

FINAL
CHARTER TOWNSHIP OF COMMERCE
ZONING BOARD OF APPEALS MEETING
Thursday, May 27, 2021
2009 Township Drive
Commerce Township, Michigan 48390

A. CALL TO ORDER: Rusty Rosman, Chairperson called the meeting to order at 7:00pm.

ROLL CALL: Present: Rusty Rosman, Chairperson
Robert Mistele, Secretary
Rick Sovel
Bill McKeever
Absent: Clarence Mills (excused)
Sarah Grever, ZBA Alternate Member (excused)
Also Present: Paula Lankford, Assistant to the Planning Director
Anne Allard, Clerical Admin, Planning/Building Dept

Chairperson Rosman introduced the Members of the Board to those present, as well as Paula Lankford. She indicated that only 4 of the 5 ZBA members were present and therefore, any approval would require 3 of the 4 members present to vote in favor. Applicants could choose to table their item until the next ZBA meeting, when a full board might be present, but the public hearing will be held as it was advertised.

Chairperson Rosman reviewed the requirements for receiving a variance from the Zoning Board of Appeals, including the fact that all standards are to be met by the applicant. She assured the applicants present that the sites of the proposed variances have been visited by the members of the Zoning Board. She also explained that if a petitioner's variance request is granted, they will receive their letter of approval by mail. It is imperative that the letter be presented when applying for a building permit. A variance is valid for 365 days from the date of the approval letter. If the variance is used, it runs with the land; however, if it is not used, it expires.

B. APPROVAL OF MEETING AGENDA

MOTION by Mistele, supported by McKeever, to approve the Zoning Board of Appeals Regular Meeting Agenda for May 27, 2021, as presented.

MOTION CARRIED UNANIMOUSLY

C. APPROVAL OF MEETING MINUTES:

MOTION by Sovel, supported by Mistele, to approve the Zoning Board of Appeals Regular Meeting minutes of March 25, 2021, as presented.

MOTION CARRIED UNANIMOUSLY

D. PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA:

None.

E. UPDATE OF ACTIVITIES IN COMMERCE TOWNSHIP:

Rick Sovel – Township Board & Library

- Fire Station #3 on Welch Road is being rebuilt. Currently the fire trucks from that location are being held in the City of Walled Lake on Maple Road. In the Fall when our station opens up, they will be moved back.

- Unfortunately, some bad news. For those of you who live near Union Lake Road, the Road Commission will be closing down Union Lake Road completely starting on July 5th, until sometime in September, just south of Wise Road in front of Matter of Taste. They will be replacing the culvert under the road.

Bill McKeever – Planning Commission

- At our last meeting, we recommended approval for a Planned Unit Development located at 155 Haggerty Road.
- We also granted approval for a permanent outdoor dining area at Bar Verona, located at 500 Loop Road.

F. OLD BUSINESS:

None.

Chairperson Rosman explained the public hearing process in detail to those present before proceeding.

G. NEW BUSINESS:

ITEM G1: PA21-04 – ROBERT LUSCOMBE – PUBLIC HEARING

Robert Luscombe of Commerce Township MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to demolish an existing home and construct a new home that will encroach into the required roadside front yard setback located at 4181 Lake Pointe Lane. Sidwell No.: 17-15-126-001

Chairperson Rosman opened the public hearing.

The petitioner, Robert Luscombe, was present to speak to the variance.

Paula Lankford brought up the site plan on the overhead for reference.

Mr. Luscombe – What's unusual about this property is that when they subdivided it, there are two lots, there's a Lot 16, which is a rectangle, and Lot 17. If Lot 17 was buildable, it's not buildable anymore. It might have been in 1956, but as you can see there's no access point to Lot 17.

So, whether or not that is a road, I don't know what else it would be, but it's only a road to Lot 17. Lot 17 cannot be split off of Lot 16 anymore. This has to remain one lot. I see no point in the private area which is marked to have a setback of 25'.

Your six points; I wrote a letter. I think there's no other property in the subdivision that has a road. This would put us on an equal footing with everybody else because again, they don't have to have it. We are already staying more than 25' from the road. The variance is needed because this is a unique property. There is no other lot in the zoning district burdened with this. This problem was created, not by us, but when it was originally subdivided.

Chairperson Rosman – Thank you. Is there anything else you'd like to tell us?

Mr. Luscombe – No.

Chairperson Rosman – Okay, is there anybody here from the public who would like to address this issue this evening?

Kim Corrigan, 1700 Basset St., Denver, CO – My mother lives in this house right here. I've enjoyed this house for 45 years. I'm here just to say that I think this was handled really poorly. I know that doesn't really matter to you, but Rob Luscombe and his father have lived there forever. I just think that it's disappointing and despicable that he wouldn't come up with another option so that he wouldn't adversely affect the view of that house that we've had for 45 years. We were willing to negotiate with him and all agree to let him move it farther back. He'd have to change the positioning, but the view for her house is ruined from that entire side of the house, including her porch. I just think it's despicable and I cannot believe that he would not ...

Chairperson Rosman – We're just going to address the physical issues of the property. We're not going to talk about the personalities.

