FINAL
CHARTER TOWNSHIP OF COMMERCE
ZONING BOARD OF APPEALS MEETING
Thursday, January 26, 2023
2009 Township Drive
Commerce Township, Michigan 48390

A. CALL TO ORDER: Rusty Rosman, Chairperson called the meeting to order at 5:30pm.

ROLL CALL: Present: Rusty Rosman, Chairperson
Clarence Mills, Vice Chairperson
Robert Mistele, Secretary
Bill McKeever
Rick Sovel
Sarah Grever, ZBA Alternate Member *(arrived 5:43pm)*

Also Present: Paula Lankford, Planner
Jay James, Engineer/Building Official
Hans Rentrop, Township Attorney
John Kummer, Township Attorney

Chairperson Rosman introduced the Members of the Board, as well as Jay James and Paula Lankford, and welcomed the Township Attorneys. There were no variance requests to be reviewed, and therefore, Chairperson Rosman proceeded to the agenda items accordingly.

B. APPROVAL OF MEETING AGENDA
MOTION by Mills, supported by Mistele, to approve the Zoning Board of Appeals Regular Meeting Agenda for January 26, 2023, as presented.
ROLL CALL VOTE:
AYES: Mills, Mistele, Rosman, Sovel, McKeever
NAYS: None
MOTION CARRIED UNANIMOUSLY

C. APPROVAL OF MEETING MINUTES:
MOTION by Sovel, supported by Mills, to approve the Zoning Board of Appeals Regular Meeting minutes of November 17, 2022, as written.
ROLL CALL VOTE:
AYES: Sovel, Mills, McKeever, Rosman, Mistele
NAYS: None
MOTION CARRIED UNANIMOUSLY

D. PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA:
None as there were no members of the public present at the meeting.

E. UPDATE OF ACTIVITIES IN COMMERCE TOWNSHIP:
Rick Sovel – Township Board

- I missed the last two meetings. I have nothing to update.
- Jay, did I miss anything?

Jay James – Nothing urgent. We're still working on 8585 PGA, the building next door, to renovate it for the new OCSO.

Sovel – We're going out for bids again.

Jay James – I think we received six bids, so it was a good idea to do that.

Bill McKeever – Planning Commission
- We've reviewed the Master Plan updates.
- We've also seen some conceptual reviews.

Chairperson Rosman – Paula, anything you want to share about the Master Plan exercise that the Township just went through?

Paula Lankford – The consultants, Giffels Webster, have been putting all the data together and they went over that with the Planning Commission at the last meeting. They are still working on getting us to the next step, which I believe is our public hearing.

Chairperson Rosman – But it was well-attended and well-received?

Paula Lankford – Yes, very much so. We had quite a few toolkits that were completed, and we had a good show at the Open House.

Chairperson Rosman – Good, thank you.

F. OLD BUSINESS:
None.

G. NEW BUSINESS:
ITEM G1. ELECTION OF OFFICERS
Chairperson Rosman – Nominations are now open.

Sovel – What are the options?

Chairperson Rosman – We can leave it as is, or we can change it.

Paula Lankford – Bill and Rick ...

Sovel – We just get to vote.

MOTION by Rosman, seconded by Mills, to retain the ZBA Officers, with Rusty Rosman as Chairperson, Clarence Mills as Vice Chairperson, and Robert Mistele as Secretary.
ROLL CALL VOTE:
AYES: Rosman, Mills, Mistele, Sovel, McKeever
NAYS: None

MOTION CARRIED UNANIMOUSLY

ITEM G2. ZONING BOARD OF APPEALS BYLAWS REVIEW
Attorney Rentrop – Before you tonight is an update to the Zoning Board of Appeals Bylaws. The update is consistent with State law changes. We're trying to create it so that you don't have to change it quite as frequently. Electronic meetings are only

allowed now under certain criteria for active military people to attend. However, it is anticipated that at some point in time, they are eventually going to allow it for further uses. We have modified the Bylaws to say that it's only for military, but in the event that the State law allows it for other purposes, you have procedures for that as well. The goal is that we don't have to change it quite as often.

Chairperson Rosman and Attorney Rentrop discussed the changes. Attorney Rentrop explained that changes to the guidelines for remote meetings will be done by the State, and the Bylaws will indicate how that process works. Chairperson Rosman clarified that it doesn't change how the meetings are run. Attorney Rentrop agreed, it only specifies remote meetings and attendance.

MOTION by Mistele, supported by Mills, to approve the revised Zoning Board of Appeals Bylaws as presented.

ROLL CALL VOTE:

AYES: Mistele, Mills, McKeever, Sovel, Rosman

NAYS: None

MOTION CARRIED UNANIMOUSLY

ITEM G3. EDUCATIONAL DISCUSSION

Attorney Rentrop – As Rusty mentioned, we will be touching upon two items tonight. One is a rehash of what the variance procedure is. I think everybody here has heard that, but it's not a bad idea to get a refresher as well as updates on changes in law that might be useful.

We're also going to talk about the sign ordinance. As you probably know, the sign ordinance was massively amended this Summer as a result of litigation by Outdoor One Communications. As part of that whole process, the M-5 sign at 14 Mile Road was constructed. We worked with Outdoor One to try to make the sign possible, given the ordinance provisions, and also the best ordinance possible following that. There will be a lot of changes that John will go over. He handled most of the litigation as well as much of the drafting and working with Outdoor One. They have actually been somewhat cooperative in helping us create some things in this regard. John did a lot of that work so he will address that.

Review of the criteria for dimensional variances

Attorney Rentrop – I will start off addressing variances and the ZBA's role. As you know, the purpose of the ZBA is to entertain certain functions. The Zoning Enabling Act requires the Township to create the ZBA if it has a Zoning Ordinance. The Township did that in the adoption of Article 41 of our Township Zoning Ordinance.

By virtue of this Ordinance, the ZBA can consider administrative appeals, interpret the zoning district boundaries, interpret zoning ordinance provisions, consider variances, and hear other matters specifically assigned by the Township Zoning Ordinance. Other matters include things such as determination of lot lines, review of home occupation determinations, reviews pertaining to signs which we will talk about, exterior lighting exemptions for safety, uniqueness and sufficiency of intensity, and some issues regarding nonconforming uses and structures that the Zoning Ordinance has specifically given you the authority to address.

As far as what the ZBA can't do, it's basically that you cannot zone. You can't hear decisions of the Planning Commission or Township Board regarding amendments to the Zoning Ordinance, Special Land Uses and Planned Unit Developments; however, you

can hear cases referred by the Planning Commission where the Planning Commission has approved a site plan contingent upon approval of one or more variances by the ZBA.

