

FINAL
CHARTER TOWNSHIP OF COMMERCE
ZONING BOARD OF APPEALS MEETING
Thursday, March 20, 2025
2009 Township Drive
Commerce Township, Michigan 48390

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

ROLL CALL: Present: Rusty Rosman, Chairperson
Robert Mistele, Secretary
Rick Sovel
Bill McKeever
Sarah Grever, ZBA Alternate Member
Absent: Clarence Mills, Vice Chairperson (excused)
Also Present: Paula Lankford, Senior Planner
Dave Campbell, Planning Director
Debbie Watson, Recording Secretary

B. APPROVAL OF MEETING AGENDA

MOTION by Mistele, supported by Grever, to approve the Zoning Board of Appeals Regular Meeting Agenda for March 20, 2025, as presented.

ROLL CALL VOTE:

AYES: Mistele, Grever, McKeever, Sovel, Rosman

NAYS: None

ABSENT: Mills

MOTION CARRIED UNANIMOUSLY

C. APPROVAL OF MEETING MINUTES:

MOTION by McKeever, supported by Grever, to approve the Zoning Board of Appeals Regular Meeting minutes of January 23, 2025, as written.

ROLL CALL VOTE:

AYES: McKeever, Grever, Mistele, Rosman, Sovel

NAYS: None

ABSENT: Mills

MOTION CARRIED UNANIMOUSLY

D. PUBLIC DISCUSSION (on matters for which there is no public hearing)

None.

E. UPDATE OF ACTIVITIES IN COMMERCE TOWNSHIP:

Rick Sovel – Township Board

- It was a short meeting; I think it was like 30-40 minutes on Tuesday.
- Next month, the Fire Department is getting ready to add our third ALS ambulance. Right now, we're running with two Advance Life Support.

Chairperson Rosman inquired with Sovel about the generator at the Library.

Bill McKeever – Planning Commission

- We have not approved anything in recent meetings. We've been going back and forth with conceptual plans.
- We recommended denial of a proposal for Kroger. I didn't hear what happened.

Sovel – We are in negotiations again.

Dave Campbell – Kroger is part of the Midtown on Haggerty development at 14 Mile and Haggerty. They are likely coming back in front of the Planning Commission at the April meeting with a revised proposal, hoping to get a better recommendation.

Chairperson Rosman – That will be exciting.

McKeever – Did they change anything?

Dave Campbell – Yes. This is probably the 5th or 6th meeting about this Kroger proposal.

Discussion continued regarding the proposed amendment and related recognizable public benefits for the Midtown on Haggerty project.

Dave Campbell – Planning Department

- The other big project is 5 & Main. I assume everyone has seen the apartments going up as we speak.
- We also have the first potential non-residential user, Dort Financial Credit Union.
 - They would be located along Pontiac Trail at what will soon be a 4-way signalized intersection of Pontiac Trail, Walnut Lake Road, and the newly named Pinewood Avenue, which is the main road going into 5 & Main. So, the credit union would be at the northwest corner of that 4-way intersection.
 - Dort came to the Planning Commission at the March 3rd meeting and there was a lot of discussion of their building elevations and their choice of building materials. The Planning Commission is hoping that Dort and the 5 & Main design team can come up with something better.
 - Since this is the first commercial user, they're kind of setting a precedent for what the rest of 5 & Main might look like; the precedent not only with building materials and architecture, but also with signage. Whatever signage Dort is allowed to have with respect to wall signs and freestanding signs, there's a reasonable assumption that everybody else who comes after them will say, *well, they got that many signs, we want to have that many signs too*. So, we want to be very careful and very smart about what sort of signage and building materials are allowed for Dort.
 - What we want from the 5 & Main design team are guidelines; guidelines for architecture, guidelines for building materials, guidelines for signage. We've been demanding these for years and now we're to the point where we have to have them so that we know what standards to hold Dort to. Without having them, the Planning Commission could not take any action on Dort.
 - So, they're trying to revise Dort's plans and also come up with these guidelines for the Planning Commission in the hopes of getting back in front of the Planning Commission at the April 7th meeting.

Grever – I would like to talk about new activities. Once in a while I help out with Byers Park, the Byers Homestead. They will have the Easter Bunny on April 13th. In addition, I'm a little nosy because I also live in Commerce. I saw Supervisor Gray with some of the employees walking around in the southwest corner, next to Byers, in the parking lot. Is there anything that might be coming up around there?

Dave Campbell – I assume what you saw Supervisor Gray doing was preparing for the Township's Bicentennial Celebration, which is Saturday, June 14th. Larry is much more involved in it than I am. I believe we're going to close a section of Commerce Road from Carroll Lake Road to Broadway. There's going to be vendors and food trucks. There's going to be a band and different activities. Paula, can you think of anything else?

Paula Lankford – You've covered everything I know of.

Debbie Watson – There's a 5K in the morning, and a beer tent and band in the afternoon/evening.

Dave Campbell – That's right, there's a 5K, so everybody has to start training for that. So, I know they were doing a walk-through there and trying to figure out the logistics of setup, staging, parking and so forth.

Grever – That's sounds so exciting.

Dave Campbell – We hope so, and hopefully the weather cooperates.

F. OLD BUSINESS:

None.

G. NEW BUSINESS:

ITEM G1. ZBA DISCUSSION ON A POTENTIAL TEXT AMENDMENT

Sovel – On the very last page of your packet is a standalone sheet. I assume everyone knows the history of why we're doing this. If not, I can go through it.

Grever – Yes.

Sovel – We changed the amendment process within the Township Board. In the past, what we would do was to have different people in the departments, or the department heads, submit a suggestion. It would go to the attorney and he would come up with a draft. It would come to the Township Board and we would say yes or no, or have it modified. We decided we were spending too much money on legal fees, so we changed the process. Basically, instead of going to the attorney at the top, we put that at the bottom as the second to the last step.