Ms. Corrigan – Okay. The physical is that it is having an adverse effect on my mother's property. Thank you.

Pamela Clement Furr, 10310 Wildlife Rd, Charlotte, NC – Kim is my sister and I am also here to appeal to the Board not to grant the variance. First I submitted a 6-page letter and they told me it was way too long, so I resubmitted a page and a half. I'm hoping, Madame Chairwoman, that you will read that. Everything that's on there will speak for itself. I'm also concerned because this whole area, this subdivision, is bound by HOA rules and regulations that require I believe a 30' setback. I'm not sure that the ZBA has authority to override the HOA rules and regulations, so perhaps you can address that. That's a big concern. We've dealt with this down in Charlotte, so I'm familiar with what North Carolina law is, but I'm not certain at this point, even though I was born in Michigan and lived here for much of my life, I don't know what the rules are. Thank you. I appreciate your time.

Chairperson Rosman – I will be reading your letter shortly.

Ms. Clement Furr – Thank you.

Chairperson Rosman – Is there anyone else from the public?

Mike Cunningham, 4221 Lake Pointe Lane, Commerce Township – I live two lots over from Mr. Luscombe's proposed building spot. This private road, 30x60 piece of land, was part of Lake Pointe Lane when the subdivision was built. It was for a turnaround for the original lane. Jack Horner built Lake Pointe Lane to the second subdivision in 1955-56. This road takes a right turn. This was a turnaround for Lake Pointe Lane. It dead ends right here. This road is still a private road. I think Mr. Campbell said it's speculation to him that this nub was there to gain access to Lot 17. It was not. It was there as a turnaround for dead end Lake Pointe Lane One.

Chairperson Rosman – May I interrupt, because I'm confused on what you're telling me?

Mr. Cunningham – Sure.

Chairperson Rosman – The first part of Lake Pointe was built when? And the second part was in '56?

Mr. Cunningham – Yes.

Chairperson Rosman – They were not built at the same time?

Mr. Cunningham – No, ma'am. This was built by Jack Horner between 1954-56. His son still lives on Lake Pointe. This was all swamp land. He backfilled this. He bought the land for \$1800. I have the receipts. This was a road to begin with. I can't tell you when Lake Pointe Lane One was built, but this was part of Lake Pointe Lane One. The road dead ended here and it was a turnaround. It was not built to gain access to Lot 17 because Lot 17 wasn't there when this private road was there. Am I making sense?

Chairperson Rosman – I hear you. Keep going. I just wanted a little more clarity.

Mr. Cunningham – It was platted in 1956. I think that Mr. Luscombe's design violates Section 41.09 in many ways. If you look at #5, if this variance is granted, it will create significant adverse impact to the adjacent properties, including Stella's property. I submitted a packet with pictures.

Chairperson Rosman – Yes, I have that and I will read it into the minutes.

Mr. Cunningham – 40% of her view is going to be blocked if this variance is granted, and 20% of my view, two lots over. That's going to be a significant economic impact on our properties. Mr. Luscombe even admitted to me, when I told him I was interested in buying Stella's property, he said, "Well, if you buy it, if I block the view, you can get it for a cheaper price." He admits that his building of this house is going to economically impact the property.

I don't know why he can't build a house that goes up and not out, or if he could go back a ways so he doesn't block our views. We'd be willing to give up our rights to the 30x60 piece of land, 2,000 square feet, if he would agree to go back to the board. He said he would do that. He told me his wife didn't want him to build a 4,400 square foot house. It's too much to clean. He said he'd be willing to do that, but he changed his mind and came back and did this.

I discovered a copy of our bylaws today. Our subdivision bylaws require that homes be built 30' from the road. If you grant him this variance, I think you'll be violating our subdivision bylaws. I don't know if you have authority to do that.

Chairperson Rosman – I don't either, but we will get to that.

Mr. Cunningham – I did speak with Jay James on the subject once and he said that you do not. Just FYI, I approached the subject with him.

Chairperson Rosman – What did he say?

Mr. Cunningham – Three years ago one of my neighbors built a 4,400 square foot 2-story home that violated the bylaws. He built a 2-story home. Our bylaws require a 1-story home. I went in and talked to Jay James and asked if he could do that. Jay said, the Township does not have jurisdiction over the association.

McKeever – We don't police your HOA restrictions.

Chairperson Rosman – We don't police HOAs.

Mr. Cunningham – Right, okay.

Sovel – We follow our ordinances, not your bylaws or the HOA.

Mr. Cunningham – Okay. Well again, we'd be willing to give Mr. Luscombe that 30x60 piece of land if he'd be willing to come up with a design that would move this house forward a little bit and not block our view. Thank you so much.

Chairperson Rosman – Thank you very much, Mr. Cunningham. Is there anybody else here from the community?

Regina Fronczak Roth, 4080 Lake Pointe Lane, Commerce Township – I bought the property that I've lived on for 50 years now in 1968. When we bought the property, we met Jack Horner, who developed the property for the very first time. He came to us with restrictions that Mike told you about. There were all these restrictions about the house you could build, the size, the brick percentage. We met him immediately because he built the area and constructed it, and he was very protective of it. I was putting up a shed. Jack Horner came to us and said, "I don't care if you put up a shed, but you cannot block somebody's view of the lake."