The other thing to remember is that almost all of your decisions require a hearing, so you hold public hearings for variances, administrative appeals, et cetera. Most of what you do is variances.

What is a variance? A variance is a license to use property for a purpose or to an extent not permitted by the Zoning Ordinance. As you know, there are two types of variances; a use variance, and a dimensional or nonuse variance. We tend to use those terms interchangeably. Statutorily, and by your own Zoning Ordinance, you cannot issue use variances. An example of a use variance would be a request to do commercial in a residential district.

Dimensional variances are obviously what you see the most of I'm assuming. A dimensional variance by statute says, *If there are practical difficulties in the way of carrying out the strict letter of the Zoning Ordinance, the ZBA may grant a variance so that the spirit of the Zoning Ordinance is observed, public safety is secured and substantial justice done.* I don't think you could choose more open-ended words to guide you, but that's what the statute says. It also says, *The Zoning Ordinance shall establish procedures for review and standards for approval,* which you of course have done. *You may grant nonuse or dimensional variances relating to construction, structural changes, alterations of buildings or structures relating to dimensional requirements of the Zoning Ordinance, or to any other nonuse related standard in the Ordinance.*

As a lawyer, I like the most specific variance you can give me. The more information you give me, the better it is. I was reading a case, which I'll talk more about later, where the ZBA put out a 12-page report, and they still got overturned. The point is, the more information you can provide in your variance decision-making, the better it is.

I gave you the handout which is the dimensional variance form. We'll go through how we got to that. On the screen is Section 41.09 (A) of the Zoning Ordinance, which states:

> *The granting of a variance from a particular area, setback, frontage, height, bulk, density or other dimensional (nonuse) standards of this Ordinance shall require a finding of practical difficulties, based upon the following criteria:*
>
> 1. *Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.*
> 2. *The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners.*
> 3. *The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district.*
> 4. *The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.*

5. *The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the Township, and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.*
6. *The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.*

- Bear in mind that these criteria are taken mostly from the case law and that's why it sounds wordy and difficult to understand, but we've tried to simplify it.
- The first one I refer to as the deprivation of rights enjoyed by others. Basically, if there are rights that others are enjoying that you can't because of the uniqueness of the property, then a variance may be appropriate. On your review sheet, to address that, it says, *Without a variance, the applicant can't use the property in the same manner that others in zoning district can use their property. Consider asking the applicant: "What makes your property different than everyone else who do not require a variance?"*
- The second item is one I commonly refer to as the substantial justice or lesser variance requirement. Defining justice can be difficult to do sometimes. The Law Dictionary commonly defines it as, *The proper administration of law; the constant and perpetual disposition of legal matters or disputes to render every man his* due*.* That's not very helpful. Your basic standard dictionary definition of justice is, *The quality of being just, moral rightness.* This is still not very helpful, so it's in your ballpark to figure out what substantial justice is. On your review sheet it says, *The variance requested is the least variance that will put the applicant on an equal footing with others in the same zoning district. Consider asking the applicant: "Will a lesser variance work for you?"*
- The third item addressed the basic functions of the land itself. We've summarized that on your review sheet as, *The variance is needed because of some unique feature of the applicant's land that doesn't apply to other land in the zoning district. Consider asking the applicant: "What is unique about your property that makes this request necessary?"*
- The fourth item is pretty straightforward. On the review sheet it says, *The problem is not self-created by the applicant or predecessors. Consider asking the applicant: "Did you or previous owners of this property create this situation?"*
- The fifth item considers what impacts the variance might have; not only the benefit for the property owner, but what impact it may have on surrounding property owners and the Township as a whole. The review sheet reads, *Granting the variance will not cause significant adverse impacts. Consider asking the applicant: "Can you persuade us that we won't cause adverse problems for others by granting this variance?"* It is the applicant's duty to persuade you and prove that these elements have been satisfied.

Chairperson Rosman – On #4, when not self-created by the predecessor; I'm taking your attention to the property off of Ford Road where the gentleman had just under 5 acres. We wanted him to put the barn in the location that was acceptable, but his wife did not want it in her front yard. We allowed it to go off to the side. Assume he sells it and the next guy wants to build a 2-car garage to attach to that, but he didn't create the location of the first barn.

Attorney Rentrop – He would have to comply with the Ordinance or remove the first barn. Because the predecessor has created a situation where he cannot add the 2-car garage, or cannot put it in the location that he wants, that hardship was created by the predecessor.

Attorney Rentrop –

- The sixth item of the criteria requires that the hardship must relate to the land and costs alone do not get you there. Generally, if you can't make use of the land at all without a variance, then finances may be considered. On the review sheet it reads, *The practical difficulty and hardship sought to be cured by the variance request is not just minor inconvenience or a desire for a higher financial return. Consider asking the applicant: "Why can't you manage without this variance? Why is this a significant issue for you?"* This is one of the criteria that is probably the most difficult to ascertain. Use of the land itself, or what is a higher financial return? Is it enough and what is that threshold? If the property can't be used at all, it's pretty easy that a variance would be appropriate, but for what purposes?

One of the points I want to drive home, which I think I do every time on this, is that not ~~EVERY~~ every criterion has to be met, but your decision should consider ALL of them. You have to use an analysis in the process of deciding to grant or deny, and you have to consider each criterion. When you look at the review sheet, you have a motion to approve on one side, and a motion to deny on the other. For a motion to approve, the idea is that you go through all of the criteria and explain how each applies to that particular case. Put it on the record whether you think the criteria has been met or not.

Sovel – Over the years, we have gone back and forth on whether or not they have to meet all of the items, or if they have to meet the majority. Even this wording says, *The applicant has established all of the following*. I would rather have you change this wording to say "considered".

Attorney Rentrop – Okay, I can do that.

Sovel – And then can you put a date on it too when we get it laminated? I have like four of these now and I always get confused which one is the most current one.

Chairperson Rosman – Good point.

Chairperson Rosman discussed a variance approval for a garage to be located in the front yard along Annison. She felt there was a place to locate the garage without a variance. McKeever remembered that it was a flooded area. Jay James stated that it was behind the house in a wooded area.

Attorney Rentrop – Rick, to your question, we still recommend "ALL". If they can prove all, that makes it cleaner.

Discussions continued regarding considering all of the criteria versus actually meeting all of the items. Attorney Rentrop explained that the default rule is not to grant a variance; it should be the exception. Chairperson Rosman added that it is often a matter of want versus need, and she feels very strongly about it.

