

**A REGULAR MEETING OF THE LEELANAU COUNTY PLANNING COMMISSION WAS HELD ON TUESDAY, JUNE 22, 2021, AT THE LEELANAU COUNTY GOVERNMENT CENTER.**

**Proceedings of the meeting were recorded and are not the official record of the meeting. The formally approved written copy of the minutes will be the official record of the meeting.**

Meeting was called to order at 5:30 p.m. by Chairman Yoder who led the Pledge of Allegiance. The Meeting was held at the Leelanau County Government Center, 8527 E. Government Center Dr., Suttons Bay, MI and via ZOOM.

**ROLL CALL**

**Members Present:** R. Miller (Cleveland Twp.), K. Todd (Leelanau Twp.),  
(via ZOOM)

**Members Present:** S. Yoder, G. Carlson, M. Lautner, A. Trumbull, C. Noonan  
(At Government Center)

**Members Absent:** T. Nixon, D. Hubbell, M. Black, N. Griswold  
(prior notice)

**Staff Present:** T. Galla, Director, G. Myer, Senior Planner  
(At Government Center)

**Public Present:** S. Patmore  
(At Government Center)

**CONSIDERATION OF AGENDA**

Galla suggested pushing “New Business – D. Capital Improvement Program” to next month’s agenda because she is still receiving items that need to be added. Members agreed.

*Motion by Lautner, seconded by Noonan, to accept the agenda as amended. Motion carried 7-0.*

**CONFLICT OF INTEREST** – None.

**PUBLIC COMMENT**

**The phone number for public comment was announced.**

No comments received.

**STAFF COMMENTS**

Galla mentioned the issues during last month’s meeting with zoom and noted our connection was knocked out about 4 times. Anyone on zoom or trying to watch the meeting was affected. The high winds caused the problems. Also, after June 30<sup>th</sup>, we will no longer be holding Zoom meetings. Meetings will be in person. Members will need to have a medical condition or be caring for someone with a medical condition in order to have the option to attend the meeting via Zoom.

## CONSIDERATION OF May 25, 2021 MEETING MINUTES

*Motion by Noonan, seconded by Trumbull, to accept the minutes as presented. Motion carried 7-0.*

### NEW BUSINESS

#### **PC04-21-08 Leelanau Township – Text Amendment – Temporary Moratorium.**

Galla acknowledged Steve Patmore, Zoning Administrator for Leelanau Township, who was present and available to answer questions on the amendment.

Galla reviewed the staff report, saying the request was received on May 14. The Michigan Zoning Enabling Act (MZEA) provides a 30-day review period for the county to review and report to the township after receiving its amendment. We are past the date; however, the township wishes to have the review and report from the county. Galla continued, saying this is a request to add language to Section 10.9 of the Zoning Ordinance on Temporary Moratorium, and it would apply to the application of certain provisions of the townships Zoning Ordinance. A Public Hearing was held on April 8, 2021, and at that time, a new Public Hearing was scheduled for May 13, 2021. After the public hearing on May 13, 2021, a motion was unanimously passed by the township planning commission to recommend the township board adopt the amendment.

Galla continued with the history, noting there was an ordinance adopted earlier this year to establish a temporary moratorium on any application for a special land use permit for RV Resorts and Campgrounds in the Commercial Resort Zoning District. Galla stated they were not reviewing that ordinance. Township minutes of April 8, 2021 indicate the townships legal counsel determined that the moratorium is enforceable and recommended that there be a second section in the Zoning Ordinance that also addressed temporary moratorium. Galla made note that there are only four pages of minutes posted online for the April 8, 2021 meeting, they seem to be incomplete.

Galla continued, mentioning the following excerpt “A zoning moratorium should only be done with caution”, by Brad Neumann, Michigan State University Extension, April 8, 2020. This explains some language and issues on moratoriums and the court cases that back it up. Also, mentioned was the following court case *Metamora Township v. American Aggregates of Michigan, Inc.*, 349069 which was decided on April 1, 2021. It is an unpublished opinion, but it was included in the staff report. Galla said the procedure that the township is following for establishing a moratorium is consistent with the decision of Judge Philip E. Rodgers, Jr. back in 2003. (*Case No. 02-22228-AZ, Great Northern Broadcasting System, Inc. v. Long Lake Township, Long Lake Township Zoning Board of Appeals, Long Lake Township Board of Trustees, and Long Lake Township Planning Commission (2003).*) The township adopted a moratorium as an amendment to their zoning ordinance. Galla continued, saying the township has worked with its attorney on drafting this document and complied with the requirement to amend its zoning ordinance.