I live next door to a cottage. We were continuing with the shed. His name was Mr. Sy Larkins. He came up, introduced himself and said, "I don't care about where you put your shed, but don't block my view of the lake." It's very important to everybody.

You may not know, and it was brought up, that Lake Pointe Lane was a swamp. Also, the dirt came from Sleeth Road to fill in our street. Jack had the connection.

There are homeowners that approach people on our street to trim their trees. These are people who live on the lake. They want a view. A young man who came to my house asked his friend, "Where are we?", and he said, "You're in the middle of the lake." That is the truth. People do not want their views blocked. They want to see North and South Commerce Lake. Lake living means enjoying the lake. You may not swim in it or boat in it, but you want to enjoy the view of the lake. We pay taxes for that.

This is a picture of what Lake Pointe Lane looked like originally; it was a swamp. Also, when we started construction, or applying for a mortgage in 1970, it is a private road.

The mortgage company would not permit a mortgage unless I got a document signed by everybody on that road that they would not do any restriction blocking anything. I had to go with a lawyer from home to home to get that down pat.

In conclusion, Jack Horner was an engineer. He knew what he was doing when he created and built Lake Pointe Lane. Dave Campbell had written to Mr. Cunningham about that piece of property, something that it belongs to Mr. Luscombe. You're speculating. Jack Horner designed that. I am very fortunate because I live on a lot that has a view for both North and South Commerce. My neighbor sitting there has preserved that. I have the best view because nothing blocks it north or south.

After Jack Horner passed away, I went and had a sign made. I presented it to their family. The sign says, "Lake Pointe Lane, this is the street that Jack Built. Jack is the provider and protector of Lake Pointe Lane." I would like to continue his legacy. I don't want anybody blocking somebody's view.

Chairperson Rosman – Thank you very much. Is there anybody else?

Bill Pate, 4095 Lake Pointe Lane, Commerce Township – I've lived here over 40 years. It's a lane. I'm not sure I know the definition of a lane, but it's not a street, it's not a boulevard, it's not a road. It's a small street where maybe two cars can pass. That's a turnaround. I understand why I may not want that on my property. There's no cul-de-sac at the end of the street. We have garbage trucks come every Friday. We have lawnmowers. We have a lot of activity on that street, but there's no way in and no way out. Garbage trucks have to back out. Also, there are some 2-stories that have gotten in there and if you need a ladder firetruck, there's no where for them to go or turn around. I can't see around that bend. I see that as a hazard if that road is blocked and nobody can turn around. If you're down that way, you have to back out the rest of the 1/8 or 1/4 mile, and even when you get out, there's not a good turnaround. I'm talking about safety and just practicality.

There were -0- returns and -2- letters.

Chairperson Rosman read the following into the record from the 2 letters received.

Madame Chairwoman and Board Members:

My parents have owned and lived at 4205 Lake Pointe Lane, Commerce Township, since 1976. My father is deceased, but my 95-year-old mother still owns her home on Lot 18, adjacent to Rob Luscombe's property. In 1988, Rob's parents purchased the property and became very close friends of my parents.

My sister and I and several neighbors are here, to speak against Rob's variance request. It is based on a false premise and he does not meet the six criteria required by the state. The false premise is that the Private road stub was for the benefit of Lot 17. It couldn't be as it was built as part of Subdivision 1 which contains only lots 1-15, long before Lot 16-17 existed. Secondly, Lots 16-17 have always been one undivided parcel, Parcel 001, as Tammy in the Deeds department explained. It would have a different parcel number had it ever been divided. Thirdly, Luscombe's father was well aware that Lot 17 was unbuildable on its own, as he told my father this when he bought his property.

The six criteria are not met. Here are the important points:

- 1. Granting the variance will severely restrict the view of the lake from my mother's home, thereby reducing her property value. The variance would cause significant adverse impact to her property by eliminating the beautiful view she has enjoyed for over 45 years.*
- 2. There is no hardship or practical difficulty in moving the house back on the lot toward the street. The current plans are at LEAST the third set of plans he and his architect have drawn. It would not be difficult for Mr. Luscombe to move his house back further toward the road and not block my mom's view entirely. All other neighbors have a 105' setback and his plans call for a 50' setback.*
- 3. He has already had at least 3 sets of plans, so to change them again would not be a burden. One set proposed a two-story home and septic near my parent's home, a second set was rejected by the county this February when his septic was denied. This is his third set with an engineered septic.*
- 4. In March, Mr. Luscombe requested our approval to annex the private road stub to his property. During a conference call with me and my sister, Mr. Luscombe*

committed to get together with his architect and redraw the plans to position his house closer to the road if we would agree to his annexation of the Private Road stub. This would give him an additional 1900 sq. ft of land, significantly increasing the value of his property and easily allowing him to move the house toward the street. He agreed to get with his architect and redraw the plans or reposition the house on the enormous double lot. He told us his wife didn't want such a large house anyway. We waited a couple weeks to hear from him, but instead of receiving new plans as he committed, we received an email from the Planning Commission that he was sticking with his original plans and requesting a building variance from the zoning board instead of annexation of the Private Road.