Attorney Rentrop – Moving on, I wanted to give you some updates as to what has been changed. Harping on the idea that all the criteria be considered, there were two cases that came down recently.

One was *International Outdoor v. City of Harper Woods*, a 2016 case. That was a billboard sign case. It was a use case, not a nonuse variance case. It found a failure by the Zoning Board of Appeals to develop a hearing record. Variance requirements and why they apply were not identified. You're not the only ZBA that has a hard time going through all of this criteria, but the courts are very strong on this. They want you to go through it all. Simply stating the requirements from Section 41.09 isn't enough. You have to say why or why not.

Similarly, in *Tullio v. Attica Township*, a 2022 case, that concerned the ZBA's interpretation of whether mulching was an agri-business under the Zoning Ordinance which requires Special Land Use approval. Two points that were taken out of that case; *"It's insufficient for the Zoning Board to merely repeat the conclusionary language of the Zoning Ordinance without specifying the factual findings underlying the determination that the requirements of the Ordinance were satisfied.* I know I sound like a broken record, but I'm trying to drive a point home. *The record must show the determination was made using competent, material, and substantial evidence on the record.* So, when they come up to you and they're trying to satisfy that, it needs to be real, competent, material, substantial evidence.

Perhaps the most interesting case that came out of this is a case called *Pegasus Wind v. Tuscola County.* This is a 2022 case. It is a published Court of Appeals opinion; however, it is now on appeal to the Supreme Court. It does call into question several things that are currently in our Ordinance. I am not proposing any changes to what you're doing right now because it is under appeal, but there are some things to be aware of that I will go through briefly.

First of all, note that this case concerned a wind energy company that had already constructed a number of wind turbines in and around the Caro Airport. They'd been through litigation on the first 30 or so, and they wanted to add eight more in a certain area. The airport is a County-owned airport, so it was the Airport Authority. I didn't realize until this case that there is an Airport Zoning Board of Appeals, run by the County.

They had been through this process before. They didn't like the windfarm. Having gone through litigation with the first request, they were ready for battle on this one. They came in and they had their experts and testimony. They were going after them to prevent any more wind turbines. While it's not a traditional ZBA case, the standards are very similar. It's the practical difficulty standard. It is applicable.

It reiterated the general rule that, *Only a showing of practical difficulties, not unnecessary hardship, is required to justify a grant of a nonuse variance.* The court said, *In determining practical difficulties, look at whether the denial denies the owner of the use of the property, (*similar to our criterion #1), *compliance would be unnecessarily burdensome,* (again referencing criterion #1, and to some degree criterion #6), *whether the granting of the variance would do substantial justice to the owner,* (criterion #2), *and whether practical difficulties cannot be self-created,* (which is of course, criterion #4).

Criterion #5 was not an issue in this case, along with criterion #3. Because the court called into question the whole idea that the need must be unique or peculiar to the piece of land. The court said that, *The requirement of showing unique circumstance inherent to the property is not an element of practical difficulty, but of unnecessary hardship.* The court, in this case, said the unique nature of the property isn't applicable for the ZBA

approval for a nonuse dimensional variance. I think they got that wrong, but that's what they said. They said that actually applies to a use variance, which of course you don't consider.

Now, if I take this case literally, I would propose to change the Ordinance or change the criteria. I don't know that that is going to hold up. We will see what the Supreme Court does. Being unique to or inherent in the property is a requirement of a hardship, not a practical difficulty.

This was a very lengthy opinion. The other thing they addressed a little bit was the first of the 6 criteria to some degree. It says that, *If a party had no viable use of the land before a variance request, and still has no viable use of the land after denial, then it is a deprivation of use. The farm ranch was of no use to Pegasus Wind before and after the denial.*

What Pegasus did is they came in and acquired land from farmers. These were farm fields. The farms were viable, they did make money. Pegasus acquired a lease to lease the property, not only for the farmers who farm it, but also to put these wind turbines up. The court said that their only interest in that farm was for wind generation. They weren't going to make any money farming it. They were going to make money leasing it. Again, I think that's wrong, but that was their conclusion. The only way they could get any viable use of money was by having it as a wind farm. Therefore, there was no viable use without the variance.

It went on to say, *That the land within the airport's zoning area sits precisely in the one area where all of the requirements for a wind farm can be found is not a self-created burden.* We often think about, well, you came to the property. You knew what it was like and you knew the zoning restrictions upon the property. Nevertheless, you chose to buy it and you chose to exercise your rights. Again, this court is bringing into question, that's not a self-created burden. I think they may be right on that. That goes back to the question about the barn.

The court went on to say that had the applicant come in there, and had he been just the farmer who had been using the fields for years for farming activity, and he said, "I want to change it now and make it a wind farm." They would say, "No. You have a viable economic use of the land. You knew what you could do with the property." But, because this wind energy firm came in after the fact for one purpose, they differentiated and said, "No, this is the one area that could work. Just because you knew it wasn't zoned properly, you can still make your application and a variance could still potentially be granted."

The final quote I will make from the court was, *Simply purchasing land, or an interest therein, with the knowledge that the land is subject to an ordinance's applicable restrictions, is not a self-created hardship.* I find that hard to believe.

McKeever – So knowing that it can't be used for something …

Attorney Rentrop – That is what this court has said. Again, I'm not sure it's right. If this holds up, it is going to be a major change in how we do things.

Sovel – How about our #6 regarding the desire for a higher financial gain?

Attorney Rentrop – Again, I think it calls that into question to some degree. Now, I think there's a difference too. The court did talk a little bit about this, as to whether there's a higher financial gain, a zero financial gain, or a negative financial gain. In other words,

you don't necessarily have to give the best, most profitable use of the property, but it has to be a viable use.
The court referred to another case within the decision of this *Pegasus* case where the property owner came in and they wanted to use the farmland for something else, and it was very near a city. The argument was that was satisfied because the applicant showed, using documentary evidence, that because the tax rate was so high for that property, as it was near a city and it was prime real estate development, and the profit from farming was so low, you couldn't make an economic, viable use of the property any longer. You've basically taken it. In that case, they said that you're not expected to have negative use of the property, or be going downhill forever. Because of the change in circumstances in that case, they said a variance was appropriate. According to our criterion #6, you're entitled to have a viable, economic use of the property.

Sovel – We've never considered a negative financial ... loss?

Attorney Rentrop – A loss because of a change in circumstances.

Sovel – So, if someone wants to do one thing versus another, and because this is cheaper, or negative financial, are you saying that could not be considered?

Attorney Rentrop – No, they would have to show that they're really losing money.

