

A REGULAR MEETING OF THE LEELANAU COUNTY PLANNING COMMISSION WAS HELD ON TUESDAY, SEPTEMBER 26, 2023, 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.

CALL TO ORDER 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.

ROLL CALL

Members Present: S. Yoder, T. Nixon, C. Brown, T. MacDonald, M. Black
B. Fenlon, R. Miller, C. Noonan

Members Absent: M. Lautner
(prior notice)

Members Absent: A. Trumbull (resigned), R. Brush

Staff Present: T. Galla, Director, G. Myer, Senior Planner

Public Present: D. Manikas, Cleveland Township

CONSIDERATION OF AGENDA

Motion by Noonan, supported by Nixon, to accept the agenda as presented. Motion carried 8-0.

CONFLICT OF INTEREST – None.

PUBLIC COMMENT – None.

STAFF COMMENTS

Galla informed members that A. Trumbull had resigned. Due to her busy schedule, she felt she couldn't give the commission the attention it deserves. Also, members will be reviewing a Master Plan from Long Lake Township at their next meeting. Galla said she had already emailed the plan to members so that they would have time to review it.

CONSIDERATION OF JULY 25, 2023 MEETING MINUTES

Motion by Fenlon, supported by Noonan, to accept the minutes as presented. Motion carried 8-0.

OLD BUSINESS

Review of Fall Session

Galla stated that she thought they would draw a larger crowd. She did have a few people inquire about Zoom options or the ability to watch at a later date. People still want to stay at home rather than attend

in person. Galla said overall she was pleased with the session. She would have liked the speakers to get into a few more of the problems involved with big developments. She realizes this also would have taken more time, and it took a lot of time to get through what they did.

Fenlon said he enjoyed the training and the speakers were very knowledgeable. He realized he still has a lot to learn. Miller said they did a great job. Some of the pitfalls and concerns on big projects were stressed to the right degree.

Nixon commented that the speakers were well prepared and he enjoyed talking with Mary Reilley, she is always helpful. He appreciates staff for putting it together. MacDonald said the small group thing took up a lot of time that could have been better spent. Brown said it was a very good session and the speakers pointed out some things he never would have thought of. Yoder said he also anticipated a lot more people. The comments he heard were all positive and the content they had was really good.

NEW BUSINESS

PC12-2023-03 Cleveland Township-Text Amendment Short Term Rentals

Galla reviewed the staff report saying that the township has based this off of some reviews they have done of other ordinances dealing with short term rentals (STR's), so a lot of the text is similar to what is in other township zoning ordinances. Galla said this is a text amendment to add Section 4.28 Short Term Rentals to the zoning ordinance. The township held a public hearing on September 6 and received some public input. Following the public hearing they passed a motion to recommend the Cleveland Township Board adopt the amendment.

Galla pointed out that the current zoning ordinance on the Cleveland Township website does not include a Section 4.27, after 4.26. Instead, the Ordinance adopting 4.27 starts on page 111 of the document. For consistency, the ordinance should be cleaned up to show each of the new sections so that a person could easily find them. Galla continued, saying that this text would permit STR's in the Agricultural District, Residential I, II and III Districts, with requirements for permits, standards and owner responsibilities and penalties. The township has not yet set the maximum number of STR's. The STR industry has seen an increase in growth, with online access and popularity of rentals vs. a stay in a hotel or motel helping to drive up the popularity. This issue with STR's is not limited to Cleveland Township. A lot of communities are struggling with what to do with them.

Galla continued, saying the issue with STR's is not specifically mentioned in the township's plan, but under Appendix A, Public Comment Plan, from a public open house, there were some issues listed and some public comments received. It was noted in the Public Hearing introduction that this amendment was requested by the township board and was modeled on Leelanau, Suttons Bay, and Elmwood Townships STR ordinances. Galla noted that the "purpose statement" doesn't seem to read as a "purpose statement" consistent with other sections in the zoning ordinance. The township could also take the statements A through L and shorten into a similar type Purpose statement as that in Section 4.26.

Galla continued, saying that the township informed staff that these uses of STR's are already allowed in the commercial, commercial resort, business, and recreational districts. Staff questioned if the township will allow unlimited STR's in these districts but set a maximum allowed in the Agricultural and Residential districts? Item L. states the township intends to prioritize primary resident owners when awarding permits. If challenged, will the township be able to defend this statement to prioritize permits to primary resident owners? Galla then moved on to Section 4, Short Term Rental Permit, C. Renewal of Permits and questioned whether the permit has to be applied for every year? Section 4,

Item D. refers to the Cleveland Township Fee Ordinance but the document online is called a Fee 'Schedule'.