5. *The need for the variance is NOT "due to unique circumstances...that are not applicable to other structures in the same district." Half of the parcels in Luscombe's subdivision are "double" lots where one of the lots doesn't work as a standalone -- mostly due to septic or potable water issues. The proof of this is that there are only six unique parcel numbers in his subdivision (Parcel numbers 001 through 006), so all three "double" lots HAVE ALWAYS BEEN UNDIVIDED and were deeded with a second lot which was unbuildable on a standalone basis. Luscombe is already on an equal footing with 50% of the landowners in his subdivision.*

In conclusion, we have stated a willingness to work with Mr. Luscombe in granting the annexation of the Private Road if he would move his house closer to the road or reconfigure the house so it no longer entirely blocks mom's view. Mr. Luscombe told us he would do that, then in bad faith, simply filed this petition.

To change the plans again would not be a hardship or practical difficulty. He has already drawn up and proposed at least three different sets of plans. Rob could easily redraw/reconfigure his plans to move his home closer to the road, especially with the addition of the Private Road to his property.

Our primarily objective is not to allow our mother's property to be devalued by drastically blocking her view. Our understanding is that property owners are not allowed to build fences or plant trees or bushes that would obstruct a neighbor's view. If it is true that trees or fences, which can easily be removed, cannot block a neighbor's view, then certainly a PERMANENT STRUCTURE such as a house, should not be allowed to obstruct one's view.

We plead that the Zoning Board NOT grant Rob's request, as his premise, that the Private Road was delineated for the benefit of Lot 17 is false and MOST IMPORTANTLY, he clearly does not meet all 6 criteria set forth by the state.

*Thank you for your consideration,
Pamela Clement Furr*

Madame Chairwoman and Board Members:

My name is Mike Cunningham. I live at 4221 Lake Pointe Lane (herein and after "LPL") on Lot No. 19, two lots over from Luscombe's property. (Please see attached Exhibit 1). Luscombe is proposing to build an approximately 4500 square foot home, which includes a 3414 square foot home and over a 1,000 square foot garage. I have reviewed Luscombe's request for a variance, which has some errors in it, and spoken to Luscombe several times. I have reviewed Mr. Campbell's report, which he admits is based upon speculation. I am opposed to Luscombe's plans and request for variance for several reasons:

1. *His plans will totally block about 40% of the western view of 4205 LPA (herein and after "Stella's house"), and lower the value of her home. (Please see attached photos Exhibits No. 2 and No. 3).*
2. *His plans will block about 20% of my western view of the lake, and lower the property value of my home as well. (Please see attached Exhibit No. 4). Granting this Variance will cause a loss of value for Stella's house and the Cunningham house, which "will cause significant adverse impacts to adjacent properties", a violation of dimensional Variance Section 41.09(A)(5) of the Commerce Township Zoning Ordinance.*

There is a very simple solution to this problem. Luscombe could build a smaller house with a smaller garage. He could fit a slightly smaller house on his property and not block Stella's view nor the Cunningham view of the lake.

Luscombe in his variance request is also speculating that the 30 x 60 stub was there to gain access to Lot No. 17. It was not.

In early April, Luscombe called me. He said there was a 30 x 60 foot "Easement" between his property and Stella's property and he needed all six residents of LPL No. 2's consent to give him this land to build on. "Would I agreed to give him this land?" "I said I probably would, but would he please send me his Building Plans."

Luscombe has admitted that building his house which will block Stella's view, will lower the property value of her home. Luscombe never got back to me about redesigning a small house, and applied for this variance with the ZBA. We are just trying to protect our property values.

Legal Objections: Luscombe's plans violate the site distance rules of most communities by blocking neighbor's views of the lake. There are other Charter Township of Commerce Zoning Ordinances that also must be considered when planning a variance. Several years ago I built a fence between my neighbor's house and my house, obtained a permit. Section 3302 under fences (A)(5)u fences shall comply within clear site distance standards in Article 6." Article 6 indicates that a fence cannot be built that will block a neighbor's view of the lake. I complied with this Ordinance and only built my fence up to the end of my neighbor's house.

The ZBA could ask Luscombe to go back to his architect and try a different design which Luscombe said he would do. I would also ask the ZBA to deny Luscombe's variance request until a real estate appraiser can be hired to determine the loss in value of both houses whose view he is going to be blocking. (I contacted an Appraiser and this is in the works).

For the reasons stated above I respectfully request that this Zoning Board deny Luscombe's request for a variance at this time.

Thank you,

Michael J. Cunningham

Chairperson Rosman closed the public hearing as there were no additional questions or comments.

Board Comments:

Sovel – Those were good concerns, but some of them are not things that we are able to look at or consider. We enforce the Township ordinances and that's all we look at. Everyone has a right to build on their property. You can build up to whatever the ordinance says. Setbacks are obviously part of every piece of property, residential and commercial. When someone does want a variance, they're allowed to request one. It's our job to decided, A., if it meets the criteria, and B, are we giving only the minimal

amount that they're entitled to, to achieve what they're trying to do. A lot of times, especially with lakefront property, people want to build a big home and use up all the property they can. As long as they stay within certain height ordinance requirements, they're allowed to do that.