Galla said staff questioned the proposed language “It will allow for moratoriums of 180 days, and will allow for such temporary moratorium to be extended for up to another 180 days by approval of the Township Board. Do the words ‘up to **another**’ mean this will only allow one (1) extension? And, the online version of the zoning ordinance Table of Contents, lists Sections 10.1 through 10.7. It should also list the current Section 10.8 Public Notice, as this amendment would be Section 10.9.

Galla concluded by mentioning the correspondence received from attorney Richard Edmonds, regarding this moratorium. He has provided some background and suggestions as to what the County Planning Commission should do. Galla stated anything regarding the legality of this or how it was

done, or if the wording is correct, needs to be done at the township level with their attorney. Galla stated there is information in the letter that the township should review. It is her understanding that there has been a lawsuit filed against the township with regard to the ordinance that was adopted. Galla said the county review is a planning review, and anything regarding the legality of it, needs to be sent back to the township for their attorney to review.

Yoder asked for discussion by members.

Todd said it appears the amendment has been done correctly, and she agrees that there needs to be clarity regarding the extension. Also, the township mentions “Findings of Fact”, as a procedural matter, or advice or direction. It would be most helpful, that when any moratorium is established, those “Finding of Facts” are specific, numerated, and backed up by the written basis as to why they came to those finding of facts for future analysis and review.

Lautner questioned who determines the 180-day extension, it doesn’t say just one extension. S. Patmore said he believes the intention was that there only be one extension. If it’s not clear, it should be clarified. He will pass this question along to the township. That is something the township board can take care of.

Patmore said the township planning commission did have the MSU Extension Bulletin to use when they had the public hearing. Suttons Bay has a similar section in their zoning ordinance, so this is not something new, it’s a zoning tool that you hope you never need to use, but it’s there if you need it. Patmore concluded by saying this not about a particular thing, it does coincide with the “other” issue, but it’s something our attorney recommended.

***Motion by Lautner, seconded by Noonan, to forward staff report, minutes and all comments to Leelanau Township Planning Commission, and the legality of the amendment should be evaluated by the townships legal counsel. Motion carried 7-0.***

*\*Staff Note: Correspondence received from Richard Edmonds was forwarded to all county planning commission members, and the township zoning administrator and Chair of the township planning commission, on June 21. Correspondence is on file at the planning office and available upon request.*

**PC05-21-06 Glen Arbor Township -Text Amendment RE: Single Family in Business District.**

Galla referenced an email she forwarded to members earlier in the day that contained some lengthy documents, and said she wasn’t sure if they all had time to review them or not. Galla said the email was from Kathleen O’Brien, who apologized and said she had some issues which prevented her from getting it sent out sooner. Another email she forwarded to members was from the Glen Lake Chamber of Commerce Board of Directors, and she just received another email before the meeting tonight. This email was from a person who said three of the people listed are not property owners in Glen Arbor Township. Galla continued, saying that Kathleen O’Brien has asked that this item be removed from the agenda tonight. This is the first time she can remember that the county was being asked to remove items from the agenda. Galla said she did receive feedback from the county attorney regarding the proper way to handle these two items (Leelanau and Glen Arbor). The items remained on the agenda tonight and the legal issues (as noted during the Leelanau Township item), are issues that need to be handled by the local township attorney, not by the county. The county is looking at this from a planning perspective.

Galla reviewed the staff report and said this request was received by the Glen Arbor Township

Planning Commission to amend their Business District and add single family residential. This was actually allowed in the Business District several years ago, and then removed. They are now trying to put single family residential back in. A public hearing was held on June 3, 2021. The minutes of June 3 indicate the discussion was opened to participants on Zoom (page 3), comments were received and then the township planning commission passed a motion (aye-4, nay-1) to allow single family dwellings as a use by right in the Business District and to forward the proposed amendment to the County Planning Commission for review.