Sovel and Attorney Rentrop discussed negative financial situations from a residential standpoint. Attorney Rentrop reiterated the need to determine if a lesser variance will work. It has to be economically viable, but it doesn't have to be the highest return. You also cannot make it uneconomically viable. Sovel inquired about return versus expense; if one option is more expensive than the other, or if a lesser variance would be more expensive. Attorney Rentrop felt that was appropriate if there is a reason for doing it, such as to bring it closer into compliance with the ordinance or the criteria.

Grever – We just had a resident come in for a variance and their shed was destroyed during the storms this past Fall. It was in their backyard and it was noncompliant. They wanted to give it a proper foundation. They had an option to have an elevated deck, or a slab. This is hypothetical; it's not exact to the case. The slab would probably be more expensive, but it would probably be more advantageous for our Ordinance because it's not such a structure and it's not as invasive. It's on a lake. The other option would be on stilts with wood decking. Between those two options, and let's say they had a really tight budget; we would probably be more likely to give them the stilts than the slab.

Attorney Rentrop – I think one of the things you can question, or a better way to spin off that example is if other property owners had it on slabs and they wanted stilts instead. I think it's appropriate for you to ask them to put it on a slab to be consistent. You're not supposed to have it all, but since everyone else is doing it this way, we will let you do it, but you have to do it the same way. That's going to cost a little more, but that's what everyone else has to do too. That's probably a fair analysis.

Mistele – What if they could put something that would be compliant, but they have to move the septic field?

Attorney Rentrop – Good question. I think you can make an argument, and you could probably deny it. I would need more facts on it. Are there others out there? Are they similarly situated? If the location where it would be compliant would ruin the neighbor's view and cause problems for someone else, then I think you say, we could consider a variance because it's unique to the property.
That's why I say that you are supposed to address all of the criteria, and they are supposed to comply with all to the extent they can, but you have to be a little bit practical in your application on this. Does that make sense?

Mistele – Yes.

Chairperson Rosman discussed a ZBA request for a fence that was specific to the needs of the residents for privacy purposes.

Attorney Rentrop – This is not necessarily an easy job. You get very unique situations and it's hard to make decisions. The only advice I have is to follow the criteria, analyze each one and try to be as methodical as possible. Know that the default rule typically is that you don't grant a variance. The applicant needs to show you why you should. That's all I have on variances for now.

Jay James – Back to Bob's question, because this is one that we get a lot. The applicant wants to put a garage where it's not allowed, and one of the reasons is the location of the septic field. They could put a garage there and it would meet the ordinance, but the septic field is there. To me, that's an expense. They can move their septic field for a cost. Is that something that could be approved? It's financial, but is that just one of the factors to be considered?

Attorney Rentrop – It's one of the factors and you've got to look at all of the factors. It's something to be considered. Is it cost prohibitive to move the septic? And, if that was the only location for the septic and it's not really movable, then that changes the situation. If they can't satisfy any other requirements, and if it's a simple septic system, then I think they have to move it.
If you do all of the analysis under the ordinance, deference is in your favor. You are the finder of fact, the one who is making the decisions, and as long as you consider all of your criteria.

Chairperson Rosman – There are so many lakes and so many narrow properties that septic is something we hear about a lot.

Attorney Rentrop – I think it's easier for new communities. It's harder when you have old lots that are narrow where the septics are failing.

Open discussions continued regarding development, narrow lots, lake lots, cottages, permits and the lack of a Zoning Ordinance a few decades ago.

Grever – How rigidly are we supposed to follow this criteria if we have professional and educated experience on the topic at hand? Such as for the example you used with the airport, the farmland and windmills. I actually have a lot of experience with that, professionally and personally. Our family farm leases their land, and I know a lot of the

FAA regulations. The Detroit Airport was one of my clients. Windmill Farms was one of my clients. I have a lot of experience with that. Is there a point where I have to draw a line in the sand, that I should just follow the Ordinance and then let their professional team take over for that?

Attorney Rentrop – The burden is on them, but you are appointed to the ZBA because of your knowledge and your ability to make a judgment. You're using the knowledge that you have, that you bring to the Zoning Board of Appeals, and you can input that knowledge. If someone says something regarding flight regulations, and you know that to be contrary, you can say, "I don't think you're right on that." You can certainly use your knowledge and expertise.

Grever – Thank you.

Article 30, Signs – Amendment and how it affects the ZBA

Attorney Kummer – Nice to meet you all. I'm here for signs. As you're aware, and as the Planning Director's memo indicates, there was an amendment to Article 30, the Sign Ordinance. There are some other amendments that will be coming in later months as this ordinance continues to evolve, as standards are applied and pivots are made.

I think I heard Rick mention he would like to revisit some aspects of it. It's always going to be an evolving, living document. That being said, we made a lot of changes with the expertise of opposing counsel in the case in which we entered into the consent judgment, and it's something that we hope is litigation-proof based on the current state of law, so there's not another lawsuit or another billboard.

The litigation in this case was a case that arose in Austin, Texas. I'm not going into a ton of detail, but essentially it focused on off-premise and on-premise restrictions and content based sign regulations. Eventually, the Supreme Court did weigh in; this lawsuit was filed against Commerce prior to the Supreme Court weighing in. The Supreme Court actually favored our position in that case, but in speaking with opposing counsel, he had found a litany of other items in which he intended to amend that lawsuit and to revise his complaint to invalidate our ordinance.

Based upon that, we did an ordinance overhaul to focus on on-premise and off-premise restrictions, as well as to create a content neutral scheme. So, instead of addressing specific signs, like a sale sign, a business sign, or an election sign, we did site specific standards and then district standards. It's kind of a legal loophole, but you're essentially saying, if a property is listed for sale then you're entitled to this sign. If a road is closed nearby these parcels, these parcels are entitled to this sign during a road closure. We're not calling it a road closure sign. We're not making them use the signage area to advertise their business based on the road being closed, but we're essentially providing opportunities.

What it does is it gives a lot of freedom to people to put anything on a sign, but our hope is that because we have limited the amount of signs that people can have, and the area they can have, that they have to make the best use of the signs that they're permitted. We're not going to have businesses using their one freestanding sign that they get to put political statements up. They're going to want to advertise their business and they need to make the best use of that signage.