Is he requesting more than is necessary? Can you build a house without seeking any variance whatsoever? I know one of the questions I saw was asking if the house could be moved closer one way or the other to minimize the loss of somebody's view. I do have some concerns that this is larger than it could be built. Is it self-created? I would say that aspect of it is definitely yes. There are some unique challenges to this property. One of the questions I have is with the stub street. What is the outcome? Did he get unanimous consent? Did it go to circuit court?

Paula Lankford – They haven't done anything with that.

Sovel – So, I'm not sure but my impression of this, if he doesn't own that, then I'm not sure how we can consider that part of it.

Chairperson Rosman – And he has to be 25' from it.

Sovel – Right, so I'm not sure if what he's trying to do is to get control of it, if he's able to do that, and then come to the ZBA. We can't assume he's going to get it. Based on the fact that he doesn't have ownership, it makes it pretty difficult to do much more than what he has right now on that current property.

McKeever – I've always thought that the granting of a variance was the last resort. I would think that all efforts should be made to obtain the abandoned road before coming to us. One thing where I think there may be some confusion is, he's not encroaching into any of the lake setbacks. If we don't grant the variance, and he does not get the easement abandoned, he could still build a house that is going to be just as close to the lake as what he's proposing, and he can make up the lost square footage of the encroachment by going up.

Paula Lankford – That's correct.

McKeever – Which I think would be far more obtrusive to people's views than a 1-story house.

Chairperson Rosman – I want to make it clear if I may before I call on you. The current Township ordinance requires a 50' setback from the lake. This is 2021. When all those houses were built, I don't know, *A. Was there a Zoning Ordinance?*, and *B. What did it call for?* But, because he is coming in 2021, we are under those numbers of whatever the ordinance requires. Right now, he has to be no less than 50' from the lake. While I understand what you ladies, and Mr. Cunningham, are saying about encroaching on the view, he is meeting the ordinance on the lakeside.

Now, on the roadside; you see that stub, the top point of it, Mr. Luscombe has to measure 25' into the property from there as the required setback. When he takes a look at the 50' from the lake, and the 25' he has to be from the stub road ... Am I right Paula?

Paula Lankford – Yes.

Chairperson Rosman – It is that amount of land that he has. However, he owns Lot 16 and 17. It's not just Lot 16. So, there is something that he could possibly do. I'm not a reviewer of plans, but there is a way to fit a home on 16 and 17 that meets the setback from the stub, and the 50' from the lake. Whether that is the house or not is another story, but that is the building envelope that he can use without a variance. Now that we are all clear on that, Bob?

Mistele – Pretty much, I agree with everything that has been said. I think he could put a conforming house on that lot. I think essentially he is asking for us to vacate that road property by granting a variance. I think the better option would be to have that road vacated properly as opposed to trying to put a band-aid on it.

Chairperson Rosman – There is no question, the lot is buildable. How gorgeous it will be and the way it would set is open for discussion with an architect. That's past me. However, Mr. Luscombe, if you would like to abandon that road and bring your house closer to the road, then I'm going to suggest you listen carefully to what your neighbors have said about the design of the house and see if you can meet that. If they're all happy with it, I'm getting the feeling that they would be willing to sign off so you can abandon the road. Otherwise, your other option is to sue the Township and the County, sue this one and that one. There are two options, and as Bill said, we truly are the last resort. I'm going to vote no for your variance and I'm going to make a motion.

Sovel – Before you do that ...

Chairperson Rosman – I'm not quite ready to do that yet, but I wanted you to know that as far as I am concerned, and from things that I've heard my fellow Board members say, there are options that you do have, and can and should pursue. I know that the Township would be willing to sit down with you and help you figure out the setbacks to what your envelope would be. Before I go on, Paula, is there anything you would like to add or explain?

Paula Lankford – I think you've covered it.

Chairperson Rosman – Anne?

Anne Allard – Nothing to add.

Sovel – What I was going to request is, if you think you may want to pursue options on vacating the road, then you can ask us to table this, in which case we will stop the process. We won't vote. We will wait until you accomplish or don't accomplish your mission, and then you can come back to us. The other point, as Rusty mentioned at the very beginning, we have 4 out of 5 members. If you want us to wait and vote when there is a 5th member ...

Chairperson Rosman – They can't because they weren't here to hear it. They weren't here for the hearing so they can't vote on it. It would still be 4 votes. Is there anything you'd like to say to us, Mr. Luscombe, before I call for a motion?

Mr. Luscombe – I think we're confusing the apples and the oranges. The problem I've had building it is I have to take several steps. I don't even know what I can build. I can't really know what I can build until I know what that private road is or is not.

Chairperson Rosman – I'm not going there about what you can or cannot build.

Mr. Luscombe – I just finished last week getting approval on the septic system, and there's only so much space I can put it in. If I can't get that approval, I can't move ahead. I've got to redo things. So, I don't know what my options are.

