

**BINGHAM TOWNSHIP
REGULAR BOARD MEETING MINUTES
OCTOBER 19, 2020**

1. CALL MEETING TO ORDER

Supervisor Werner called the Bingham Township Regular Board Meeting to order on Monday, October 19, 2020, at 7:00 p.m. at the Bingham Township Hall, 7171 Center Hwy., Traverse City, MI. via zoom meeting.

2. ROLL CALL- QUORUM PRESENT

Present: Midge Werner, Kathy Morio, Sandra Grant

Absent and excused: Brad Saxton

Staff Present: Recording Secretary, Marge Johnson; Steve Patmore, Zon. Admin.

Guests Present: 15 (most via zoom)

3. PLEDGE OF ALLEGIANCE

4. AGENDA APPROVAL

Sandra Grant/moved, Kathy Morio/supported, to amend the Agenda, adding Bob Walton's Proposal under Parks & Recreation, PASSED.

5. CONFLICT OF INTEREST

None shown

6. APPROVAL OF MEETING MINUTES – Sept. 21, 2020

Sandra Grant/moved, Midge Werner/supported, to approve the September 21, 2020 Minutes as presented, PASSED.

7. PUBLIC COMMENT

Tim Doyle said he sent the Supervisor a letter with regard to the Short Term Rental Ordinance and asked that his letter be recognized under public comment. Midge Werner said the letter will be accepted under public comment.

Tim Doyle had comments - as a general test of reasonableness would individual board members be willing to accept the restrictions on your own households as written and proposed. The rules are unduly restrictive, and an overall less restrictive approach could be taken. Ninety-five percent (95%) of the households in the community are regulating the actions of five percent (5%). Have any of the lessees helped with the drafting of the ordinance. Together we could work out a much more reasonable proposal that would certainly be less contentious. I would like the Board to table the ordinance and reassess it for a future date.

Nancy Popa, 6638 Lake Leelanau Dr., said this has been a very long process, well over a year with public hearings with a lot of public input. The Board has been very thoughtful and deliberate to the approach of balancing the interest of the short term rental owners with that of the character of the community and protection of water quality. She said she is supportive of the ordinance as proposed.

8. OLD BUSINESS

a. Short Term Rental Draft Ordinance

Steve Patmore said the township attorney was asked to address the Fair Housing Act. The township attorney responded to the township's request in an attorney-client privilege letter. The attorney did cite some Federal court cases regarding the Fair Housing Act and said as long as the township has reasonable restrictions and doesn't discriminate between families and non-families, it could limit occupancy in a building. The attorney's conclusion was that, based on the Federal law that he looked at and what he found that he could defend a limit of occupancy in a short term rental. The attorney recommended that footnote 1 that refers to a Michigan Supreme Court case be deleted. The attorney said it was his opinion the Fair Housing Act was not violated.

Midge Werner asked for comments from the Board and staff.

Kathy Egan said the ordinance that the Board has in front of them was prepared after the Township Attorney Tom Grier's second review of the draft ordinance.

Discussion –

- Midge Werner – In Section 1, eliminate the first and third “that”. Under definitions couldn't find a definition of operator.
- Kathy Egan – Word “operator” is used three times.
- Midge Werner – in the footnote for “e” on page 4, can we say the number of permits was determined as 5 percent of the actual taxable residential units in Bingham Township at the time the ordinance was created. Page 5 under “fireworks”, say fireworks of any kind are not allowed on any property except in an accordance with the Bingham Township Fireworks Ordinance.
- Kathy Egan – the word “amendment” covers any future amendments of the Fireworks Ordinance.

Midge Werner submitted a Resolution for the adoption of the Short Term Rental Ordinance and information regarding the administration and application process for subsequent calendar years. Correction to the Resolution - pg. 2 – 5b. – date and time stamped. 5. Renewal Application Process For Subsequent Calendar Years should be “6”.

Midge Werner asked for public comment –

- Bob Walton – pg. 4(f) regarding occupants.
- Kathy Egan – the Health Department counts bedrooms differently. It has to be a legitimate bedroom, can't be something that is turned into a bedroom in the basement or another room.

Original septic size is based on the number of bedrooms in the dwelling as constructed originally.