Galla then mentioned Section 5: Short Term Rental Standards, D. 4) states the township will provide the phone number of the contact person to all neighbors within a 300-foot radius of the STR boundary. This is also listed in Section 6: Owner Responsibilities A. Why? This could get out of hand with neighbors making calls, instead of contacting the township and having the authorized person at the township handle the issue. This amendment states that Cleveland Township (zoning administrator or other person designated) is authorized to issue all permits and issue civil infraction notices. Galla said it might be cleaner to run it through the township, not the neighbors. Galla pointed out that staff felt the 10-foot fire distance didn't seem adequate. Under M. Quiet Hours it states "...which does not disturb the quiet, comfort or repose of a reasonable person of normal sensitivities". This statement seems like it would be hard to determine or enforce. Is there another way the township can word this requirement?

In conclusion, Galla said she had a few emails back and forth with D. Manikas because staff was a little confused and still are as to whether or not this is a Police Power Ordinance or an amendment to the zoning ordinance. Some townships do have this as a stand-alone ordinance and if that is the case, Cleveland Township needs to make sure they have followed the proper procedures to put it into place.

Manikas stated that he also questioned if this was a stand-alone ordinance and he was told by the township supervisor Tim Stein that it was not. Manikas continued, saying that the township doesn't have anyone to integrate the amendments into their zoning ordinance online and that is why the amendments are just added to the website. STR's are mentioned in Objectives and Action steps of the township's Master Plan. They were not high on the list at the time the Master Plan was done, but things have changed in the last five years so the township board directed them to develop this. Some of the language is more "flowery" than they usually write because it was borrowed from other townships. Their lawyer's advice was to list out the purpose since this gets to the PRE question and makes it defensible. And to the point that they allow STR's in other zoning districts makes it defensible.

Manikas said that the township master plan does reference short term rentals. And their attorney suggested listing items out for the Purpose statement as that references PRE and other items and it was felt listing them was the best. He also stated that other townships have a requirement that the neighbors get the contact person information, so that way, the neighbors can address an issue before it turns into a complaint that the township has to handle. Perhaps they can work it out between the parties.

Manikas emphasized a crucial point, this is not a taking because in their ordinance currently, any STR in Residential or Agricultural is in violation. He referenced a previous training and the fact it was mentioned that just because you haven't enforced it, doesn't mean you can't. It has gotten to a point where the township needs help to enforce it and this is a strategy - to charge fees in order to hire a third party to monitor because it is overwhelming. Manikas clarified that he misspoke at the meeting regarding permits and reapplying. The text clearly states that you have priority to renew, you do need to reapply. The township wanted people to be able to plan year to year, that once they have a permit, they will have top priority for any available permits the following year. Manikas concluded by saying that they are looking at numbers right now to limit the number of STRs and will make a recommendation at the next township meeting. The number of STR's have become a problem and they are disrupting the neighborhoods and affecting the homes available for those who want to live here.

Fenlon stated that he is concerned about the fire distance because the international fire code recommends 25 feet. 10 feet is appropriate for a charcoal or gas grill, 25 feet for a fire pit, and 50 feet for an open fire. Most insurance companies will not be happy with that distance. Also, the phone number given to neighbors could get out of hand. How would that even work? Instead, direct those calls to the township and the relevant enforcement in the township. Manikas said they talked a lot about that. Most of the other ordinances they reviewed had that in there. They didn't want to put it all on the zoning administrator. If the neighbors can handle it by going to the point of contact, then there is no formal complaint. However, if it gets out of hand the township will find out.

Miller made reference to the 300-foot radius and having an authorized agent to contact because you can't get ahold of anyone at the township after hours or on the weekends and get any response. How is the 300-foot radius defined? Property lines or the residences? The text states that a bedroom is for two people, but a lot of these properties have bunk rooms. Noonan stated that it is capped at twelve person's total. Manikas said it is based off the septic which is their primary concern. Two persons per bedroom and children over 3 since they are using a toilet at that age. Miller questioned places that are marketed for more people than what they are licensed for. Manikas said there are companies that monitor that type of thing, and that would be a violation. Miller wanted to know if a sign by the road would be permitted. Manikas said signage is addressed in the text. Manikas said STR's are in their neighborhoods, this isn't just in commercial areas. They allow that stuff in the Business, Commercial Resort, and Recreation Districts. The courts were pretty clear that they do not have a right to commercial use of a residence in a Residential District. Miller concluded by asking why they would reference fireworks when there are other township ordinances that apply to that? Manikas stated that redundancy doesn't hurt.

Noonan said he applauded the township for wrestling with the bear. It's a difficult thing in every township and there is no cookie cutter ordinance. It is nice to see the township working through this.