Chairperson Rosman – You just got one from Rick.

Sovel – And, as Mr. McKeever said, you're way ahead of things. This is the last place you should be coming to, not the first place. You should know exactly. You should have a specific plan. If you got approval, the plans would be part of it. You can't then change it. You need to make those decisions before you come here.

Chairperson Rosman – Which is why he suggested that you might want to ask us to table it. If you don't, one of us could make the motion.

Sovel – Or we just deny it and then you're done.

Mr. Luscombe – I'm completely ignorant of the process, so I stepped into the mud to see what's going on.

MOTION by Rosman, seconded by McKeever, to table Item PA21-04, until we hear back from the petitioner, the request by Robert Luscombe of Commerce Township MI for a variance from Article 6 of the Commerce Township Zoning Ordinance to demolish an existing home and construct a new home that will encroach into the required roadside front yard setback located at 4181 Lake Pointe Lane.

Sidwell No.: 17-15-126-001

Chairperson Rosman – Sir, we have not denied what you asked for, but we have not approved it.

Mr. Luscombe – I understand.

Chairperson Rosman – Thank you very much for coming.

Sovel – You should meet with staff. Talk to Paula and schedule a time. You'll have a clear understanding of what your options are before you come back to us.

Mr. Luscombe – I understand that.

Chairperson Rosman – Our travelers from afar, keep in touch with the Township, and that way you'll know what's going on. Mr. Cunningham, thank you. I want to thank all of you for coming and educating us on the different parts, but as Rick said, tabling this makes the most sense because Mr. Luscombe has an awful lot of thinking and figuring out to do. He made a very good point about what the County will and will not allow on septic. That's out of our hands. He is too early for us. By tabling this, he won't have to pay to come in again, and he'll have the opportunity to figure it all out. Thank you.

McKeever – Rusty, we should let everybody know that they should keep track of meeting agendas moving forward, because it might not be noticed again.

Chairperson Rosman – That’s correct. There won’t be a notice sent out, but you can always check the commercetwp.com website for the meeting agenda, so you’ll know if it’s coming up again.

Unidentified Resident – Can I ask just a general question? I understand you can’t enforce deed restrictions. They’re on file with the County. How does the Township then have a right to overrule that?

Chairperson Rosman – The County?

Unidentified Resident – The Township. The deed restrictions that are on file. I know you can’t enforce that.

Chairperson Rosman – That circuit court and lawyer business. We can’t answer those questions.

Sovel – There are certain things, like some homeowner’s associations say you have to have a wood mailbox, not a metal box. We don’t get involved in any of that.

Unidentified Resident – I understand that, but by approving exceptions, you’re overruling those.

McKeever – No, because they would still have to seek approval from the HOA.

Sovel – If your association requires it. Some of them have deed restrictions that are so old, they don’t even require it.

Chairperson Rosman – I’m going to move on right now.

ITEM G2: PA21-06 – JEREMY KEATING – PUBLIC HEARING

Jeffrey Leib representing Jeremy Keating of Commerce Township MI is requesting an appeal of an administrative decision of Article 39 of the Commerce Township Zoning Ordinance to construct a new single family home on Lot 22 of Supervisor’s Plat #18 that is not a single lot of record but is considered to be an undivided parcel adjoining Lot 21 located on the north side of Lake Pointe Lane. Sidwell No.: 17-15-101-014

Chairperson Rosman opened the public hearing.

Jeremy Keating, 2901 Hazel Foster Dr, Carmel, IN, was present along with counsel, Attorney Jeffrey Leib, 30445 Northwestern Hwy, Ste 230, Farmington Hills, MI, to speak to the variance request.

Attorney Leib – Good evening. I’m an attorney in Oakland County. I’ve sat where you sit for many years, and I’m privileged to represent the Keatings tonight. Jeremy is sitting right behind me. We’re here regarding Lot 22, Supervisor’s Plat #18 on Lake Pointe Lane. As you know, the Zoning Board of Appeals is a quasi-judicial branch of local government. Appeals from, for instance, the Planning Commission, and other created

boards within the Township go to the Township Board. Whereas appeals from the Zoning Board of Appeals go to circuit court, and circuit courts have equitable jurisdiction and equitable decision making authority.

The Zoning Board of Appeals has jurisdiction over lots of local issues. The most routine matters you hear involve whether or not to grant dimensional variances. In fact, Ms. Rosman in her opening remarks talked about all the criteria necessary for variances. Well, we're not here for a variance, but that's one of the issues that appear before you. Some municipalities also give the ZBA the opportunity to grant use variances. Not in Commerce Township – you don't have use variances, and fewer and fewer communities have use variances, but there still are some.

Each variance request has a list of criteria that must be met, and you're all familiar with them. Your ZBA also has jurisdiction to interpret the Zoning Ordinance district boundaries and the ordinance provisions. And finally, we're here tonight in Commerce Township where the ZBA has authority to hear and decide appeals from decisions made by administrative officials, in this case, Jay James. He is a friend of mine and I'm not quarreling with Jay James' decision and I'll explain to you why.