The reason for this meeting is to review the current ordinance and go over the history of the way it used to be, and then come up with some suggestions. The goal here is to prepare some bullet points for discussion. We're not going to vote on anything. It's just discussion for me to be able to take back to the Board. I've also asked everyone here to give their input, including Paula, Dave and Deb. We started with four different potential criteria, four different categories of issues. If there are others, that's fine.

I met with everybody and if I had to pick one word as the theme for what everyone has said, it was flexibility; to have some form of flexibility. The second theme that came out was common sense. And, for example, nobody, especially on the Township Board, wants to tell someone that they have to tear down a house because they're one inch over the setback. And, according to Hans, technically, that is what the current ordinance says right now. It was tightened up primarily because of one case, Kallabat, which was for a pool. I don't know if everybody knows about that.

Basically, the resident came to the Township. He lives on Union Lake off Flagstaff. He wanted to build a large home, and also put an inground pool in the lakeside front yard. We only have a couple of those. He was able to get approval, but in the process, something was done wrong. It will probably never happen again, it was just a fluke. He had a neighbor who was not very cooperative and the two of them were fighting. The neighbor waited until the pool was pretty much done to come to the Township and say, *the pool was put in the Township side yard setback* (too close to the neighbor's house/yard.)

It was incorrect, but unfortunately, we had approved it to go in that spot. This came before us, and we didn't think it was fair to tell them they had to remove the pool because of something we approved. We knew there was going to be a lawsuit no matter what. So, we basically read a script from the attorneys. But then, because of that, Hans and John changed the ordinance, and the Board wasn't fully aware that it was being changed because of that scenario.

Chairperson Rosman – Are you looking to take strict compliance and marry it to common sense?

Sovel – So-

McKeever – I remember that a bit differently.

Sovel – Well, okay. That's kind of the background. That's what caused the ordinance to get changed.

McKeever – I know there was a problem with the pool, but I don't recall the issue being with Commerce. I recall the issue being with his grading.

Chairperson Rosman – No, it was staff.

McKeever – Who raised the grade on the pool?

Dave Campbell – Can I make a suggestion?

Sovel – I'm not here to argue that subject.

Dave Campbell – Yes, I don't think we want to re-litigate anything, especially-

Sovel – Yes, that's why it got changed. So fast forward to where we are now. Basically, what I'm looking for is some flexibility. We don't have to create the wording. That will be the job of Hans and John. From here, I want to take it back to the Township Board for the April discussion meeting and then from there, get some basic approval from them to then authorize to meet with ...

Chairperson Rosman – There was a gentleman, and this has to be 20 years ago. They were off Cooley Lake Road. This couple got married and they were redoing the house to make it bigger for both families. He came back and he was one inch too close to the side yard setback. It was two days before they were going on their honeymoon to Disney World. It was one inch. We not only gave him the one inch, we gave him back

his \$350. I ran into him one day and he remembered that. That one inch was due to an error by whoever measured his site.

Dave Campbell – But it was 20 years ago?

Chairperson Rosman – Yes.

Dave Campbell – Long time.

Chairperson Rosman – Yes, it is. But, that one comes under common sense. I hear what you're saying. The problem is how to write it. And I understand-

Sovel – You don't have to worry about that.

Chairperson Rosman - ... that's not our problem.

Discussion continued regarding past disagreements between Rosman and Sovel on strict adherence to the Zoning Ordinance. Dave Campbell reminded the Board once again not to re-litigate old cases.

Sovel – The intent is not to go back and rehash. I just wanted to give some history, and then basically from this day forward, how can we-

Chairperson Rosman – My point is, there's this and there's that. There are times I get the common sense, and there's times I want it strict.

Sovel – When I talked to Hans, my focal point was, how was it that we were able to operate the ZBA previously when you didn't have to meet all of the criteria? After the Kallabat case is where he changed it to meet all criteria. So I said, can we just go back? He said, technically no, but tell me what it is you're looking to do and give me some guidelines and we can go from there. So, I met with Paula and Dave and it didn't take them long to come up with what you see here. Why don't you go over what your first thoughts were on this? I think this is probably a good starting point.

Dave Campbell – There's two things in your packet. One is what the Planning Department came up with, which is this version, and you're right, it was done quickly. And then there is this proposal from the Township Attorney from July of last year. What the Planning Department came up with, based on what we think Rick is trying to accomplish, again with the keywords being flexibility and common sense, is to take the six criteria that we have and add some new language, which you see in red. That instead says that *a preponderance* of the following criteria has been met. And you're right, Rick, that the Township Attorney's direction is that all six of these must be met in order for someone to get a variance. In theory, this gives the ZBA a little more flexibility that a preponderance of the six must be met.

Then, within #4, and this is the one that folks struggle with most often is, *the problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors*. So, if someone before you, the homeowner before you made the mistake, whether you like it or not, that's still your mistake to deal with. So, based on our conversation with Rick, we struck the language, *or the applicant's predecessors*. Therefore, you would not be denied a variance based on the mistake that the guy

before you made. I will tell you that the Township Attorney is going to say, *I cannot support this*. So, we want to have these discussions, but keep in mind that Paula and I are sort of in the middle of what the Township Attorney is telling us he can support, and what we know the ZBA hopes to accomplish. It's a fun position to be in sometimes.

Chairperson Rosman – What does the statute say? Go back to the statute.

Dave Campbell – Statute and case law, according to what the Township Attorney would say, all six of the existing criteria in Article 41 of the Zoning Ordinance must be met. I will pull them up on the screen. It's very challenging for folks to meet all six of those criteria. The Township Attorney would say it is supposed to be very challenging to get a variance. It is not supposed to be easy, and it's only supposed to happen in rare occurrences.