That's the balance and the interplay that we had to reach. In addition, we eliminated a lot of the vagueness, overbreadth and discretion; discretion that both the Building Department had in reviewing signs, as well as discretion that you had as the ZBA. We

eliminated sign exceptions entirely. In reviewing the Planning Director's minutes in the January 2022 meeting, you discussed the thorn in the side being constant requests and appeals for more signs, bigger signs.
I know when I first accepted this position a couple years ago, I wanted to brush up on Commerce Township so I was reading some meeting minutes. I happened to read the Zerbo's meeting minutes. I regretted it immensely the second I embarked on that. And don't hold me to it because I don't remember all the nuances today. My point is, I read a lot about elimination standards, wall signs, the sizes of those signs, the placement of those signs, the number of those signs, and wanting more signs. That's not something that should be coming before the ZBA at this point because exceptions won't be provided.
In addition, we've prohibited conditions from being attached to the approval of a sign variance, or approval to a sign permit. One example that was given is, if you take down this nonconforming sign, as part of this agreement, we will let you put up a new, prettier nonconforming sign. We can't attach conditions anymore. In speaking with counsel for Outdoor One Communications and the examples that were provided, it was made clear that conditions can open up the Township to a legal challenge for arbitrary and capricious decision-making, allegations of bias and things like that. There are decisions made in one case that are then set as an example in a subsequent application and variance that can get you, as a ZBA, under scrutiny, and the Township's Ordinance under scrutiny, and entanglements in court.
What we wanted to do was to provide something where you can strictly apply the variances. If they meet that variance, it's granted. If they don't, it's not granted. That doesn't mean that there won't be a lot of nuance, thoughts and debate amongst you. I'm sure there will be, but it won't be a matter of people regularly just asking for more, and then planning what best thing can we then attach to condition it upon.

Sovel – If someone says they want to add 6 more signs, and they go to Paula. Are they just going to be told, "No"?

Attorney Kummer – Yes, Paula denies it and she says, "You're zoned in this district. This is the type of sign you've applied for. This is the condition of your property at this time. Based on our Ordinance, you're entitled to X number of signs, limited to X-area of signage per sign at this height and at this setback.

Chairperson Rosman – Do they still have the right of appeal to come here if they want to?

Attorney Kummer – They do.

McKeever – They have the right of appeal, but we don't have the right to grant it.

Sovel – That's the part that's confusing.

Attorney Kummer – You have the right to deny them.

Sovel – So they pay $350 ...

Attorney Kummer – And, with the Ordinance trimming down that discretionary decision-making with the Article 41 exception being removed, I hope that it will be a lot easier for

Jay to be able to just point to a specific subsection, show them the numbers, show them the provision that shows them what type of sign they can have, and it won't then be brought here. People don't like wasting their time or money.

Chairperson Rosman – Scooter's Coffee is the size of a quarter, but wanted signs the size of a dollar, and they're still going to come. The applicant said, *Well, corporate said I had to come.*

Attorney Kummer – And if someone pays them, then they come. What it should do is make your time much more limited, and your investment in reviewing that appeal should be significantly less because the answer is, "No."
I'll get into the new variance standard that is in place. What I'm going to focus on first is appeals because it comes first in the Ordinance.

Jay James – Scooter's is a great example. They come to us and they say, "I want 7 wall signs." I say, "No, the Ordinance doesn't allow that." They say, "Well, I'd like to go ask for a variance." Can we tell them, "No, you can't ask for a variance. You're not allowed it." Or do we have to give them the opportunity to come here?

Attorney Kummer – I err on the side of them having the due process ability to make that request. I printed copies of the Ordinance to hand out.

Copies of the Sign Ordinance were distributed.

Attorney Rentrop – Remember, one of the things they can appeal is Jay's decision.

Chairperson Rosman – Don't they still always have the right to come in to appeal?

Attorney Rentrop – That's right. He makes a decision, but you can challenge anything.

McKeever – But we don't have the authority to grant a variance.

Attorney Rentrop – They would come to you for an appeal of Jay's decision that they're not entitled to an appeal.

McKeever – So they would be saying that he misinterpreted.

Attorney Rentrop – Yes, they would be appealing Jay's decision that they are not entitled to a variance in this situation, and they would appeal his decision that they're not entitled to a apply for a variance.

Chairperson Rosman – Going back to Culver's who came in for more signs; I voted no on that one. Some people voted yes and they got it. That's the kind of thing where Paula will say, "Sorry, Charlie, you can't have that." They're still going to come in because they're corporate and they'll spend the money.

Attorney Kummer – They will, because they go around to some municipalities throughout the state that either loosely apply their ordinance, they don't care, or they can be persuaded.

Chairperson Rosman – But we don't have the right to give it to them under this new ordinance.

Attorney Kummer – Correct. With appeals, the language is, *Appeals from the ruling of any department or administrative officer concerning the issuance of a permit, or the removal of an unlawful sign, pursuant to this article, may be made by any aggrieved party within 30 days of the ruling to the Zoning Board of Appeals, sitting as an appeal board under this article.*
So, you see that there are two areas of appeal. One being permit denials, and the other being unlawful sign removal. The ruling that is being contemplated there for the permit denials would obviously be the denial of a permit. The 30-day appeal window should begin upon the postmark date of a decision on the application, whether it be an electronic transmittal or written; not necessarily the date it's made by the Township if it is not relayed to the applicant. The areas of review for you; there are obviously a number of standards set forth in Article 41, but I want to highlight timeliness of appeal ...

Sovel – We're saying that they have 30 days. We only meet every 60 days. Or, is that 30 days to request? That's not how I'm reading it.

Jay James – To apply.

Attorney Kummer – When an appeal is made, it's a submitted appeal.

Sovel – Okay, so they don't have to actually have the hearing.

Chairperson Rosman – They have to do the office process within 30 days.

Attorney Kummer – Correct, and I believe Article 41 addresses stay of proceedings in Section 41.06 (B), when an application to appeal is made and things like that.
There are areas of review I wanted to highlight for you, with one being the timeliness of an appeal. So, finding out when they were notified and confirming that it was in fact filed within the 30 days. The Ordinance exists to be followed, and so if people are delayed in their applications, they should be denied. If you grant a delayed consideration on one, when do you stop? That's why we have the 30 days, so determining at the outset when you receive an appeal, of when determination was made, when they were notified and when the appeal was filed is significant.

Chairperson Rosman – Jay, that comes under your department, correct?

Jay James – Yes, they make the application, I deny it, and we notify them. Then the clock starts from when they're notified.

Chairperson Rosman – Do they get a copy of this?

McKeever – Is it return-receipt requested or registered mail?

Jay James – How do we notify them? We could do it by email and have it so it's date-stamped.

Chairperson Rosman – Is there any way that you give this to people?

Jay James – We don't, but we can.

Paula Lankford – I'm making notes here.

Chairperson Rosman – Highlight the 30 days and put it in a different color.