Unlike you, Jay James doesn't have equitable jurisdiction. He has to make a decision based upon interpreting the facts according to the guidelines of the Zoning Ordinance. His decisions are either black or white, there's no gray area. He doesn't have that authority. He has to call it the way he sees it, in this case, because the Keating's predecessor, Jeff Lauzon, who happens to be here tonight, "owned Lots 21 and 22 at the same time", according to Jay James' interpretation. These two lots were nonconforming because they're not 70' wide, and therefore, because they were held in common, according to his interpretation, they became one lot of record and thereby, Lot 22 standing alone is no longer a buildable lot. That's why we're here tonight, we're here appealing his decision.

Everyone here in the Township, including Mr. James, Mr. Campbell, Paula, they all know what happened in this case. They all understand that what happened was inadvertent in terms of Lots 21 and 22 being held in common. Jeff Lauzon never intended to own or combine Lots 21 and 22 at the same time.

I learned something today. Patricia Beale called me up and I talked to Jeff Lauzon, and he confirmed it. They're going to tell you that the swap date, when they swapped 21 and 22, was when the deeds were actually exchanged between the two of them. That happened on January 29, 2015, regardless of what the dates of the deeds were, or when they were recorded. In other words, the equitable, and I'm talking about equitable because this is a quasi-judicial branch of government that has equitable powers in this case, the equitable, operative or defining date of the swap was January 29, 2015. They came to the meeting, one had a deed prepared by their lawyer, and the other had a deed prepared by their lawyer. It could have been dated a year before, but they came and they exchanged deeds. Jeff Lauzon never had both pieces of property at the same time. One was exchanged for the other.

So justice in circuit court has equitable jurisdiction. Your authority is spelled out in Section 41.01 of the Zoning Ordinance. The Section creates the ZBA, and it says, and I paraphrase, *The Zoning Board of Appeals shall perform its duties and exercise its powers in such a way that the objectives of this ordinance shall be observed, the public safety and welfare secured, and substantial justice done.* It's right in your ordinance, substantial justice done. So, in deciding this appeal, you can put your judicial hats on to perform substantial justice.

While I'm not quarreling with Jay's decision, because he has limited interpretative authority, you can reverse his decision as being an error in principle, but exercising your

authority to see that substantial justice is done. Or, as suggested by your Planning Department in the summary, there's a paragraph that suggests that you can reverse the decision by deciding that it was contrary to the spirit and intent of the Zoning Ordinance, and that the parties involved in the swap were acting in good faith, and Jeff Lauzon never actually held both Lots 21 and 22 in common.

I talked to Paula before and she said, yes, but the recording dates are different. Under the law, if I give you a deed to something, you don't have to record it. Most people record deeds just to show the world who owns it, in case somebody wants to check out a piece of property and see who the legal owner is of record. There's no legal requirement to record a deed. Lots of people hold on to documents that could be recorded but never do. So the date of the recording is irrelevant.

Similarly, the date of the deed itself is irrelevant, because as I indicated, each of them came to the "closing" with deeds already prepared. One was prepared on January 29th, and one was prepared January 22nd. They came to each other, they agreed to swap, and they exchanged deeds. That does not mean that Jeff Lauzon held those two properties in common. That's exactly what happened and again, put your judicial hats and do what's right. Thank you.

Chairperson Rosman – Thank you. Jeremy, would you like to add anything this evening?

Mr. Keating – Thank you. I purchased the lot from Jeff. I used to live on N. Vanstone, just around the corner for about 7 years. I always wanted to own a piece of property in that area, on that peninsula, for the reasons that were said beforehand. Jeff had an opportunity to sell me the property and I purchased it.

Not long after that, I got relocated out of state to Indiana. I still do a lot of work in Detroit, but decided to stay in Indiana until my girls were out of school, so I've got a couple more years. I've been slowly working on getting back and using that property to build on. I got to the point where I started having an engineered septic designed. We went for a permit and that's when we found out from the Township that I could not get a septic permit approved because it's a non-buildable lot.

That's how this whole thing started, and then we just back tracked with Patricia Beale also who is my neighbor, and was the owner previously. We came to this conclusion that was very well explained by Jeff Leib. That's why we're here.

Patricia Beale, 4041 Lake Pointe Lane, Commerce Township – That's the part that Jack Horner didn't build. All I want to say is partly what the attorney said. On Thursday, January 29, 2015, Jeff and I met in my office in Union Lake and we exchanged deeds at that moment. That is the closing date. That is the defining moment of a sale. The deed date doesn't really matter. The recording date doesn't really matter. I was slow as I was working too many hours. The defining moment is that closing. Of course, that's not something that's usually provided to the Township because it's not needed. Only in this very rare circumstance is it needed. Clearly, constructive ownership passed between the two of us, and at no moment did Jeff Lauzon have constructive ownership of both lots. He didn't. He never owned both because we simultaneously swapped deeds in my office on that date. I think, unfortunately, when the Township goes to make a ruling, he had to look at dates, but frankly, that's erroneous input for constructive ownership. It's the date of the deed or the date of the recording. That's not it. The defining moment is the sale for the closing. The closing date is the date of the sale.

