the mandatory public notices and holding the public hearings as required by both the Zoning Ordinance and the Michigan Zoning Enabling Act for any actions involving CUPs.

There is no provision of the Zoning Ordinance or the Michigan Zoning Enabling Act that allows the planning commission to "extend" a CUP. The planning commission only has the powers it is granted by the Zoning Ordinance and applicable statutes, and none of those allow the planning commission to grant an "extension" without following the same procedures and requirements as for the initial grant of a CUP. The planning commission did not follow those procedures and requirements when it granted the 2015 and 2016 "extensions."

Although the Zoning Ordinance does not provide for "extensions" to CUPs, it does allow for "renewals." However, Sec 705(D) expressly requires that: "Conditional Use Permits may be renewed *using the same manner as originally applied for.*" Under Sec 703(A) of the Zoning Ordinance, the planning commission must publish at least one public hearing notice and hold a public hearing before it can grant, amend or renew a CUP. At the public hearing the applicant must bear the burden of meeting all the general criteria and requirements of Sec 704 of the Zoning Ordinance, and the planning commission must make findings on each of the standards listed in that Section before it can grant, amend or renew a CUP.

Sec 1203(G) of the Zoning Ordinance relevantly provides that: "*Any permit issued on the basis of an application which was in error shall be null and void.*" No such permit may be construed as permission to build or begin a land use." Thus, in view of the planning commission's errors in failing to comply with the notice, hearing, evidence and finding requirements of the above Zoning Ordinance sections, the planning commission's 2015 and 2016 "extensions" are "null and void" under Sec 1203(G) of the Zoning Ordinance.

The Zoning Ordinance is consistent in this respect with the requirements of the Michigan Zoning Enabling Act, which uses the terms "special land uses" or "special uses" to describe CUPs. The same notice and hearing requirements contained in the Zoning Ordinance are also mandated by the Act. See MCL 125.3502 and MCL 125.3103.

In addition, a long line of Michigan court decisions has held that zoning decisions made without a required notice or hearing are "void." *Baura v Thomasma*, 321 Mich 139, 146; 32 NW2d 369 (1948); *Krajenke Buick Sales v Kopkowski*, 322 Mich 250, 255; 33 NW2d 781 (1948); *Bingham v Flint*, 14 Mich App 377, 384; 165 NW2d 628 (1968); *Boron Oil Co v Southfield*, 18 Mich App 135, 139; 170 NW2d 517 (1969); *Keating Intern Corp v Orion Twp*, 51 Mich App 122, 125; 214 NW2d 551 (1974), *affirmed*, 395 Mich 539; 236 NW2d 409 (1975); and *Ann Arbor v Danish News Co*, 139 Mich App 218, 224; 361 NW2d 772 (1984). Failure to comply with the required notice and hearing procedures was therefore fatal to the claimed 2015 and 2016 "extensions" purportedly granted by the planning commission on CLWYC's CUP.

Under the Zoning Ordinance, whenever the Zoning Administrator finds that a person is operating without or in violation of a required permit, it is his duty to advise the person of the violation and require its discontinuance. See Zoning Ordinance Sec's 705(C), 1201(A), 1202(A) and (B), and 1203(A) and (G), among other sections. Therefore, we recommend that the Zoning Administrator notify CLWYC that its CUP is no longer valid and that CLWYC must cease further work under the CUP, unless and until the CUP is properly granted, renewed or amended.

In conclusion, based on the foregoing analysis, it is our considered opinion that CLWYC's CUP is no longer valid or in effect, and the planning commission's 2015 and 2016 attempts to grant "extensions" to the CUP were void. We recommend that the Zoning Administrator advise CLWYC that it must cease further work under the CUP, unless and until the CUP is properly granted, renewed or amended.

If you have any questions, please feel free to contact me.

Very truly yours,

FAHEY SCHULTZ BURZYCH RHODES PLC



William K. Fahey

Cc: Terry Knapp, Zoning Administrator, via email to: tdknapp@earthlink.net