Sovel – I will say, in my first discussion with Hans, we talked about keeping those six, but then adding a seventh one that would give us flexibility. He said that we probably could do something like that, depending on the wording. He has already acknowledged that what the Board of Trustees want and what the attorneys want are in conflict. In reaching out to other communities, some are strict and some are less strict. Some never updated. I talked to someone in Tyrone and they're super flexible.

Dave Campbell – I think the attorney would say that he's not trying to be the wet blanket here. He is trying to guide the Township to keep us out of trouble. And, if we do find ourselves in court, have us in a position where the Township Attorney can do their job and defend us in court. That's why they're being very particular. I think it does go back to the Kallabat case to a large degree that the Township Attorney is stressing that all six of the criteria must be met, and that Michigan case law supports that position.

Sovel – But that was under the old language. That was not this.

Dave Campbell – Say that again.

Sovel – That was under the previous version of Article 41.

Paula Lankford – What was?

Chairperson Rosman – I don't think so.

Sovel – That's why he changed it. Because of that, he changed it.

Dave Campbell – I think those six criteria have been in the Zoning Ordinance for quite some time.

Sovel – But we didn't have to meet all of them.

Dave Campbell – Correct.

Chairperson Rosman – But it had to meet most of them.

Sovel – And it was different because then it dealt with hardship and financial ...

Chairperson Rosman – We had the word most, that you meet most of these.

Dave Campbell – Okay.

Chairperson Rosman – We had that for years.

Grever – I do have two things. A lot of what I do in my job involves an error of tolerance. I don't know if we could ponder about that, giving specifics as to how much error is allowed in whatever dimensional variance they went over if it's already built. So, one inch does seem reasonable in the examples that we have. But then that seems more like an ordinance type thing. I don't know how far that could cross over.

The other thing would be, how would it affect the character of the community that they're in, or the town that they're in? I think maybe mentioning how the character is affected could help us to be more flexible, because that's an opinion.

Sovel – That's one of the things that used to be in there. Does it affect any of the surrounding neighbors? One thing that Hans has always said from Day 1 is that every case is unique on its own. You're not setting a precedent by doing one. Therefore, since every property and their situation is unique, then it's not a cookie cutter type situation. But, then if everyone is unique, how do you have something that's boilerplate that allows us to deal with the fact that the property is unique?

Dave Campbell – Sarah, does #5 of the existing criteria speaks to at least some of what you're looking for?

Grever – A little bit. It wouldn't be an inconvenience, but the character. Like Juniper Lane has larger one-acre lots, compared to my neighborhood which has tiny, historic houses all around. I feel like if someone had a one-acre lot in my little neighborhood, that would be an outlier and not fulfill the historic feel of my neighborhood. It's not like that would be a hardship if something was out of character, but it wouldn't fit with the feel of anything. And granted, putting a little lot over on Juniper Lane would also change the characteristics of it. If they were subdividing Juniper parcels, and everyone has a quarter-acre lot ... One of those things is not like the other, and they would have a smaller house of course, on a smaller lot. So, just the characteristics of Rolling Hills versus a dirt road and what would belong in that area. That's where that would be very flexible because that's an opinion and very biased.

Chairperson Rosman – Let me ask a court question. When you get to court, I know there's a tremendous amount of flexibility with judges, as we see when they take the ordinance to court. This one lays it on them, and that one says, oh, shame on you, don't do that again. The same thing with this, if this goes to court, it's the judge that they get.

Sovel – My opinion is, we've had almost none that go to court, very few. And we've learned through all of the various lawsuits that we've dealt with, the judge will interpret what they want. So, I don't worry so much about what the judge ... If we come up with something that satisfies someone, so that one inch, that's the person that's going to take us to court over one inch. But, if we allow them to have it, then they're not going to take us to court. That's how I view it.

Chairperson Rosman – I'm going to turn it around for a moment. We're the quasi-court and what we say goes, and anybody who wants to sue has to go to circuit court. Even if the attorney doesn't like what we do, if we've done it, it holds. So, if we give the person the one inch because we choose to, what can Hans do about it? I'm just asking.

Dave Campbell – If the neighbor in that hypothetical were to file suit that the variance was granted without satisfying these criteria, then the Township Attorney would have to defend the Township and the ZBA's decision in court. Whether that would happen, who knows, and I doubt it. But I guess that's the mindset of the Township Attorney.

Chairperson Rosman – I understand that because from Board of Review I heard the one inch business on Locklin. I don't know if that rings any bells, but somebody was arguing with his neighbor about one inch, and they did not vote for it.

Sovel – I'm looking for your input.

Mistele – I think a little bit, like the one inch issue, but where do you stop is the question. One inch or six inches, okay, a foot. Well, wait a minute – now a foot, that should have been caught. An inch, I can see how that is missed during the construction phase, but I don't know how you draw that line.

Sovel – What I'm hearing is that we don't want to say that you're allowed to be within three inches or one inch. We don't want to put a specific number, but some word that gives us some flexibility. My point of view is, let's say someone has a shed and it's three inches too close to the back yard setback, and they're against Township property or State land, or something where it's not an impact. And the neighbors show up and they're in support of it, that doesn't hurt anyone. For me, in my personal opinion, I would be willing to give them a little more flexibility on that than I would be someone building a house that will block someone's view of the lake. On that one, I want to be stricter on that. That's where it's hard to put that part in writing. Some of these examples help, but that's the challenging part.

Mistele – That's exactly the case, right; up against nothing is very different than being up against someone else's property. We have to look at that, and I don't know how you get that wiggle room.

Chairperson Rosman – Are you basically saying that you would like #7 to say something that the ZBA will use its common sense? What are you looking for #7 to say?

Sovel – My question to Hans was, what if we added a #7 that gave us flexibility? We didn't talk about any wording. I don't know if it's kind of like what Dave has here; preponderance. I don't know. I'm just asking, can we add more criteria to give us flexibility?