Jeff Lauzon, 2105 Sunnybrook, Commerce Township – I grew up on Commerce Lake and I'm a lifelong resident of Commerce. I love Lake Pointe Lane. I've owned a number of properties down that street. I originally purchased the lot next to Pat. It came up for sale from a man who I knew as a child, Richie George. He owned that lot his entire life and it went up for sale, and I bought it. It was a legal, nonconforming lot. I bought it as a buildable lot. Pat owned Lot 22 next to it.

Pat and I became friends and we were talking. I kind of felt weird, I had the spoiler lot. I had the one right between her house and the other lot she owned. So, we talked and said let's just swap properties. No monetary compensation or anything, just swap. I had a legal nonconforming lot and she had a legal nonconforming lot. To swap seemed very straightforward to us. Pat's a wonderful lady, but at no time did she ever give me her property. I never owned that piece of property. I think everyone can see what happened here. I remember it like it was yesterday, I met her in her office in Union Lake. We swapped and shook hands. It was a great deal for both of us and it just made sense. It was a neighborly thing to do. In a million years, I never thought I owned both of those properties.

There were -0- returns and -0- letters.

Chairperson Rosman closed the public hearing as there were no additional questions or comments.

Board Comments:

Mistele – I believe that Jeff did not intend to own both lots at the same time. Unfortunately, I think our hands are kind of tied because we have to look at criteria in regard to the administrative appeal. I believe Jay was correct about what the ordinance says, and I think the ordinance is very clear. I don't think there was a misinterpretation on Jay's behalf. Obviously I don't believe Jay was using an arbitrary decision or abuse with that. I think they did a good job of finding the information regarding this, but I believe the intent was not to own both properties.

Sovel – I have no problem with reversing Jay's decision. I believe that the spirit and intent was to do the swap at the same time. The recording issues botched things up and I'm fine with reversing this.

McKeever – My mind was pretty much made up when I walked in, based on the information. I do believe Jay acted in the way that he should have. I don't think there were any mistakes made on Jay's part, but I think you've made a compelling argument in the way this situation happened. I'm not sure I follow where the 7 days of common ownership comes from. I'm swayed to Rick's side.

Chairperson Rosman – I too am persuaded because I understand why Jay said no, but Jay did not know what you are telling us, Pat and Jeff. He didn't have that information. Having that information I feel is a very strong and compelling reason to overturn, understanding completely why Jay said no, based on the black and the white of what he needed to do. Exactly as you said, we are a quasi-court and we have more information than what was available when this was written. Paula, anything you want to add?

Paula Lankford – Just that Jay was going by the date that the deed was conveyed, not recorded. That is where the 7 days came in. As Jeff said, that doesn't matter apparently.

MOTION by Sovel, seconded by Mistele, to reverse the administrative decision of the Building Official relative to Administrative Appeal PA 21-06, the request by Jeffrey Leib representing Jeremy Keating, and to consider parcels 17-15-101-013 & 17-15-101-014 of Supervisor's Plat #18 as single lots of record. The Zoning Board of Appeals finds that the administrative decision was based upon an erroneous interpretation of the Zoning Ordinance by the Building Official. The Zoning Board of Appeals further finds that while the Building Official's interpretation was not erroneous in its finding of fact, the interpretation was contrary to the spirit and intent of Sec. 39.04.B.2 of the Zoning Ordinance. Additional information was learned by the ZBA in that the lots in question were under single ownership for approximately 7 days in January 2015, during which all parties involved were actively, in good faith, transferring legal ownership. This was a swap of equal land without any financial transaction.

MOTION CARRIED UNANIMOUSLY

Mr. Lieb and Mr. Keating thanked the Board. Chairperson Rosman thanked everyone for attending, and for providing input and information.

H. OTHER MATTERS:

Mistele discussed expiration dates on tabled items with the Board members. Sovel clarified that there is no discussion on items that are tabled. Paula would keep tabled items under old business to serve as a reminder to the Board.

Chairperson Rosman – We have a new alternate member who would have loved to have been here tonight, but she had a family emergency and she had to hop on a plane. We will meet her in July.

I. CORRESPONDENCE:

None.

J. PLANNING DIRECTOR'S REPORT:

Paula Lankford – I'm ready if you have questions regarding the report.

Chairperson Rosman – Is anything new being built?

Paula Lankford – The Planning Commission will be reviewing a new Culver's on Haggerty. We are looking at a text amendment to eliminate electronic or digital signs. That will come to the Township Board, probably in July.

Chairperson Rosman – Why do they want to eliminate them?

McKeever – They're very distracting.

Chairperson Rosman – Are we having any luck getting an ordinance officer?

Paula Lankford – As far as I know, it's looking like August or September.

Chairperson Rosman discussed enforcements issues to be addressed with signage, cars without license plates, et cetera.

Open discussions took place regarding developments in the Township, including the PUD proposed on Haggerty Road.

K. ADJOURNMENT:

NEXT REGULAR MEETING DATE: JULY 22, 2021

MOTION by Mistele, supported by McKeever, to adjourn the meeting at 8:23pm.

MOTION CARRIED UNANIMOUSLY

Robert Mistele, Secretary