Jay James – We can add that to the denial letters. But John, so you're saying on Day 31, if they come in and file, do we administratively say, "You've passed the deadline." At that point, it does not come to the ZBA, or do they still have the opportunity to come here and the Board says, "You were a day late."

McKeever – It shouldn't even make it to us.

Jay James – That's what I feel too.

McKeever – If it fails to meet the criteria coming in ...

Attorney Kummer – If they file it with you, I believe you should take a copy of it and be prepared to mark it as untimely or late, just so there is a record of it. The reason I'm talking to you is because you set up a number of lines of defenses in things like this. There may be one that does get by you, depending on who is reviewing something, when something has passed.

Jay James – I just want to make sure, we would be correct in saying, "No, that timeline has passed. You cannot come in and ask for a variance."

Attorney Kummer – If you're adding language to that letter, you're the one providing the denial and they are submitting the appeal to you.

Jay James – I just want to make sure so that we don't have to waste your time with people that show up late, and we've already told them they're late.

Sovel – So their appeal would then go to the Circuit Court, if it's 31 days or more.

Paula Lankford – If they come in after 31 days and we tell them, "It's untimely. You missed the deadline." Can they then reapply through Jay and get denied again, to restart the 30-day clock?

Chairperson Rosman – That's a good question.

Attorney Kummer – There's nothing in writing to suggest otherwise, and there are changes in circumstances that they can. If they're spending the money and they want to play the game, they can.

Paula Lankford – All right.

Attorney Rentrop – What we've done in the past with certain things is that you have one shot at appeal. I'm pretty sure under the existing Ordinance, appeals ... I'm thinking about when you issue permits, you have a set amount of time to use it. If you don't use it in that time frame, then you've waived it. You could probably add language that if you

have been denied an application for a sign permit, you have to wait one year, absent a change in circumstances, to apply again.

Paula Lankford – Yes, isn't there something in our Ordinance that says your request has to change in order for you to reapply?

Attorney Rentrop – I thought there was too.

Chairperson Rosman – You can't ask for the same thing over again.

Paula Lankford – I think it is a year, or 90 days.

Chairperson Rosman – I'm remembering a year.

Attorney Kummer – And people get creative with changes. Another area of review, and this is something that Jay will already have reviewed and addressed in his line of review, and would likely include it as a basis for denial that would come to you, but whether the sign permit application included all the information that's required under the Ordinance. There is a lot of information that's required. Jay knows it and it's not light lifting. If they haven't satisfied that basic requirement of the Ordinance, we shouldn't be considering the merits of the argument as far as why they want the permit when they fail to meet the basic threshold with Jay.
Now Jay, you can speak to that. You may do a lot of back and forth and allow them to amend it before you make a final determination. I imagine that's how things go practically, but if someone continually fails to provide you with the information, to a certain point where you just have to flat out deny it for a lack of sufficient information, that's a second check that should be done before the Board addresses the merits. Lastly, the merits of an appeal. That's when you look at the standards set forth in the Ordinance and look deeper.

Sovel – There's no date on this, so I'm assuming we are going to get a new copy of this also then.

Attorney Rentrop – Remember, that's a dimensional variance request form.

Chairperson Rosman – No, this is the sign exception.

Attorney Rentrop – Yes, we'll update this one.

Discussion continued regarding rewriting the new informational page for the Zoning Board of Appeals that correlates with the new Sign Ordinance. Attorney Kummer explained that the sign exception page could be eliminated as there will no longer be any sign exceptions. Chairperson Rosman reiterated the need for a reference page explaining sign variances going forward and proactive efforts to protect the Township from litigation.

Grever – I'm assuming this was addressed, but I know there was an appeal on Haggerty Road for a commercial business. If they were to put a conforming sign, their freestanding sign would have been inside of their warehouse.

Attorney Kummer – We will get to variances very shortly. Sign exceptions and variances are different. Sign exceptions allowed provisions to be waived, and there was a bit of trading. With variances, we take into account those types of concerns, and you'll be able to actually address that situation that you just mentioned.

Sovel – John, is it fair to say that with this new Ordinance, we're no longer regulating the words of the signs?

Attorney Kummer – Correct.

Sovel – It's still hard to process that when you're looking at the signs.

Attorney Kummer – It won't be a consideration on Jay's end, and it won't be a consideration once it gets to you. It's simply going to be, looking at how the parcel is zoned, the condition or state of it, whether it's vacant or non-vacant, and the features of it that provide for the types of signs.
So, is it an election season sign? Not an election sign, because technically someone could take their entitled election sign and put any social statement that they want to on it. It doesn't have to be an election sign per se, it will just be different times of year that they're permitted to have one extra sign. Hopefully that makes sense.

Chairperson Rosman – Will it also address how much of a window can be covered, as related to a party store? Right now you have a percentage of how much of the window has to be open. That will still be in there?

Attorney Kummer – Yes, there are percentages of area in there. So, we had the permit denials. The second one is unlawful sign removals. Within the Ordinance is the process and standards for the removal of unlawful signs. It requires a certified mailing by Jay of that determination to be sent to them. They have a right to appeal within 30 days of receipt of that, should they believe that their sign is lawful and shouldn't be removed. The same areas I'll highlight are just the basic, immediate ones to review.
Is it timely? Then you're looking at the Township's compliance with notice requirements. We're required to send by certified mail. Then, the merits of the appeal can be looked at. I would note that there are a number of signs that can be removed that aren't unlawful signs. If it's a damaged sign, the Ordinance addresses that. Some of the other ones are unsafe signs. Temporary signs that were within a right-of-way; those have shorter time periods for removal by Jay or Terry Long, one of our Ordinance Officers. So, roadway and, right-of-way signs are immediate. Unsafe signs are 15 days. Understanding then, those will not be the removals that come before you. It will just be those unlawful signs.

Mills – You were talking about the appeal within receipt of notice. How do you determine when that person received that notice?

Attorney Kummer – Generally in law, it's when it's postmarked to the return address. We send it to the address by certified mail, so that's when it's received, is when it's sent. If Jay internally decides he wants to do return-receipt, I don't recommend that because some people just don't sign, but when something is sent by certified mail, it's the date that it's placed in the mail.

Sovel – Jay, how are we handling temporary help-wanted signs for a business now?

Jay James – That does fall under the temporary.

Attorney Kummer – The 15 days, that would fall under unlawful if it is too big, or if there are too many of them. It wouldn't fall within the temporary removal because that is just for those within the right-of-way.

Chairperson Rosman – Would those just be outside versus being on the window?