Galla reviewed the history, saying the reason for removing single family dwellings in 2007 (PC06-07-06), was that the township feared running out of places to put businesses in the Business District. The staff report from 2007 referenced the Glen Arbor Township Master Plan and the recommendations at that time. Galla said township minutes from June 3, 2021 also indicate about 100 phone calls and 18 letters were received stating concerns over this proposed amendment. The May 6 minutes posted online for Glen Arbor Township, as well as the minutes from the Public Hearing, discuss the past history of removing single family dwellings as a permitted use and the consequences of doing so. In 2007, it was noted that there were single family dwellings in the Business district which would become non-conforming. The Public Hearing minutes include a good deal of discussion by the planning commission members and not a lot from the public. Galla pointed out that during a public hearing you want to get the comments and input from the public. The meeting is opened, you get the public input, note them in your minutes, close the public hearing and then if there is any action to be taken, it is taken after the public hearing is closed. The minutes indicate a lot of discussion from the members, not very much from the public. It is also important to follow proper procedure which is to open the public hearing, close the public hearing, and then take action. Galla continued, saying evidently there were a lot of letters received, and although it is not common for the county to get copies of every single letter included in the minutes, it would have been helpful to have a summary of them.

Galla pointed out that the Public Hearing minutes state a planning commission member brought up conflict of interest, and stated he did not feel he had a conflict of interest. Staff questions if the township has a Conflict of Interest Policy. The County Board adopted such a policy in 2005, and has revised it several times through 2013. This policy is on the website at [www.leelanau.gov](http://www.leelanau.gov) for reference. Also, the county planning commission adopted language in its bylaws several years ago to address potential conflicts of interest, and that language was shared with all of the townships and villages. It is on the agenda and requires a member or staff, to bring forth any potential conflict at the beginning of a meeting. However, they do not decide if there is or is not a conflict. The rest of the members make a decision based on the policies and their decision is documented in the minutes. You have to really take a look at it and decide, is it really a conflict of interest, or are they just uncomfortable voting on the issue. If you have this spelled out in your bylaws then it is very clear when someone has a conflict. This takes the burden off the member on deciding whether there is a conflict or not, and recording that decision in the minutes allows for it to be easily tracked for historical purposes.

Galla reviewed the zoning map showing the business district areas: in Glen Arbor, some by Fisher Lake, and a good size chunk at the Homestead, which is mainly their ski area and golf area. The lots that appear vacant that would be affected by this proposed amendment, appear to be along Oak St. in Glen Arbor. Galla said it might be good to analyze just how many lots might be available for single family use. Galla mentioned the email from the Glen Lake Chamber of Commerce Board of Directors, particularly the sentence which reads “we call your attention particularly to these items and analysis you received from your zoning administrator, that argue against your agreement to the Glen Arbor Planning Commission request”. Galla noted ‘zoning administrator’ should actually be “the county staff” not the “zoning administrator”. They are referencing the county staff report. Kathleen O’Brien’s documents show she submitted a Freedom of Information Act Request (FOIA) request to the township, asking for more information. She noted in her emails some potential conflicts of interest at the

township level. Galla stated that this goes back to the legal issues that could be involved in such a situation, but the county is not dealing with the legal issues. The county looks at this from a planning perspective. Can the township amend their zoning ordinance? Yes. Is it illegal for them to put residential in the Business District? Not that we are aware of. This is a decision they will have to make at the township level and any legal issues will have to be dealt with by their township attorney.

Todd said the Master Plan is very clear that the desire is to have the Business District to be business. Even the concept that dwellings or properties that were not businesses when the Master Plan was created, would segwayseque into business because of the desire to have businesses focused more in one place. Todd continued, saying it was her understanding, that rather than going totally contrary to your Master Plan, you look at other alternatives such as amending your Master Plan if that is what you want to do. Todd stated she also questioned the validity of the vote on this amendment. Mr. Ihme said that he had property in the Business District, but then concluded why he didn't have a conflict. In her opinion, owning property in a district being changed by an amendment is a conflict of interest, unless you can prove otherwise in some compelling way. Obviously, that was not done. Ihme raised a conflict that was not properly dealt with, which impacts the validity of the vote on this amendment and our ~~even~~ looking at this amendment.