- Bob Walton – inserting “as” would make it clearer.
- Cara Gelven, 4448 SW Bayshore Dr., Suttons Bay. With the wording on line, is this something you want to start in January. I just don’t think it is realistic with the timeframe right now. I haven’t seen an application on line posted. Wonder how that is moving forward, if there is an application everyone can see yet.
- Steve Patmore – we are not going to put the application on line until the ordinance is passed.
- Cara Gelven – at the last meeting it was said it would get posted on line with the draft.
- Steve Patmore - the draft application was on line.
- Cara Gelven – With the snow coming and wanting every septic to be inspected. I urge the thought that something be put into place that, have you thought about how this is going to be enforced, how are you going to figure that 180 days is going on. I think enforcing the 180 days might create more work than good.
- Midge Werner – we have taken a lot of public comment into consideration and thanks for your comments. We have worked on this for quite a few months and a lot of you have not been here for the whole process. Most everything that has been brought up or has been brought up at last month’s meeting was taken into consideration.
- Cara Gelven – someone brought that up last time and there no really good answer as to how it was going to be handled if a neighbor was to stay above 180 days, how that looks when brought to your plate though. At the last meeting was no answer, wondering if there is an update.
- Midge Werner – at the last time most everything was brought up under public comment, so we did respond.
- Jeff Van Rhee, 7900 SW Bayshore, first question on the well and septic. Are you looking for a pump card or the actual drain field?
- Steve Patmore, the way it is written, evidence of pumping is all that you need at this time.
- Jeff Van Rhee, so nothing on the drain field. It’s wintertime, it’s pretty easy to get to, is last spring sufficient.
- Steve Patmore – it says within the last year, and you are going to have to submit that it was pumped within the last 3 years.
- Jeff Van Rhee, is the township still open to discussing 2 per bedroom. In the meeting people are sounding on this the most. East Bay Township did 2 people per bedroom plus an additional four. Is that something you guys would consider.
- Midge Werner – right now we are pretty well set on the 2 per bedroom, but not to say that we will relook at that. I think 2 is what we are looking at.
- Jeff Van Rhee, is that based on a Health Department recommendation.
- Midge Werner – it’s based on the Health Department how they determine the size of the septic and that’s what we are trying to go with.
- Kathy Egan – the occupant level is 2 persons per bedroom, but it does not count anyone under the age of 5. It’s families with children, the younger kids would not be counted as two per bedroom. This is going to the township goals of protecting the waters of Lake Leelanau, and Grand Traverse Bay and also protecting the character of the township by trying to maintain a short term rental look and feel and act and sound like a residential activity, and not a house full of 14 adults for example or something.

- Jeff Van Rhee, I don't think 10 as referenced earlier, saying we are going to put short term rentals in one category, but somebody that owns a cottage who has a 3 bedroom can have 10 people over whenever they want. That's really not fair to target one niche, and say you guys have to follow this rule, but nobody else has to. If it's because we are trying to save septic fields, and stuff like that, anybody with a 2-bedroom house should have 5 people living there.
- Kathy Egan – it's more along the lines of, what you are trying to do is to marry and combine two potentially incompatible uses in a residential district. I know short term rentals house humans and families, but it is a business inside the residential district, and you are trying to mitigate any impact that you have of running a business next door to a residence. It has been shown that there are issues not only with short term rentals, but any time you have a business inside a residence, whether it is a home occupation or home business, there are a lot of standards and conditions that you have to follow if you want to run accounting business inside your home or a taxidermy business. If you want to run a landscaping or snowplow business out of your home, there are conditions that apply to any time there is an operation, a commercial operation, inside a home, and short term rentals is what you are doing, you are developing conditions to allow this to happen, to create the viability of the township and try to mitigate those impacts between the true residential and a business use in a residential area.
- Jeff Van Rhee – that doesn't relate to the septic and wells at all, and also we are doing just what the zoning ordinance allows us to do at this time. The zoning ordinance allows for short term rentals. When I bought my property, it allowed for short term rentals. What you just said I can completely agree with. That does not have anything to do with the well and septic. The Health Department is saying this will wreck your septic system, and we should look at the whole township and say if you have a two-bedroom house, only four occupants. If you have three-bedroom house six occupants if we are trying to go by Health Department rules.
- Kathy Morio – we have worked on this for about a year and I think as Kathy Egan has stated, we want the residential feel of our neighborhoods. This is a business entity. We are not disallowing them, but we allowing them with what we feel are good regulations. We try to put both hats on. If I own a short term rental, it is restrictive but still allowable. When I put the hat on when I live next door, the same is reasonable as my next-door neighbor. I feel like we have a good balance here.
- Sandra Grant – I am comfortable with this ordinance, we did try to legally take this much reasonable risk from both parties, feel comfortable with the ordinance.
- Tim Doyle - I want to go back to my letter, because I have raised a number of these issues in my letter. Also had a discussion with the Health Department, and for example on holding tanks, they've indicated that a holding tank system would accommodate a range of bedrooms, 2 to 5 for example, that's the holding tank system they are recommending right now. So anything that's been put in effect since last 10 or 15 years would accommodate up to 5 people, so if we are looking at protecting the water quality of the area, it is not necessarily limited to just to bedrooms and assigning two people per bedroom. They also on their application have in the case of septic's, it's true that they relate to bedrooms per sizing a system, but they also identify the number of occupants in the home as well. You could have two bedrooms and have five or six occupants. I think it is overly restricted. I understand the need to protect for water quality, and I support that 100 percent, but it has to be reasonable. The other issue with two people per bedroom is that you apply that not only to the occupancy for overnight, but you apply it to gatherings. If you have a two-bedroom home, that means that only four people can go to a cook