Grever – What if we suggest to Hans the tolerance of error, and then we don't specify any numbers whatsoever. The error tolerance would be subject to the ZBA, open ended.

McKeever – The criteria are set by the State?

Dave Campbell – Yes, by the Zoning Enabling Act, and then by applicable case law. All the various cases that have gone to court through the years have set precedents, and that then applies to how Hans wants our ZBA to function.

McKeever – Wouldn't we be in the same predicament if we altered it by addition, than just changing what's already there to give us leeway? If this is what the State gives us, then adding language that gives us leeway would be the same as deleting language that would give us leeway.

Dave Campbell – That is what the Township Attorney would say. He would say, this is the best I can do for you. This proposal is the best that I can offer as the attorney to satisfy what the ZBA wants to accomplish, but also be defensible if we found ourselves in court. I got yelled at by the Township Attorney for even suggesting this.

Sovel – One of them said that you can't even apply for a variance if it was self-created. Is that what that one is?

Dave Campbell – That's what our Zoning Ordinance says right now; #4 The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.

Sovel – No, but there was some wording, verbiage that was presented, and it wasn't approved, that says that they can't even apply for a variance.

Dave Campbell – That was a suggestion of the Planning and Building Departments.

Sovel – Okay. That's the one that-

Dave Campbell – If you build something without a permit and you build it wrong, such as too tall or too close to the property line, you shouldn't even be able to ask for a variance.

Sovel – And the Board said no.

Chairperson Rosman – Why did the Board say no to that?

Sovel – Just because you're one inch, then-

Chairperson Rosman – No, I'm saying if somebody-

McKeever – If they had come in to do things correctly in the first place, they wouldn't be in the predicament they were in by illegally building something.

Discussion continued regarding illegally built structures.

Sovel – The Township Board was 7-0 that they didn't want this, and that's why we're discussing it now.

McKeever – What did the attorney say?

Dave Campbell – He wrote it.

Sovel – We did not ask the attorney to do it.

Chairperson Rosman – So you're saying the Township Board does not want to create an arena where if somebody builds something without a permit, that they are denied a variance? If I built myself a pole barn and I said, whoops, and I came to get myself a variance, and the Township inspected it and said it's okay, even though it's too big ... Is that what the Township is saying?

Dave Campbell – About a year ago, staff presented the Township Board with ... Let's take your pole barn example. If you build a pole barn with no permits, you build it too big, or too close to the property line, or too tall, whatever it is. Six months later, the Township discovers the pole barn. We say, not only did you need a permit for it, it doesn't meet our ordinance. And they say, well, I want a variance. Staff was saying that they shouldn't even have the option to come in and ask for a variance. The Township Board did not feel that was fair. They want them to have their day in court.

Sovel – They want them to be able to come before the Township and the ZBA.

Chairperson Rosman – So, then if we deny it, then ...

Dave Campbell – Then they have to tear down the pole barn.

Chairperson Rosman – And if they go to court and talk to the judge and they don't make them take it down, then I've got a pole barn with no variance ...

Sovel – If the judge says they can keep it, then it's a done deal.

Chairperson Rosman – I have that on my list to talk about today. I am beside myself about enforcement.

Sovel – That's not part of this discussion.

Chairperson Rosman – No, not part of this. This is for afterwards.

Sovel – So, once again, it always comes back to that one inch or the two scenarios. The one inch that was done with the permit, or the one where you bought this house, and the previous owner did it. Now someone would have to tear the house down and they couldn't even go to the ZBA. That's why that was nixed. Let's get back on track here.

Chairperson Rosman – Well, we already talked about a #7 and you wrote that down. Does anybody have anything else they would like to put into the concept of #7?

Mistele – I think adding #7, as Sarah was saying, however you can wordsmith that.

Chairperson Rosman discussed variances granted and conditions being placed on a restaurant with regard to parking. They were required to have valet parking on weekends and for banquet events. She questioned enforcement and follow-up on conditional variances. Sovel felt that goes back to enforcement. Dave Campbell added

that they had to have more than 300 people in the building. Sovel brought this up recently with the new owners. Chairperson Rosman inquired as to how awareness can be maintained in continuity with regard to conditions that have been placed on a variance. She wondered if this was also part of the discussion. Sovel said no, that's not part of this.

Mistele – Rick, why did the Board not like the approach of going with an exception versus a variance? A temporary exception?

Sovel – I'm fine with ... I think my first choice is to not require all six criteria. The second is having a #7. We have had discussions with John about just doing five out of six. There has to be something to give us some flexibility. I think Dave did a good job on just those two areas right there, and it took him 30 seconds.

Grever – I have another thought. What if we had someone who had a permit, and they came in for the variance, and then they have their list that they have to fulfill in order for us to even see them at the ZBA. Then, there's the non-permitted; they come in and ask for a variance later. What if there are different requirements for each type of variance?

Sovel – That's a good idea. Remember, we don't have to deal with the legal part. We can ask the questions. So, basically two sets of criteria, permitted and not permitted.

Grever – Yes, that's what I'm thinking, because the pool example of one inch. That could have been that the staking was a little off with the land surveyor or something, and then the actual concrete people come in ... Just that little bit adds up.

Sovel – What do you think, Paula?

Paula Lankford – Well, when you and I talked, I made that suggestion that there be a separate set of criteria for people that built already without permits. We talked about that and I think that might not be a bad way to go. That way, you're setting them aside. However, it really doesn't happen that often. I don't know that we go through all that work just for ...

Chairperson Rosman – Maybe it will happen more now, now that we have a new ordinance officer.

Paula Lankford – Maybe.

Grever – Or that could even be part of our training, as the ZBA. What things would we consider if it was permitted, or if it was built without a permit. That could have us go through our itemization, if it can't be written out.