Sovel – Not in the right-of-way. If they put up like sandwich board type with help wanted. Do they need to have a permit for that and how many days would they get for that?

Attorney Kummer – That would be 30 days if it is found to be unlawful. The default by the Ordinance for temporary signs is that a permit is not required unless specified otherwise. For a small window sign, they would not need it, but if a complaint is received and it's noted, then Jay could send notice and they would have 30 days to take it down, because that extra window sign, or that window sign that's too large, would be unlawful.

Chairperson Rosman – Do you count weekends and holidays in the 30 days?

Attorney Kummer – 30 calendar days.

Mistele – Can they appeal Jay's interpretation of 30 days? If Jay sends an email on Friday at 5:00pm, and they claim they didn't know about it until Monday, so technically it is Day 29.

Attorney Kummer – No, and that's where I say, whatever determination is made, as long as that's conveyed to an applicant, and it's a procedure that's in place, you'll be fine. It's when you stray from that and sometimes you count the first day of mailing, or you count the day after mailing. If you're not consistent, that's where you get into trouble. But, if it's something that's in writing that is uniformly applied, it shouldn't be an issue.

Discussion took place regarding postmark dates, applying standards, and that policies may vary between Township Departments for different matters.

Attorney Kummer – If Jay includes something on the application form, and they're advised of that ahead of time, the best thing is to point to the document that they had already signed when applying to show them that they had knowledge of whatever the future requirements were going to be. Does anyone have any questions on appeals?

Sovel – If someone has a legally nonconforming sign right now, and it's damaged, what are their options now under this Ordinance?

Attorney Kummer – The nonconforming sign provision did not change drastically. It's just a matter of whether or not it can actually be repaired and rebuilt. The situation I brought up as an example was when someone had a fine nonconforming sign, but they wanted to beautify the parcel by renovating it, and they wanted to move it slightly to the right, while adding landscaping to the left. If the ZBA said, "Okay, if you promise to take down the really ugly one, we'll let you have a new one, in a new place instead of filling

the old footprint of the prior nonconforming sign." That's the most common example that I had heard of occurring. As far as nonconforming signs themselves, if you're replacing it within the standard footprint, that's unchanged.

Sovel – If they have a pole sign, and someone runs it over, can they get another pole sign?

Jay James – They cannot. I don't have it in front of me, but it's similar to legally, nonconforming structures; if it is damaged by more than 50%, it cannot be replaced. It has to be brought up to today's requirements.

Sovel – How about for the location of it? Can it be rebuilt with a pedestal sign at the same location, do they have to comply with that too?

Jay James – They would have to meet today's Ordinance.

Chairperson Rosman discussed the sign situation at CJ's. Jay James noted that was a different situation because those were actually two separate parcels owned by the same entity. Chairperson Rosman discussed aesthetics of signs.

Attorney Kummer – We did actually remove some language that was somewhat vague and subjective. We all like it, but it is something that can land municipalities in hot water because what's beautiful to one is not beautiful to all.

Attorney Rentrop – When we talk about variances for a sign, this is not the same thing as a variance under the variance procedures I talked about. We got rid of the term exception so we had to call it something else, and we went with the term variance. The standards are not the same.

Attorney Kummer – With variances, I'll read aloud what is in front of you.

- *Requests for nonuse sign variances shall be granted only in accordance with the standards set forth in Section 30.08 (B).*
- *The Zoning Board of Appeals shall not have the authority to grant use variances for signs.*
- *The ZBA shall not have the authority to grant exceptions to the restrictions set forth by this Ordinance.*

So there within the new Ordinance, it's pointing to the prior sign exception provision, stating that you can no longer grant exceptions to this Ordinance. As Hans indicated, we are using some of the same phrases, but this Ordinance operates removed from the other provisions of law within the Ordinance that Hans discussed.
There is still a practical difficulty standard; however, that is a different standard for the Sign Ordinance than your other Ordinance. I think it's simpler, and it's more cut and dry, but we use the same word because it still has a certain meaning to courts and you want there to be some familiarity with courts as far as the legal standards being applied.
With opposing counsel, we drafted what is called a construction clause. It's defining a term that's used within a provision within that provision itself. The construction clause in this case was defining practical difficulty.

For this purpose, practical difficulty means:

> *The variance applicant demonstrates the existence of natural or artificial features of the applicant's property which obstruct the visibility of the sign from the primary right-of-way adjacent to the parcel where the sign is proposed, and cannot be practically removed or mitigated through the applicant's own reasonable efforts. A practical difficulty must not be self-created.*

You'll see here that we're talking about a visibility standard. Essentially, you could think of these as visibility variances. We're not granting variances in the sense of an extra sign, or a larger sign.

Chairperson Rosman – It's more just location.

Attorney Kummer – Correct. So I expect you will be seeing a lot of setback variance requests and potentially some height variance requests. I imagine that height will be less likely, but never say never.
Available nonuse variances will only be related to visibility obstructed by natural and artificial features. We're thinking that the construction, materials, illumination, structural standards for signs – those shouldn't be coming to you for variances. It has to impact visibility. Is the visibility obstructed? Those obstructions can be natural or manmade. I cannot tell you if all of these things exist here in the Township, but examples would be; bridges, canals, streams, hills, railroad tracks, infrastructure such as a cell tower or other manmade or artificial obstructions.

Chairperson Rosman – At Lowe's, if the sign went where it was supposed to, it was right over the gas main, so we let them move it. That made sense.

Sovel – How about landscaping?

Attorney Kummer – That's the interesting point. Is it something that can be mitigated on their own? Is this their landscaping, or an adjacent neighbor's lawful landscaping? It's naturally existing, but it can be mitigated. If it is their existing landscaping for a parcel that they are redeveloping and they want to put a sign in somewhere, but they want to keep the mulberry bush. They have to choose.

Sovel – I think the Planning Commission is requiring too much landscaping in the sign area.

Paula Lankford – We are actually including that now in our reviews, looking at signage and letting them know that they have to make sure the landscaping, at its maturity, is not going to be blocking the sign.

Chairperson Rosman – That was the problem with Applebee's.

Jay James – But it wasn't Applebee's landscaping.

Paula Lankford – It was somebody else's. So if the landscaping that is blocking their view belongs to somebody else, they can't mitigate that, so it may be a variance that they could request.

Attorney Kummer – You have to look at it. Is it overgrown where their landscaping is in the right-of-way? Or, is it trespassing? Or, is it lawful, setback far enough and not overgrown? It just happened to exist there before this building went in.