out or go for a day at the beach. That's just unreasonable. I would like to see if someone else proposed the number of bedrooms plus in increment if you have to have a restriction on it. I could appreciate that there has been a lot of hard work done here for the last year, but what you are looking at is you are really putting in some very significant restrictions. As an example, the Suttons Bay ordinance I believe they have the same objectives, but it's not nearly as restrictive. Is that an ordinance that's not effective, not working? I think that really needs to be reassessed because it's really a significant burden particularly with regard to gatherings. You regulate the behavior which is, I support that, but to limit gatherings to four people or six people or eight people if you have a four bedroom on occasions, that is just unreasonable.

- Midge Werner – we will take that under advisement though, thank you.
- Gary Strutz, 7888 SW Bayshore, just piggybacking on that as well, if the reason is being for the septic, and it was regulated to 180 days, they are going to have a lot less use on a septic system in a full-time residence who might have or six people living there in a two-bedroom house. I think that definitely needs to be reassessed. The other thing I would say is that when you are talking about enforcing it, how is anyone going to be able to determine whether it's me and my family up there using the cottage when we are going to be more than two occupants per bedroom, or rather someone who is just renting the home. How is that going to be determined?
- Midge Werner – I don't know if we have a true answer for that. My thought is that if we get a report that there's more people there than should be, you will get a call and will explain at that time that it is you and your family there, you are not renting it out for this period.
- Steve Patmore – That's a good answer.
- Gary Strutz – does that call count as one of the verbal/written warning.
- Midge Werner – no because you are not in violation if you are using it personally yourself
- Gary Strutz – if someone is supposed to be calling me to get that report, is that call going to the local contact person, or is the call coming to myself.
- Midge Werner – what the plan is we are going to have the local contact number there. We are going to have your number there, and we are going to have an 800-number people can call. So any of the three.
- Gary Strutz – if we were to get a report that someone reported there are 8 people in a 3-bedroom house, do you guys call the local contact, and the local contact would have to call me, and I would have to explain to you guys.
- Midge Werner – I guess it could go that way, but my guess is that most people would call you first. Get to know your neighbors so you can tell them you are going to be there and they recognize it is you. Gary Strutz, my neighbor is a rental home as well.
- Midge Werner – it will be resolved some way, but my guess you are not the first person to call. If people have the number, they will call the owner.
- Cara Gelven – one more thought, for the 180 day rule, it was a good point about the septic being used half as much to take into consideration, but at the same time would you want your neighbor's house to just be sitting there empty half a year that's not being used to stimulate the economy, not being used in the winter, that's when people are going to let it sit empty if they to. That's the time that small businesses up here need to be supported. The 180 day rule I don't think is good for anybody. It's the septic, it doesn't make sense because you are already limiting bedrooms, it's not enforceable in any sense to be honest. I think if the whole thing comes down to I wouldn't want my neighbor's house to sit empty and worrying what's happening, and at the same time I think Suttons Bay needs these people to be coming up all year

round, so that there's someone in the establishment. I really think you should reconsider that rule.

- Midge Werner, thank you for your comments, I see this as a fluid document, as we get into using it, I think we are going to determine things that we need to tweak, but right now I think what we have in place is what I am going to vote for. We have worked on it a long time, we have had a lot of input from people on both sides, the neighbors and the short term rentals. I think there is a pretty decent compromise. Obviously, it is not going to meet everybody's wants and needs, but we are doing the best we can. If we see where there are major issues, we will take a look at that. We are reasonable people here. We are not trying to be domineering.

Midge Werner/moved, that the Bingham Township Board adopt Ordinance No. 2020-1019-01, an Ordinance to regulate short term rentals within Bingham Township the Ordinance shall be known as The Short Term Rental Ordinance, as amended, Kathy Morio/supported.

Roll call vote: Yes: Kathy Morio, Midge Werner, Sandra Grant. No: None. Absent and excused: Brad Saxton. Motion carried.

Public Comment - Tim Doyle – I just heard four people with their primary objective as to how you arrived at the number of people, and you just blew by it.

Midge Werner said we understand Mr. Doyle what you are saying too, and we can take a look at it, but if we can get this in place, there are people who are starting to have rentals for next year. We are trying to have something in place to go by for the first of the year and get everybody in line for an application. If we waited until January 1st, we wouldn't have an ordinance, and you would have to be doing the same thing we are doing right now. We are trying to get it in place so that we have a working ordinance for next year. If it needs to be amended, we will do that. Right now, we need to get something in place.