Sovel – Deb, do you have any comments?

Debbie Watson – I have nothing to add.

Chairperson Rosman – One thing I have noticed, and we've all noticed, is that we're not busy. We used to be very busy.

Dave Campbell – You're welcome.

Chairperson Rosman – We used to have two meetings a month, 15 to 20 years ago, because we filled up all six slots. Now, we can go with six meetings a year.

Dave Campbell – We had three last year. Can I speak to that?

Sovel – How about, can you tell us, because we've given you more flexibility on the administrative side, how many are you allowing administratively?

Dave Campbell – How many variances? I can't allow variances.

Sovel – How many interpretations are you allowing that we don't have to see?

Dave Campbell – It's not that we're allowing anything that we shouldn't be allowing. I would say that the Planning Department, and more so the Building Department, are exhausting every possible option with property owners, contractors, whoever is applying, to find a solution that doesn't require them to come to the ZBA. What we say to folks is, you're going to pay your application fee, you're going to pay your surveyor and all these things. You're going to wait a month and a half to get on the agenda, and you might not get the answer that you want. So, let's find a way to make this work for what you want within the parameters of the Zoning Ordinance.

Chairperson Rosman – That has been happening a lot, and it has been wonderful.

Dave Campbell – I guess we're doing pretty well then.

Sovel – I think the other thing you have been doing that has been helpful ... Years ago, we used to get lots of after-market decks, after they bought the house, because they maximized the footprint and there was no place for a deck, or it was too small. I don't know if you're still using that great big red stamp and letting them know in advance.

Chairperson Rosman – Bill took that back to the Planning Commission and made a huge difference in ...

Sovel – Site plan approval goes through them.

Paula Lankford – We have it put in their master deed, "no variances allowed", for new subdivisions, new houses.

Debbie Watson – I can certainly attest to that. I hear that at the Planning Commission meetings. It is clearly stated to the developer, it's documented and they're fully aware.

Dave Campbell – What the developers and their builders would do is to maximize the building envelope with the house, not leaving any space for a deck. Then, a homeowner buys the house and they save up a couple years for their deck. They come into apply for their deck and they find out they have no place to put it. So now, what we're trying to do is be proactive and put it right in the master deed that they cannot ask for a variance. So, everybody needs to be mindful when they're building their house of what their building envelope is.

Paula Lankford – I think Jay too, when he's looking at new house site plans, he's making sure that there is room if he sees a second story door wall. So, that helps.

Sovel – And requests for sign variances are being filtered better.

Paula Lankford – Well, they're not given the ability to come.

Dave Campbell – Signs are another whole animal because now you're getting into freedom of speech issues. The Township got challenged. I think everybody has seen the billboard on the east side of M-5 at 14 Mile. That was the outcome of litigation and a consent judgment, which all came back to a freedom of speech challenge that went before the Supreme Court that came out of Texas. That's a long story, but we could spend a whole lot of time talking about signs.

Sovel – My point was that we're not getting as many sign variance requests as we used to.

Dave Campbell – We are trying to minimize the number of instances for people having to come to the ZBA.

Sovel – Between decks and signs, that was probably a large portion of what we used to do.

Dave Campbell – COVID was part of it too. A lot of people did home improvement projects during COVID because they had nothing else to do, and they didn't bother getting permits. That was where we had a few unpermitted structures that got built that were not built correctly.

Mistele – I have been thinking a little bit. Back to adding a 7th item. One concern, in the example where we let the shed sit in the back corner, that would run with the land so that shed could stay there forever. If one day that land sold, I think I would want to see something that runs with the structure. I'm leaning more toward a 7th category, like an exemption or an exception, because then you could make that run with the structure. When that structure goes down ... The lot could be perfectly compliant, and you could have a couple inches here or there because it was built wrong, but it could be brought back into compliance at that point. That's just one thought on adding the 7th criteria.

Chairperson Rosman – If we did something like that, that opens up a can of worms for all of the lakefronts where people built sheds by the water. Then, before a house sale can close, we have to see if there's anything in violation of the ordinance. We would have a whole process. I don't know that we could do something like that. I would love it, but that doesn't mean that we could. You have the whole process with real estate people, buyers, sellers, everything.

Grever – A dimensional variance runs with the land right now?

Chairperson Rosman – Yes.

Grever – Okay.

Sovel – Are variances recorded?

Paula Lankford – No. But we had somebody come in and their house burned down. They came in to rebuild and Jay denied it, and then I found an old variance. I talked to Hans, and he said, as long as they build it exactly to this footprint, with the exact setbacks, they were able to rebuild.

McKeever – But was it legally nonconforming?

Paula Lankford – It was legal because it received a variance many years ago.

McKeever – But before the variance, was it thought of as a legally conforming lot?

Paula Lankford – A variance makes it a legally conforming lot.

Sovel – A variance makes it legally conforming.

McKeever – Well, I mean there were cottages and whatnot that were built long before we even had an ordinance that don't meet any of our criteria and that don't have any variances. But, if they were to be destroyed, couldn't they build back on the same footing?

Paula Lankford – No.

Dave Campbell – No. If a nonconforming structure is ever destroyed beyond 50% of its assessed value, then it cannot be replaced with a nonconforming structure. What replaces it has to be conforming. So, if you have a 100-year old house that is too tall, too big or too close, and God forbid it burns down, then what replaces it has to be conforming.

Sovel – So you could see a variance request for something like that.

Dave Campbell – Depending on the circumstances, yes, that would make for a good ZBA case, especially if they were on a pie-shaped lot.

McKeever – Which they all are.

Chairperson Rosman – There are so many different shapes, especially along the lakes.

Dave Campbell – Sure, and that's the nature of the ZBA. You get the weird ones, the ones that don't quite fit into a box.