Chairperson Rosman – We had a situation where Applebee's went in and their sign was where it was supposed to be, on Haggerty between Maple and 14 Mile, and the trees immediately to the south had grown. As you were coming south, until you were right at Applebee's, you couldn't see it.

McKeever – There were some topographical issues there too.

Attorney Kummer – Those are the types of things where you have a mix of natural and manmade. Applicants aren't entitled to constantly, perfectly visible signs, but if in your review you see that it is obstructed to a degree that requires a variance, then you grant it.

Chairperson Rosman – What about substitutions in 30.09?

Attorney Kummer – For your purposes, you can strike that. That's just part of the Ordinance itself for substituting other areas of law. That doesn't pertain to variances.

Paula Lankford – On location of signs for existing buildings, as Sarah said, the sign would be inside the building; we did do an amendment to the Sign Ordinance that allows for a business to average the distance of the signs on both sides of them. That should take care of that issue. You shouldn't see too many of those.

Attorney Kummer – It does the mean average of three on either side?

Paula Lankford – Yes.

Chairperson Rosman – That's wonderful, thanks.

Attorney Kummer – When we talk about self-created, it's whether the applicant took some affirmative action that created the need for the variance. Examples would be:

- An unusual land division that they obtained which now limits where they can put things based on setbacks.
- Providing site plans that fill an entire buildable space with their building, leaving no room for the sign. That's their fault and they will have to modify their plans to allow for a sign somewhere. They can't maximize one thing, and then ask for more on another.
- If they are digging a pond, and ponds are beautiful, but if they want a water feature in front of the building or complex, they don't get to have the pond, and have an enlarged, taller sign right next to the road. They have to move the pond back or shrink the size of the pond in their plans. They cannot create the problem that they seek a variance for.
- As Hans had mentioned, self-created also applies to predecessors in ownership of a property. So, if the prior owner developed a parcel in such a way that they maximized the space because they didn't think they needed a sign, but the new owner and use require a sign, the answer would be no. They purchased the

property and building that did not have space for signage and they don't now get to keep the same building footprint and then ask for a freestanding sign that doesn't comply with setback requirements. That manmade choice made by the prior developer is a self-created issue. They purchased it knowing what the Ordinance is.

- It doesn't mean that people aren't allowed to apply for variances, and it doesn't mean that it won't be appropriate to grant variances sometimes. But, you're still required to consider whether or not it's self-created and what they can do to mitigate it. If they are renovating a building and they can carve out space in such a way that a sign can exist, they may have to revise their plans.

Chairperson Rosman – You brought up a point and I'd like to ask Jay. Using that same example, the predecessor built the building – are buildings like that allowed a sign on the building?

Jay James – Each commercial building is allowed a wall sign.

Chairperson Rosman – Thank you.

Discussion continued regarding allowable signs and the lack of authority that the Township has over the content or words on those signs; however, business owners will generally want to make the best use of their signage.

Attorney Kummer – As I had indicated, the size of wall signs will be inapplicable. It's a question of whether or not it's obstructed, and not whether it's the best, biggest, brightest sign. The same with illumination and uniform standards of construction.
I will note a few things. The granting of a nonuse variance no longer requires discretionary act. It's not a matter of, may we grant it? It's in your review, you're finding the obstruction and that they can't mitigate it. There's a question of, did they build that building and take up the entire space? Was that a self-created issue by the predecessor? Yes, possibly. At that point, it may be a denial.
Now, this wasn't drafted this way when that came before you, but those are the kinds of things you'll want to be rethinking with this new language. It should hopefully make it easier to say yes or no, and have agreement amongst all of you because when you see it, you'll know it.
Sign exceptions no longer exist. We've belabored that point. I have it here in my outline, but I think you all understand that what was previously occurring is no longer. Then, remember that it's up to the applicant to justify the variance need. You are not to make the arguments for them. You all have knowledge and want to be helpful, but the record needs to contain a certain amount of evidence to support your decision, and the evidence needs to be submitted into the record for whatever decision you make, and you can't be the ones making the evidence. While it's important to ask questions and get answers from them, they bear the burden and they need to bring it to you. If something is insufficient, I believe that Article 41 provides for tabling a matter and coming back to it. I'm not suggesting that you outright deny. You have that discretion, so if you need more information, you can come back to something and give them that opportunity if you choose, but you shouldn't be making their case for them.
Just the last emphasis of building a record; I'm in court and I talk a lot, saying a lot of things that the judge already knows. The judge is on the same page as me, but I have

to say those things because someone else might read it. They might not be in the room and they might not share the same depth of knowledge that we have. A lot of it is just talking for that typist, and we're just asking that this Board do the same when a variance request is before you.

Chairperson Rosman – I would like to say that Paula has done a phenomenal job of explaining to applicants what they can and cannot expect from the Zoning Board of Appeals. We are not as busy as we used to be as a result. That's the key.

Paula Lankford – I have to give some kudos to Jay too. He and I work as a team.

Chairperson Rosman – It's a wonderful job that you both do. Thank you. And, thank you very much. Does anybody have any questions for John or Hans?

Paula Lankford – We can still pose conditions on variances for garages, sheds or houses, correct? It's only signs where you cannot do that?

Attorney Rentrop – Correct. It is unfortunate that the word variance is used in both situations.

H. OTHER MATTERS:

Chairperson Rosman – The people who are in the street every weekend at Commerce and Union Lake Road; is that allowed?

Paula Lankford – Don't they have to get a solicitor's license?

Attorney Rentrop – There was a court case – what was it, two years ago?

Attorney Kummer – Yes, two years ago. That essentially permits it.

Attorney Rentrop – City of Royal Oak had a problem with that. They went after them and it was decided to be free speech.

Attorney Kummer – There are ways in which it can be policed if it becomes harassing or targeted, or they are impeding traffic, as those are law enforcement functions that can exist. As far as us having any type of law that prohibits people from that type of behavior outright, it's a protected act based on recent court rulings.

Sovel – So we can't require registration anymore?

Attorney Rentrop – I think you can still do it for door-to-door type solicitation.

Attorney Kummer – But not the transient.

Chairperson Rosman – Thank you for that.

I. CORRESPONDENCE:

None.

J. PLANNING DIRECTOR'S REPORT:

Paula Lankford – The report was included in your packet.

- **NEXT REGULAR MEETING DATE: THURSDAY, MARCH 23, 2023.**

K. ADJOURNMENT:

MOTION by Mills, supported by Mistele, to adjourn the meeting at 7:11pm.
AYES: Mills, Mistele, Rosman, Sovel, McKeever
NAYS: None MOTION CARRIED UNANIMOUSLY

_____
Robert Mistele, Secretary