Mr. Doyle – what is the amendment process?

Midge Werner – like we are doing now, we will review it, research it, will look at what people have said. We may go back to the Health Department. Your comments regarding holding tanks may be something we need to take a look at.

Mr. Doyle – I understand, I personally have commitments through next year.

Gary Strutz – I have one more question as well. What are we doing with people who have already booked for 2021. I have multiple reservations already for 2021.

Midge Werner said we are going to go thru a permit process and you will apply. I am not necessarily expecting that we will have 86 people, but if we do, you will go on a waiting list. We are not anticipating that will be the case, but if that is the case, we will address it.

Gary Strutz – with that being said, if there is more than 2 people per bedroom, what do you do about that.

Midge Werner said we have an ordinance that says two people per bedroom and it's been that way when we have been working thru it. I don't have an answer for you right now, but we will work it out I am sure.

Steve Patmore said the Ordinance is the Ordinance, two per bedroom.

Sandra Grant/moved, Midge Werner/supported, to adopt Resolution 2020-1019-01, as Amended. Roll call vote: Yes: Kathy Morio, Midge Werner, Sandra Grant. No: None. Absent and excused: Brad Saxton Motion carried.

Discussion –

- Midge Werner – The application fee of \$300 per unit would cover enforcement of the ordinance.
- Steve Patmore – Recommend that the township board hire a compliance firm. The township will start taking applications on November 5th. The Short Term Rental Ordinance will be enforced starting January 1, 2021.

9. NEW BUSINESS

a. Letter of Resignation from Gary McGhee, Trustee

Gary McGhee submitted a letter of resignation as Trustee of Bingham Township. Midge Werner said Gary McGhee has done a lot of work as Trustee. The township will not fill the vacancy as it is close to the election.

Midge Werner/moved, Sandra Grant/supported, to accept Gary McGhee's resignation as Township Trustee with regret, PASSED.

b. Reappoint to Board of Appeals

Sandra Grant/moved, Kathy Morio/supported, to reappoint Derek Kulpa and Mike Park for a three-year term to the Zoning Board of Appeals, retroactive to July 1, 2019 with term ending July 1, 2022, and to reappoint Marge Johnson as alternate for a three term, retroactive to July 1, 2023, PASSED.

10. COMMITTEE, STAFF AND OFFICER REPORTS

a. Parks and Recreation Committee

Bob Walton submitted a Report to the Board. Walton is requesting approval of \$167.00 for signs that will be placed near the life rings at the township waterfront parks.

Midge Werner/moved, Kathy Morio/supported, to approve the Parks and Recreation Committee spending \$167.00 for signs to be placed near lifesaving rings at the township's waterfront parks, PASSED.

Todd Stone said the Committee is requesting approval to spend \$450 for sand for Bingham Township Park.

Sandra Grant/moved, Kathy Morio/supported, to approve the Park & Rec. Committee spending up to \$450.00 to put sand around the playset at Bingham Park, PASSED.

Todd Stone said the pole and back board are waiting to be installed on the basketball court. Jon Walter will be completing the site plan for Groesser Park.

- b. **Buildings and Grounds** – No report.
- c. **Cemetery Committee** – Kathy Morio said the township purchased back a cemetery lot.
- d. **Zoning Administrator** –Written report received.
- e. **Planning Commission Report** – Kathy Egan submitted a Memo from the Planning Commission regarding updating the 1999 Comprehensive Plan. The Planning Commission is asking the Township Board to consider allowing the release of an RFP to begin the process to find a suitable consultant.

Kathy Egan announced she resigning from Network Northwest at the end of November. Kathy Egan said another staff member from Networks Northwest would be assigned to work with Bingham township as a planner.

- f. **Fire Authority** - Documents e-mailed.
- g. **Assessor's Report**
Sandra Grant/moved, Kathy Morio/supported, to accept the Assessor's Quarterly Report, PASSED.

h. **Treasurer** - No report.

i. **Trustee** - No report.

j. **Clerk**

Kathy Morio submitted the Vendor Balance of \$5,634.09 which includes \$33.60 for cleaning of the hall. Payroll if \$9,744.72.

Sandra Grant/moved, Midge Werner/supported, to approve the Vendor Balance of \$5,634.09 and Payroll of \$9,744.72, PASSED.

Kathy Morio said November 3rd is the election. As of October 19th, a total of 1,258 absentee ballots have been sent out, and 799 have been returned.

k. **Supervisor** - No report.

11. **PUBLIC COMMENTS AND ANNOUNCEMENTS** - None.

12. **ADJOURNMENT** - The meeting was adjourned at 8:38 p.m.
Minutes by Marge Johnson, Recording Secretary
Kathy Morio, Clerk