Miller commented that it seems with all of the recent emails and correspondence, this is very controversial and he hopes the township would resolve this before acting upon this. They may have to revise it again, which would not be beneficial to anybody.

Trumbull stated the conflict of interest issue raised by Todd also concerned her.

Lautner said this brought to mind, a situation she heard of from a Glen Arbor business owner some time ago, that spoke to the fact that they need more housing closer to the Business District to retain/gain more employees for the businesses. She agreed with Ihme's conclusion, that he did not have a conflict of interest, because this proposed amendment could go either way for a business owner. It could benefit or not benefit, with a flip of the switch. Lautner continued, saying that just because you are a property owner, doesn't necessarily mean that it is a conflict of interest. Members on a planning commission might live in a residential area, even the same residential area, and if a change comes up, are they all in conflict? She doesn't think so. You have to look at the meaning of the conflict. There has to be a very direct intentional benefit.

***Motion by Lautner, seconded by Carlson, to forward staff report, minutes and all comments to Glen Arbor Township Planning Commission, and the legality of the amendment should be evaluated by the townships legal counsel. Motion carried 7-0.***

*\*Staff Note: Correspondence received from Glen Lake Chamber of Commerce was forwarded to all county planning commission members, and the township zoning administrator and Chair of the township planning commission, on June 21. Correspondence received from Kathleen O'Brien was forwarded to all county planning commission members the afternoon of June 22. All documents are on file at the planning office and available upon request.*

#### **PC06-21-04 Elmwood Township – Text Amendment RE: Rural Resort District**

Galla said this was just sent to the county planning commission members yesterday, and staff did not have time to prepare a full staff report but did review it and prepare some comments. Staff did check with the township to see if this could be held onto until next month, but the township wished to have this reviewed tonight to keep things moving. The township is proposing changes to the Rural Resort District, which basically lies in three areas in the township: a portion of the Timberlee area, a large tract of land along M-72 that runs north to Hoxie Rd., and then there is about 60-acres on the north side

of Lincoln Rd. west of Bugai Rd.

Galla continued, saying that at the Public Hearing held March 16 at the township planning commission meeting, the township discussed this and Mr. Brock is the one who brought this forward. He is the owner of quite a bit of land in the Timberlee area. Nate Elkins is also mentioned in the minutes, and he is the applicant acting on behalf of the owner. The township has reviewed the language that Elkins worked on and the township's attorney has also reviewed it. Galla said they are making a change to Section 7.23, Standards and Requirements for Approval of a Planned Development. The biggest change is to item number B. 2. which will require a traffic study and some of the items that may be considered are: pedestrian and vehicular traffic conflicts; adequacy of site distances; road surface and character; impacts to the surrounding character of the area based on new trip generated; and impacts to level of service and capacity on existing roads. Galla continued, pointing out minor changes to Section B. 5., and then items "a thru e" which will be added to this section. This section would also allow an increase in the area for the supporting uses of a development from 5% to 8%, if you met at least three of the standards listed in items a thru e. One of the things mentioned is Universal Design Principles, which. Galla noted Universal Design includes:

1. Equitable use.
2. Flexibility in a use.
3. Simple and intuitive use.
4. Perceptible information.
5. Tolerance for error.
6. Low physical effort.
7. Size and space for approach and use.

Galla commented on Universal Design meeting requirements so it is developed to suit all ages, similar to programs that Ms. Esther Greenhouse presented in Leelanau County a few years ago.

Todd stated there are a lot of things that are very loose in the wording, and hard to interpret. Item B. 2. reads in part "A traffic study based on the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers shows that the new trips per day as a result of the primary and any supporting or accessory uses will not be unreasonable and will ensure vehicular and pedestrian safety", which is really a tough standard that is going to cause a lot of disputes. Todd continued, saying 5.c. reads "The project limits the use of chemicals for landscaping and snow removal" which is way too broad. This needs to be much clearer in order for people to be able to follow it.