Chairperson Rosman – My parents wanted to build what essentially was a garage, but we used it as storage and a playroom. My mother came to the Township in the early 1950s. She had a \$5 bill to get herself a permit. They said, lady, we don't do anything with permits. Go home. And the garage is right on the lot line.

Dave Campbell – One of the things Paula and I have talked about, if you look at the overall layout of a city like Livonia. Everything's on a grid, everything is 90° angles. It's all perfect squares, right. Whereas out here, it's lakes, none of our roads go in a straight

line, none of our property lines go in a straight line. So, it's sort of the nature of our environment that we get some interesting challenges.

Chairperson Rosman – We have more fun than Livonia does. We have lakes.

Sovel – So, I have my notes for the Township Board. An as-built does not match the submitted plans. It could be off by one inch. Meaning, it was supposed to be a 25-foot setback, and it was approved, but then they ended up actually building it one inch into the setback area. So, it was permitted and approved, but when they built it, it ended up being-

Chairperson Rosman – Well, I'd like to ask a question because many times we have said in our variance that we will let Paula approve it when they come back with A, B and C, or let Jay approve it. I'm sure when they go out to measure and they see something is an inch off, it's easy to say, oh, that's okay. But if it's a foot, that's another ball game. I wouldn't be surprised when they pour the footings; sometimes they move a little or they wiggle. They can live with an inch, but not more than that.

Dave Campbell – I know we're all talking about an inch for conversational purposes, but it doesn't happen. The one example I heard, it happened 20 years ago. I hope that shows this is a very rare occasion, especially with technology where they've all got their laser levels and GPS guided tools.

Sovel – Right, but we're not worried about that. One that was caught is when two basements were poured side by side, and they ended up being wrong. The reason they were wrong was because some kids came by the night before, after it had been staked, and they moved the stakes. But, it was far enough apart that we caught it before anything else happened. They had to fix it and make it smaller.

Dave Campbell – Paula says that was 15-20 years ago.

Sovel – I understand that, but-

Dave Campbell – We're just trying to stick up for ourselves. This doesn't come up often.

Sovel – My argument to you would be that as technology improves, there's going to be a satellite to look down and be able to have an overlay where all the property lines and setbacks are, and we'll probably discover a whole bunch of things that are off a few inches here and there.

Paula Lankford – I hope I'm not here.

Discussion continued regarding technological advancements.

Sovel – So these were the four criteria the Township Board wanted to address.

1. People who ask for variance that have not started their project yet.
2. Started or finished without permit and got caught.
3. New owner that purchased home with noncompliance or no permit from a previous owner.
4. As-built does not match submitted plans. Could be off 1 inch.

Sovel – I don't think we have an issue with #1. I think we're pretty good about making it fit.

Dave Campbell – That's what we do now when people apply for something.

Sovel – Right. So, #2 is without a permit. #3 is a new owner with no permit by the previous owner; we've talked about that. And #4 I just talked about that it does not match what was submitted. I do have a question ... Go ahead, Dave.

Dave Campbell – The one about the unpermitted and got caught. Can we say unpermitted, got caught, and it's wrong? What is not uncommon is somebody builds something and honestly didn't know they had to get a permit. They get caught, and then Jay looks at what they did and says, okay, as long as you brace this and do that, then I'll issue a permit and it's fine.

The ones that are concerning is when they do something without a permit and it's wrong; it's too close, too tall or too big. So, can we add that?

Sovel – Here's what I think. This is coming to the ZBA. So, if they didn't get a permit for a deck, but it met all of the criteria, it wouldn't necessarily be coming to us. Someone on the street behind me apparently did that. They didn't need a variance so it would never have come to us, but they found out about it and it was really tall, and I think Jay said they used 4x4s as opposed to 6x6s, and they didn't cement it. They just put it in the dirt. It never came to us because there was no variance needed.

Dave Campbell – In that scenario, Jay says no. You have to do 6x6s and you have to cement them in. You do all that, and I will issue the permit.

Sovel – Right, so it's non-ZBA. I'm only talking about the ones where he did it, and it's too close.

Dave Campbell – Yes, we're saying the same thing.

Sovel – Okay. I think #1 and #2, we're okay with that. I think it's just #3 and #4 where we are looking for some flexibility.

Dave Campbell – Is #3 where you built it without a permit and you did it wrong?

Sovel – No, #3 is the previous owner did it. You bought the home and found out it doesn't meet the setback.

Dave Campbell – So that would be the special exception.

Sovel – Right.

Dave Campbell – Which one is the guy who built without a permit and did it wrong? Is that #2?

Sovel – Yes, started or finished without a permit and got caught and has to come before the ZBA.

Dave Campbell – All right. So, you never asked me my opinion when you were going around, but that guy shouldn't even be able to come to the ZBA. That's my opinion.

Sovel – Okay.

Chairperson Rosman – I'm with you.

Dave Campbell – Because then everybody who does it right is a sucker.

Paula Lankford – And if we do that, and people get variances, we're going to end up being the Township where they say, "Well, just go to the ZBA."

Dave Campbell – Yes, do whatever you want. If you get caught, go to the ZBA and they'll give you whatever you want.

Sovel – But, there have been some over the years where we have made them open up walls, take down some, et cetera.

McKeever – That's all part of making sure it's built to code.

Sovel – Right, but in the past, we've literally made them open up walls and they had done it with no plumbing. We have done that.

Discussion took place regarding Shady Point and the fire that took place right before Christmas. The fire took out four homes and part of a fifth. The setbacks are very small. The ZBA was creative and allowed the homeowners to keep and rebuild their homes, but with double drywall on the exterior walls and no exposed wood. It was allowed because the ZBA had flexibility then.

Sovel – I thought we did a good job with Shady Pointe. With this current ordinance, I don't know if those homes could be rebuilt.

Paula Lankford – Probably not.

