

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

SPECIAL MEETING

APPROVED

December 3, 2012

The December 3, 2012, special meeting of the Charter Township of Oakland Board of Trustees was called to order at 7:00 p.m. in the Township Hall.

PRESENT: Terry Gonser, Supervisor
Jeanne Langlois, Treasurer
Michael Bailey, Trustee
Judy Keyes, Trustee
Sharon McKay, Trustee
Maureen Thalmann, Trustee
James Creech, Manager
Steve Joppich, Attorney
Gerald Fisher, Attorney

ABSENT: Karen Reilly, Clerk

A quorum was present.

PLEDGE OF ALLEGIANCE

Supervisor Gonser led the Board, staff and those present in the Pledge of Allegiance.

AMENDMENTS TO AND APPROVAL OF AGENDA

There were no changes proposed to this evening's agenda.

CITIZENS

Supervisor Gonser invited those present to comment at this time on an item that is not on this evening's agenda. If someone wishes to comment on an item that is on this evening's agenda, they may do so at an appropriate time when the Board is considering that item. Supervisor Gonser reviewed some guidelines for public comment: speakers are asked to identify themselves at the podium, direct their comments to the chairperson, limit their comments to three minutes, speak only once until everyone who wishes to

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

SPECIAL MEETING

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December 3, 2012

speaking has had an opportunity, and for those present to refrain from making comments, noises or other distractions while another person is speaking.

No one wished to comment at this time.

BLOSSOM RIDGE REZONING

At the November 27th special meeting, the Board reviewed a letter the Township received, dated November 20, 2012, from attorney Gregory Need. At the request of “certain Oakland Township residents,” Mr. Need provided his opinion regarding the Blossom Ridge rezoning. In his letter, he states that the Township failed to submit the proposed rezoning for review and recommendation by the Oakland County Coordinating Zoning Committee as required by the Michigan Zoning Enabling Act. Therefore, it is his opinion that this voids the Township Board’s approval of the rezoning request.

At that meeting, the Board reviewed the opinion of Township Attorney Joppich during a closed session, and then agreed to seek another opinion from former Oakland Township Attorney Gerald Fisher. The Board also asked that, if possible, Mr. Mocerri provide input on this matter.

Developer Dominic Mocerri was present this evening, along with his attorney, Ed Kickham, at the Board’s request. Mr Kickham stated that he has not received the opinions that the Board has, and that he is not prepared to make a statement regarding what he believes the Board is compelled to do. However, he said that if the Board decides to rescind its approval of the PRRO, he would consider this to be selective enforcement by the Township.

Mr. Mocerri shared a presentation that covered items including past Oakland Township PUD and PRRO approvals, and Oakland County’s review process. He noted the similarities between a PUD rezoning and a PRRO rezoning, and pointed out that none of the PUD projects were ever submitted to Oakland County for review.

Mr. Mocerri continued that Oakland County Deputy Executive Matthew Gibb attended Oakland Township’s October 14, 2011, Planning Commission meeting with regard to the Blossom Ridge project. Further, Mr. Mocerri shared a letter from Mr. Gibb dated today stating that his staff had knowledge of the Blossom Ridge plans in 2011, that he received the project summaries from both the Township and the developer, and that Oakland County conducted discussions and reviews of the project in the same manner as they would for the “review procedure” that Mr. Need referred to. (It was noted that the

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

SPECIAL MEETING

APPROVED

December 3, 2012

statutory requirement is that the plans are sent to the Oakland County Coordinating Zoning Committee of the Oakland County Board of Commissioners for review.)

Finally, Mr. Mocerri stated that he feels if the Board rescinds the decision made at the August 14, 2012, meeting (albeit by the former Board of Trustees), this will violate due process and will raise equal protection concerns.

Regarding the proposed language of the rezoning referendum ballot question, Mr. Mocerri recommended that it mirror the language contained on past agendas and in the Board's motion, specifically that it refer to the "Blossom Ridge Senior Development." He has forwarded a letter to Attorney Joppich in this regard.

Supervisor Gonser then accepted comments from those present.

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

SPECIAL MEETING

APPROVED

December 3, 2012

Jan Olson of 4190 Orion Road recalled that Mr. Mocerri had compared the Blossom Ridge PRRO rezoning with the rezoning required for a PUD. However, she pointed out that the Blossom Ridge development is different in nature than a PUD development, and asked that the Board take this into consideration.

Annalisa Rogers Hollenbeck of 2055 Aberdeen Court commented about Mr. Gibbs' attendance at the Planning Commission meeting in 2011. She said that Mr. Gibbs admitted at that meeting that he had only recently become aware of the proposed Blossom Ridge senior housing development and that he had not had the opportunity to conduct an in-depth review at that time. At the meeting, Mr. Gibbs indicated his support of the plan as it would create many new jobs in Oakland County. However, Ms. Hollenbeck said that these new jobs will result in new traffic patterns. Ms. Hollenbeck commented that she found Mr. Gibbs offensive, and suggested that the Board review the minutes of that Planning Commission meeting. Mr. John Giannangeli of 5846 Murfield Drive said he also objected to Mr. Gibbs's demeanor, and wondered if Mr. Gibbs was aware of the citizens' concerns.

Joe Langlois of 490 W. Snell Road stated that he is Treasurer Langlois's husband, but that the opinions he wishes to share are his own. He urged ~~to~~ the Board to not rush into making a decision, but rather to make an educated decision. Based on his understanding of election law, Mr. Langlois said he does not believe the referendum ballot question is required to appear on the February ballot as there is not a candidate up for election. He proposed that the Board put this matter over to the May ballot. In the meantime, he proposed that the Board seek an advisory opinion from the Attorney General.