Miller said the standards in 5.c. limits the use of chemicals - what is that? Organic fertilizer is a chemical, stuff used on ice is a chemical. Standard 5.e. states "Recreational uses open and available to the public free of charge for a minimum of 4 opportunities in a year." He's not sure how a business operates that way with providing something free of charge. And what are the 4 opportunities - 4 hours, 4 days, 4 weeks? Miller concluded by saying all of these criteria are questionable.

Lautner said the recreational use alarmed her. Could a board hold a developer hostage in a sense, forcing them to open it up to the public free of charge? She is curious what exactly is behind this, what it entails, and the legalities of this. This would be good information for them to have for future use.

***Motion by Noonan, seconded by Trumbull, to forward staff report, minutes and all comments to Elmwood Township. Motion carried 7-0.***

## **Capital Improvement Program (CIP) – DRAFT.**

No discussion held.

### **Update on Training Session for Fall.**

Carlson mentioned she received an outline from Galla, which was from the MSU Extension Land Use regarding both of the topics for the fall training session. About 45-50 minutes presentation for each topic, with a break in between. Very reasonable price, sounded like a great thing to have.

Galla added that the outline was sent by Mary Reilly and there is going to be a lot covered by this session. They now need to pick a date, early in the fall. Galla said they usually try to hold the training session on a Wednesday night, she will get a date set with Mary Reilly. Galla also suggested that they think about having a basic training session for local boards and commissions, sometime in the future, because board members change constantly and education is important.

## **REPORTS**

### Education Committee

Update given on fall training session.

### Housing Action Committee

Lautner stated the meeting was cancelled for lack of business.

### Parks & Recreation Committee

Noonan said they are moving into their budget process to get it turned in to the county. Clean-up at Myles Kimmerly Park is under way to remove massive brush piles caused by the logging. The Poor Farm Barn was awarded barn of the year and kids fishing day at Veronica Valley Park was cancelled due to Covid. Old Settlers Picnic is still being held with food truck supplying the food. The Masonic Lodge does plan to do the meal next year.

### **Reports from LCPC members of attendance at township/village meetings, or other meetings/trainings.**

Yoder mentioned the playground in Cedar is being revised. The old equipment is being torn out and new stuff that is up to code will be installed. A lot of volunteers are making it happen. Lautner said they have a great coffee shop in Cedar now. Yoder also said a motion was made at the last township meeting, to study water and sewer in Cedar.

## **COMMUNICATIONS**

Planning & Zoning News mailed out.

## **PUBLIC COMMENT**

### **The phone number for public comment was announced.**

Ken Jackson, a member of the Glen Arbor community, said it is sad what is going on. Their elected

officials are not representing them in a very transparent manner. It looks to him as though the comments sent to the planning commission, did not include public comment, which were overwhelmingly against the proposed amendment. He wished there was a way to get this information out there prior to the vote, sending it back to the Glen Arbor Township Planning Commission. The county did not get all of the facts they needed to make a decision. Jackson concluded by saying it is a sad state of affairs for the elected officials in Glen Arbor Township.

Paul Holtrop, a resident of Glen Arbor, said he was glad to see staff comments about the conflict of interest, regarding one member of the township planning commission, but there are at least one or two others, who many believe, have conflicts of interest, that did not even bring them up at the meeting. Two people are real estate agents, the other member has a rental property in the district. He wishes that it could be sent back to the township planning commission to address these conflicts of interest. Looking at the comments from the County Planning Commission tonight, there could be some disagreements about what constitutes a conflict of interest, but possible conflicts of interest should at least be brought up at the Glen Arbor Planning Commission meeting. And the rest of the planning commission members should vote on those conflicts of interest.

### **STAFF COMMENTS**

Galla said she read an article about the old Gabes market, in Maple City, and how the new owner is remodeling it to take it back to its historical appearance. Also, the rezoning of the Old Mill property in Glen Arbor went to referendum, and the vote of the citizens will be held in August.

### **COMMISSIONER & CHAIRPERSON COMMENTS**

Carlson and Yoder thanked staff for their work. Lautner mentioned the tire recycling event being held this Friday. Galla stated the HHW Collection scheduled for Saturday is full.

### **ADJOURN**

*Meeting adjourned at 6:40 p.m.*