Sovel – You guys are doing community service and you're doing a great job. It's not a fun job to do sometimes. On the elected side, we're here to represent, support and help residents get things done and deal with government. So, we're coming at it from two slightly different points of view. The Shady Point one is, to me, an example where an elected official should try to help to make it as safe as possible. They had to have a brick exterior. The reason we did the double drywall interior was to give more fire rating and more time for the Fire Department.

Chairperson Rosman – Yes, there was the fire rating number we worked with. But here is the reverse side of that. If we say you cannot rebuild, and I'm talking Shady Pointe, and these people can't live there anymore, they still have a mortgage. Nobody is going to buy their lot, so now, if I was a homeowner, I would turn to the courts. I would say, they've tied my hands. I can't rebuild. I have no place to live. I can't sell it. I need help.

Dave Campbell – I would say that speaks to #2 of the six existing criteria; *the variance will do substantial justice to the applicant*. So, if the ZBA makes a finding that the variance will do substantial justice, which I think is the scenario you're describing ...

Chairperson Rosman – Then we could give them a variance to rebuild.

Sovel – That's just one; they still have to meet all the others.

Paula Lankford – It has to meet all.

Sovel – And that's the problem. Under the old way, we could say yes because of #2 and ...

McKeever – In the Shady Pointe example, you can't find a reason that every one of those criteria would work?

Chairperson Rosman – You sure could.

McKeever – You could find reason to say that those six requirements are met.

Discussion continued regarding Shady Pointe.

McKeever – The situations where we are trying to give ourselves leeway on; I think the leeway is there already, it just might take some creativity to word it.

Sovel – You're saying two different things.

McKeever – I'm saying that by adhering to something strict, we are covered. Our attorneys are happy and they can defend us in any case. But, in your Shady Pointe example, if we get right down to applying this criteria, it was made to work.

Chairperson Rosman – That's true.

Dave Campbell – In my mind, the most challenging one is always going to be #4, self-created by you or the guy before you. It's tough to meet that one.

H. OTHER MATTERS: **Enforcement**

Chairperson Rosman – I do want to talk about enforcement because I'm furious. I live on Island Drive. There is a property with two front yards where Island Drive and Ridgemont meet. The owner has received at least 10 tickets. They have taken him to court and he does not care. The judge fined him \$250. Meanwhile, I'm looking at all of his garbage cans. He has two sheds, plus his garage. He has the trampoline and a gazebo. He has the smallest lot in the whole place and junk everywhere. The Township doesn't seem to have any teeth to get rid of it.

We have that all over the place, just like when you're driving up Martin Road at the roundabout where the K-9 is in the office building, at the corner of Oakley Park – every other window is plastered. That's too many and he can't get them to take them off. We have the karate guy on Oakley Park who has a big sign and he won't take it away. Where are the teeth that Commerce Township needs? We're paying us to do variances.

We're paying ordinance people to issue tickets. And, we're paying the lawyer, and it keeps going. What is wrong with this picture? There are some teeth missing and what can we as a community do? Is it in the lawyers? Is it in our ordinance? I don't know. But, I can tell you from living with it, and I'm talking 4 or 5 years now, nothing has moved on that guy's property and all he gets are tickets, over and over again. The judge just fines another \$250.

Dave Campbell – None of us can speak to how a judge makes their decisions. What I can say is, one of the biggest challenges with the Township for as long as I've worked here, and probably for Paula too, it's a problem of manpower. It's a problem of having enough people, boots on the ground, going out, finding and addressing these issues, and then following up on these issues. I think one of the issues with not having enough manpower, or person power, is you send somebody a warning or a ticket, but then there has to be follow-up, there has to be reassessment. When the personnel you have are stretched thin, some of that admittedly gets lost.

The good news is that the Township recently created and filled a full-time enforcement manager position. His name is Mario Gibbons. He has been on the job for two weeks now. He is full-time, whereas what we've had up until now is part-time officers. Mario is the boss of the part-time enforcement guys. My hope is that once Mario gets his footing and gets going, I think there will be much better follow-up on a lot of issues.

Chairperson Rosman – I agree with all of that. But my question is, when you have the follow-up, and then you have the owner say no, and the court fines \$250; my question is, you've got all that and they still go back and do whatever they want.

Dave Campbell – I hate to make this comparison, but that is similar to the frustration at the criminal level. The criminal that just keeps cycling through the incarceration system.

Sovel – We're not a city, we're a Township. So, all of our ordinances, anything punitive from that standpoint are civil infractions. We don't have criminal authority. Mario came from Novi and he has a lot of experience.

Chairperson Rosman – They're a city.

Sovel – Another city, but he will make the adjustments. But yes, we're limited as to how much we're allowed to charge somebody for fines. We can't charge them \$10,000 or \$1,000.

Chairperson Rosman – Why?

Sovel – Because we operate under the Charter Township Act. We are only given certain authority, and we have to act under that, and then it's up to the judge.

Chairperson Rosman – It breaks your heart because we finally got rid of his motorhome, which he put on another property where it doesn't belong in the front yard. His son built a pole barn without a permit, right across from the Library. I have people say to me, I have to pay for storage – he doesn't. Why can't I leave mine there? Every neighbor keeps a beautiful yard, and then there's garbage and tires everywhere. It's awful. Everybody who does it right is punished by the one who doesn't, and where is that equity to the other homeowners? I recognize that they have rights, but at what point

have they scaled the wall and they're on the wrong side of it now? Where is the protection for the ones doing it right?

Sovel – I understand. Well, we did win with the cat guy from Lake Sherwood.

Dave Campbell – But, how long did it take to get to that point?

Sovel – It took over two years.

Dave Campbell – And it wasn't for lack of effort. Getting through the court system is slow.

Sovel – I think we won that because everyone agreed it was a health and safety issue, where some judges view a boat sitting in someone's driveway is not a health or safety issue.