Closed Session

MOVED BY BAILEY, SECONDED BY McKAY, to move to a closed session of this meeting at 7:34 p.m. for the purpose of discussing a privileged attorney-client communication regarding Blossom Ridge.

AYES: Gonser, Langlois, Bailey, Keyes, McKay, Thalmann

NAYS: None

ABSENT: Reilly

MOTION CARRIED.

MOVED BY BAILEY, SECONDED BY THALMANN, to reconvene the regular session of the meeting at 8:28 p.m.

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

SPECIAL MEETING

APPROVED

December 3, 2012

MOTION CARRIED.

Regular Session Continues

Supervisor Gonser said that, since the November 27th meeting, it has come to the Board's attention that the rezoning referendum ballot question is not required to be placed on the February ballot. Therefore, the Board does not have to decide on ballot language at this time (the deadline for the February ballot language submittal is tomorrow). Attorney Joppich affirmed this, stating that, upon review of the Zoning Enabling Act, it would be appropriate to place this matter on the May ballot.

Supervisor Gonser continued that the issues brought up by Mr. Need's letter are significantly complex, and the Board has reviewed multiple opinions. They have discussed many topics including various ways to proceed, submittal of the plans to the Oakland County Coordinating Zoning Committee, seeking an advisory opinion from the Attorney General, and obtaining yet another legal opinion.

MOVED BY KEYES, SECONDED BY LANGLOIS, to submit this matter to Oakland County, to seek an advisory opinion from the Attorney General, that it is the Board's intent to, if possible, place the referendum question on the May ballot, and to seek a fourth legal opinion regarding the Blossom Ridge rezoning amendment.

(Note – this motion was later withdrawn, see page 134, below.)

Discussion:

Supervisor Gonser said one concern of the Board is that if Oakland County reviews the plans and renders a substantive opinion, the Township is unable to incorporate any proposed changes into the plans and rezoning decision as the final decision to approve or deny the rezoning request will fall to the electorate as a result of the petition for referendum. Attorney Joppich pointed out that Oakland County's comments would be advisory only.

Francis P. Hughes of 3842 Ellamae Road questioned which attorneys had authored the opinions that the Board has before them. The Board responded that these are from Gregory Need (on behalf of Ms. Robin Buxar and others), Township Attorney Joppich, and Attorney Gerald Fisher.

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

SPECIAL MEETING

APPROVED

December 3, 2012

The Board, Mr. Mocerri and residents discussed what should be submitted to the Oakland County Coordinating Zoning Committee for review. Mr. Mocerri agreed that these items should include the Planning Commission meeting minutes that include their recommendation, as well as the revised plan (showing 238 units instead of 282 units) and the PRRO Agreement, which were negotiated with the Board of Trustees following the Planning Commission's recommendation. Attorney Joppich said that the Township will provide what is required by statute, and will also ask Oakland County to find out exactly what they want to receive.

Ms. Hollenbeck suggested that the Township also forward to Oakland County a copy of the petition for referendum.

Annalisa Hollenbeck pointed out that the location of the proposed Blossom Ridge development lies to the north of Dutton Road, the dividing line between Oakland Township and the City of Rochester Hills. She questioned if the Township should hear concerns of Rochester Hills residents.

Mr. Langlois commented that he feels Oakland County should not receive a copy of the ordinance as they may feel political pressure to recommend approval of the plan. He further recommended that the Board seek an opinion from the Attorney General regarding how to proceed with the County's review, and what to do in the event that Oakland County has substantive comments on the plan.

Supervisor Gonser said he does not feel the Board is in a position to make a decision regarding how to proceed with this matter at this time. Treasurer Langlois asked if the Township should seek an opinion from the Attorney General regarding the procedure that should be followed in this situation. Attorney Joppich reminded the Board that the Attorney General's opinion would be advisory only.

The Board discussed amendments to the motion (placed on the floor at page 133), after which Trustee Keyes withdrew her motion.

MOTION WITHDRAWN.

MOVED BY THALMANN, SECONDED BY BAILEY, regarding the Blossom Ridge matter, to seek an opinion from the Attorney General, to seek an opinion from a fourth legal analyst, and that it is the Oakland Township Board of Trustees's intent to place this referendum question on the May ballot.

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

SPECIAL MEETING

APPROVED

December 3, 2012

Discussion:

Mr. Mocerri said he feels it is important that the Board submit the plans to Oakland County, as required by statute. Further, he inferred that, since the Board omitted the Oakland County submittal from their motion, this reflects that they do not want to obtain an opinion from the County. Mr. Mocerri said he sees this as a violation of due process. As a citizen, he is concerned that the Board is expending additional taxpayer monies to obtain yet another legal opinion, and said he feels this is becoming a quagmire.

Attorney Joppich noted that the Board's motion does not preclude Oakland Township from sending materials to Oakland County for their review.

Supervisor Gonser added that, while the Board would have liked to move forward with this matter, he feels it is incumbent upon them to do their due diligence, and to learn how they need to properly proceed.

Mr. Hughes commented that the Township is in this predicament as a result of an oversight of the previous Board. He feels Attorney Joppich should have guided the Board so as to have avoided this omission (i.e., the submittal to Oakland County). Attorney Joppich responded that he is an outside attorney and does not oversee matters on an administrative level.

At this time, Supervisor Gonser called for a vote on the motion.

MOTION CARRIED.

The Board agreed to discuss the matter of obtaining an additional legal opinion and seeking an opinion from the Attorney General at the next Board meeting.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 9:43 p.m.

Respectfully submitted,

Approved,

CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES

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December 3, 2012

Ingrid R. Kliffel
Recording Secretary

Karen Reilly
Clerk