Nixon pointed out to Section 1, Purpose, D. and said to remove the word "be." He likes the septic language and the language used to define the maximum allowable number of occupants. He does see a conflict between Section 5, D and Section 6, A. Nixon wanted to know who would be responsible for issuing the correct number. Manikas said at the moment, the zoning administrator or whoever grants the permits, but the board may contract that out to a company. Nixon mentioned that Suttons Bay township has had significant challenges for parking and what that means. They are now talking about the distance a vehicle is parked from the hardened surface of the roadway. The intent was always to allow people to walk or ride bikes down the edge of the road without getting run over by a vehicle that is on the roadway. This may be something to think about because the Sheriff won't do anything if the car is parked on the shoulder of the road, only if it is in the roadway. Nixon said he also raised the question as to why this wasn't a police ordinance? A zoning ordinance regulates the use of the land and a police power ordinance regulates the activities on the land. In Suttons Bay they viewed STR as an activity and used a police power ordinance. And to use it as a zoning ordinance, there needs to be some reference to it in the Township Master Plan. There has to some relationship between the zoning ordinance and the Master Plan. Suttons Bay discovered they didn't have that kind of strength in their Master Plan. Nixon concluded by saying that Suttons Bay Township uses a company to monitor their STR's and it is very helpful. The company's number is given to neighbors and they keep a log of the calls they receive and let the township know. They do not take any action, they just let the township know what the people around the rental are experiencing. They have learned that a lot of people rent by word of mouth.

Black commented that he liked the public comments by people who have been renting their places for many years. This shows you how successful they are and they haven't rocked the boat. Manikas stated that they have been getting complaints recently. Also, when they heard those public comments, it

reinforced the principal residence exemption (PRE) priority. Black said the well and septic language might be a little stringent, a lot of it depends on the septic system itself. It's not uncommon to go five to ten years between pumping. Black concluded by saying that he likes the amendment and is glad to see them working on this because we are a vacation destination.

MacDonald questioned if the township could defend the prioritization of how the permits will be distributed? Also, Section 1, L, reads "for the reason stated above..." which is pointing to all of the declarations previous to that. There is sort of a disconnect to all of the previous statements, then saying they are limiting these to primary residences. He suggests removing "for the reasons stated above." And related to that, he also recommends in Section 4, L, removing "Therefore". MacDonald said they don't need justification for why they are doing it. Manikas stated that their lawyer said it is best to have it in there. MacDonald said his last question was on signage, is that addressed? Manikas said yes.

Brown mentioned the requirements now for a driveway permit which were not in place years ago. Many driveways are not safe because they were put in a long time ago. They receive phone calls at the road commission from people who want to reduce the speed limit in front of their STR. He recommends a requirement for a valid driveway permit from the road commission within the last five years. Yoder said some of the stuff may be hard to enforce, but in general the township did a great job. This issue is a runaway train right now in the county and any way they can slow it down a little is good.

Nixon commends the septic language included in the amendment, it's a community interest. In Suttons Bay Township they had a home that was renovated and put on the market as a STR. During the sales process it was discovered that the remodeling altered the number of bedrooms, so the Benzie Leelanau County Health Department investigated and put a stop order on the purchase until corrections were made. Manikas mentioned a septic study they did and said one of the early findings is that heavy use is what leads to enteric bacteria in the house. Miller questioned with the permit renewal process; would the township be requiring documented cleaning of the septic? Fenlon pointed out that it does.

Motion by Noonan, supported by Black, to recommend approval of the Cleveland Township STR Text Amendment, to forward the staff report, minutes and all comments to the Cleveland Township Planning Commission. Motion carried 8-0.

REPORTS

Housing Action Committee

Galla updated members on the meeting held the prior day saying that Yarrow Brown updated them on the Housing Summit coming up in October, in Traverse City. Brown also reported on the number of housing units needed in the county and there was a lot of discussion on what the next steps might be. Galla continued, saying that Habitat for Humanity is moving on to units 5 and 6 at Maple City Crossings and they will be starting on the New Waves project in Elmwood Township. Homestretch is almost done with the Marek Rd. project and they put in an offer on some property that the LBA owns. Galla concluded by saying there was discussion on whether the HAC should continue in its present structure or a citizen group be developed like other counties are doing.

Parks & Recreation

Noonan reported that a gentleman wanted to put a skating rink at Myles Kimmerly Park and volunteered to do all of the work. He thought there was water there year-round, but there isn't. The well is winterized because of all of the irrigation lines. They are not sure now if this will happen.

REPORTS from LCPC members

Brown said County Rd. 675 road closure is happening now, to replace culverts. This will be ongoing until mid-November. Another project is coming up on County Rd. 651 to reconstruct the road. It will be shut down for about three weeks to put in left turn lanes.

Yoder said Solon Township is still working on their Master Plan and will be working on a STR ordinance and an accessory dwelling amendment. They recently finished a three-month visioning session for the parks to apply for DNR grants to help with improvements. They are looking at replacing all of the wooden bleachers with aluminum. Yoder concluded by saying he will be doing the Citizen Planner course in East Bay Township.

COMMUNICAITONS

Citizen Planner Course
Northwest Michigan Housing Summit 2023

PUBLIC COMMENT – None.

STAFF COMMENTS

Myer reported that the Hazardous Waste & Electronics Collection held the prior day was a success with 405 vehicles dropping off materials.

COMMISSIONER & CHAIRPERSON COMMENTS – None.

ADJOURN

Meeting adjourned by consensus at 6:28 p.m.