Open discussions continued regarding enforcement and related staff costs.

Debbie Watson – Rick, when people did not cut their grass, they used to be billed I'll say it was like \$60.

Sovel – I think it's \$400 now.

Debbie Watson – So I was just thinking of that related to what Rusty said. Is there any way to raise our ticket prices initially?

Sovel – I can ask Hans. There is a certain limit. We have a follow-up process for grass and when it hits 8 inches, then we have a company that we use.

Sovel continued discussions regarding grass cutting pricing, and placing the unpaid costs on the tax bill because it's a property issue. For some reason, tickets cannot be added to a tax bill. Chairperson Rosman reiterated enforcement issues on her street and how the fines are too insignificant. Sovel added that Mario needs about six months to get acclimated.

Traffic

Chairperson Rosman – With the sheriff's substation there now, have things calmed down on Martin Parkway by way of speeding and accidents?

Debbie Watson – I have not seen traffic stats lately, but I'm under the impression that we are having less accidents than we did a few years ago. I think people are starting to learn to drive better through roundabouts.

Dave Campbell – I think as the corridor continues to build up with buildings, landscaping, signs, et cetera, I think it just naturally makes people want to slow down. If everything around you is wide open, it feels like a speedway and you're going to drive fast. But once things start to develop and you've got things enclosing you more, people will naturally slow down.

Sovel – A comment I had from one of the officers was that you have a rough time speeding because you can't even get up to the speed limit most of the time. When 5 & Main happens, that will be even more traffic.

Dave Campbell – Two thoughts on traffic. We did have SEMCOG do a study for us and it was determined that 71% of the traffic through this Martin Parkway corridor, Martin, Richardson, Union Lake, 71% are people who came from outside Commerce and are going outside Commerce. They're just passing through. So, when people yell at us about traffic, you can only yell at us about 29% of that traffic. Everything else is just people passing through.

McKeever – It's not our traffic. It's Oakland County's traffic.

Chairperson Rosman – That's right.

Debbie Watson – It's regional.

Dave Campbell – The other thing I'll say about traffic is that the Township just found out a couple weeks ago that we got a grant to hopefully do two new roundabouts. One at Martin and Richardson, and the other at Union Lake and Richardson. That's being pulled from two different piles of federal money. The way the accounting works, the roundabout at Martin and Richardson would be in 2027, and Union Lake and Richardson would be in 2029. It will probably take all that time to design it, get the right-of-way, et cetera. Hopefully by 2029, we'll have two new roundabouts at those intersections, and everything will flow through there much better.

Grever – Does the Commerce Drive-In sign stay?

Dave Campbell – It will probably have to get moved.

Grever – I'm good with moved, but that's a cool landmark.

Dave Campbell – We agree with that. It's privately owned right now; the guy's name is O'Connell. Somebody would have to buy it from him, but we will figure that part out.

McKeever – Didn't they used to own the Bay Pointe car wash?

Dave Campbell – Tom O'Connell, yes. He doesn't anymore. It's now Jax. He owns a separate strip of property that the sign sits on.

Chairperson Rosman – Somebody said there was talk of a roundabout at Commerce, Commerce and Sleeth. Have you heard of that?

Paula Lankford – At the Chabad Jewish Center?

Chairperson Rosman – Yes.

Dave Campbell – I think the Road Commission looked at a few different intersections, that being one of them. They made some upgrades to the signalization of that

intersection. I think they added a dedicated left turn phase with a green arrow. But, I have not heard that there's any momentum to do a roundabout there.

Paula Lankford – They're talking about making the through lane a dedicated left. There is a green arrow now, but I think Larry said they're going to make it a dedicated left and you have to go to the right to go through.

Dave Campbell – Yes, that could be. That's easier said than done though, because now you have to change the geometry of the intersection and that can get expensive. The other big roundabout will be next year and it's at the goofy intersection of Duck Lake, Wixom and Sleeth.

Sovel – That bad part about that is when they shut it down for 4-6 months, I don't know where all of the traffic is going to go.

Discussion continued regarding traffic and federal grants.

Chairperson Rosman – That's good news. Are we asking for grants for anything else?

Sovel – We ask for grants all the time for anything we can get.

Dave Campbell – Parks and Recreation Department is always looking for grants.

Sovel – The Fire Department, Parks, Library.

Dog Park

Chairperson Rosman – What's going on with the Dog Park?

Dave Campbell – I think the fence is supposed to go in next week. At that point, it will be open to the public.

Sovel – Part of the park caved in on the south side of Victory Park. It's one of the underground silos or a shaft.

Debbie Watson – Mark in Maintenance mentioned that last week, but he said it's not too close to the Dog Park.

Sovel – No, it's not going to affect the Dog Park, but we're trying to figure out what our options are.

Richardson Center

Chairperson Rosman – What else are they doing at Richardson Center? Somebody said something about parking.

Debbie Watson – Additional parking, yes. I believe that was about 50 spaces. They're extending it to the east.

Chairperson Rosman – What are they doing at the intersection of S. Commerce and Oakley Park and over toward Richardson?

Dave Campbell – They are putting in new traffic signals.

Yard Waste

Sovel – Yard waste pickup starts the first week in April.

I. CORRESPONDENCE:

None.

J. PLANNING DIRECTOR'S REPORT:

Dave Campbell had addressed his report at the beginning of the meeting.

K. ADJOURNMENT:

- **NEXT REGULAR MEETING DATE: THURSDAY, MAY 15, 2025, AT 7:00PM.**

MOTION by Grever, supported by Mistele, to adjourn the meeting at 8:22pm.

ROLL CALL VOTE:

AYES: Grever, Mistele, Rosman, Sovel, McKeever

NAYS: None

ABSENT: Mills

MOTION CARRIED UNANIMOUSLY

Robert Mistele, Secretary