

PROCEEDINGS OF

**PERSONNEL COMMITTEE
BOARDS/COMMISSIONS COMMITTEE MEETING
CHARTER TOWNSHIP OF WEST BLOOMFIELD
CONFERENCE ROOM 76
4550 WALNUT LAKE ROAD
WEST BLOOMFIELD, MI 48325**

MONDAY, JANUARY 8, 2007 --- 3:00 P.M.

CALL TO ORDER

The meeting was called to order at 3:08 p.m. by Trustee Spector.

ROLL CALL

Members Present: Trustee Deborah Macon
Trustee Robert Sher
Trustee Robert Spector

Members Absent: None

In Attendance: Kent Herbert, Personnel Director
Marshall Labadie, Environmental Director
Gary Dovre, Township Attorney
Sara Oltarz-Schwartz, Wetland Member
Gerald Chudler, Wetland Member

APPROVAL OF AGENDA

Motion by Mr. Sher and supported by Mr. Spector to approve the agenda as submitted.

Ayes: Sher, Spector

Nays: None

Absent: Macon

Motion carried

APPROVAL OF MINUTES

Motion by Mr. Sher and supported by Mr. Spector to approve the minutes of 11/21/06 and 11/27/06 as submitted.

Ayes: Sher, Spector

Nays: None

Absent: Macon

Motion carried

SET NEXT MEETING DATE

The next meeting was scheduled for Monday, January 29, 2007 at 3:00 p.m. to discuss the Wetland Ordinance changes and Monday, February 26, 2007 at 3:00 p.m.

UNFINISHED BUSINESS

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)

Mr. Spector turned the meeting over to Mr. Sher for discussion of this Boards/Commissions item.

Mr. Sher stated the Committee received a copy of the proposed changes to the Wetland Ordinance. He stated the email from Attorney Dovre indicated that Section 12-38 calls for the insertion of standard conditions that are typically required by the Wetland Review Board regarding Sections 12-76 and 12-95. The “...” that appear after each entry is to indicate that for each of these types of operations, it may be appropriate to insert some limitations or restrictions.

Mr. Sher stated Attorney Dovre’s email also indicated that with respect to the woodland provisions of the Zoning Ordinance, there did not appear to be that many appropriate opportunities for administrative permitting.

Mr. Spector suggested that the new member as well as the new chairman of the Wetland Board be given an opportunity to review the proposed changes and to have the issue come back to the Committee on February 26th.

Mr. Herbert suggested that the issue be brought back to a late January meeting. Mr. Spector stated the Township Board only allowed the Committee to hold a specific number of meetings to discuss this issue.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre stated that included on the Township Board's 01/08/07 agenda is a resolution from the Wetland Board formally requesting that the Township Board allow the board members to participate in the process of the proposed changes to the Wetland Ordinance.

Attorney Dovre stated the following changes have been added: (1) a definition of *administrative permit* and (2) a definition of *director* which is less wordy than Director of the Environmental Department. He stated the current ordinance still refers to the Michigan Department of Natural Resources (MDNR), when in fact, it is now the Michigan Department of Environmental Quality (MDEQ), which is the State agency that administers the Wetland Protection Act.

Attorney Dovre stated he also provided a definition of *mitigation* which is a very short statement and is not intended to cover every possible kind of mitigation. The language comes from the administrative rules which the State uses under the Wetland Protection Act.

Attorney Dovre stated the first big issue is the definition of *minor project*. He stated that minor projects are those that are eligible for administrative permitting and that is the significance of the definition. The proposed draft retains the old fast track permits and indicates that anything that came under the fast track permit process could be treated as a minor project.

Attorney Dovre stated the definition of minor project also indicated that things which are not fast track could also be a minor project if they meet the following criteria: (1) involve single family residential, (2) the proposal is connected to a lawful use of single family residential and has to receive as well as be in compliance with all other possible township permit or approval conditions such as building permits.

Attorney Dovre stated that if an individual wanted an administrative permit for a project that also needed a building permit from the Building Department, they would have to provide evidence of receiving that particular permit prior to applying for an administrative permit. This would apply to all other permits that are required for the project.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre stated that a punch list containing ten items has been provided which would be used to determine whether a project could be considered a minor project. Those items are as follows: (1) anything by a public agency or utility such as the Drain Commission's office, Detroit Edison, or Consumers Energy, (2) anything that requires site plan approval, (3) anything that alters the shape, condition, or function of a wetland or watercourse, (4) new homes in a wetland or environmental features setback, (5) placement of new structures in a wetland, (6) other kinds of impacts in a wetland if they are not for enhancement, improvement, or removal of invasive species, (7) more than 25% impact on existing environmental features setback areas, (8) net loss of the function or value of a resource protected, (9) operations that have already been commenced (no after-the-fact permits), (10) a property that has outstanding problems with respect to compliance with the law.

Marshall Labadie, Environmental Director, stated that a decision has to be made with respect to removing the fast track permit process because once the administrative permit process is created, the fast track permit process will not be necessary. He stated the fast track permit process still requires a staff report and review by the Wetland Board.

Mr. Spector asked if the proposed changes to the Wetland Ordinance provided some type of protection that clearly indicates the responsibilities of the director. He asked if there were a set of guidelines or standards that matched the language in the ordinance.

Ms. Macon stated that years ago there were issues with whether staff procedures were being done properly and she was confident that issue has been fixed. She suggested that the Environmental Director job description include a reference to administration of the permit process.

Mr. Spector stated there have been cases which the Township has lost in court because language was not clearly stated in the ordinance. Mr. Labadie stated abuse of discretion would be caught by the public notice procedures that are included in the ordinance.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre referred to paragraph iii on page 4 which indicated that individuals have a right to challenge a decision of the director if he or she felt the director has not properly interpreted and/or applied the chapter in determining whether a permit should be issued. Therefore, the ordinance allows an individual to file an objection to a notice of intended administrative permit on that basis and the ordinance retains the right of an appeal of an administrative permit decision by the director. Therefore, the ordinance provides some protections, but it does not attempt to indicate how the director is to exercise the discretion.

Attorney Dovre stated that consistent with the West Bloomfield ordinance scheme, the Township Board is the final arbiter of appeal matters. He stated that most every decision made below can find its way to the Township Board before it finds its way to court. This provides the Township Board with an opportunity to possibly avoid court action.

Ms. Macon referred to page 2 regarding operations that have already been commenced and suggested that language be added to indicate that no after-the-permits would be eligible for administrative permits.

Attorney Dovre referred to page 2 regarding Administrative Permit Applications. He stated this section allows an applicant to ask for an administrative permit by giving additional items. The applicant still has to satisfy the same requirements that are already included in the ordinance. Therefore, it is clear that this is not a short cut in terms of information given. An applicant will be required to give more information than what otherwise would be required.

Attorney Dovre referred to Section 12-38 regarding having standard terms and conditions that are part of every permit. He stated that with an administrative permit, there is no way around those terms and conditions.

Attorney Dovre stated that with respect to wetland permits, the State law requires that decisions be made within 90 days of an application. The proposed ordinance allows the director to deny an administrative permit and in that case, the application can be referred to the Wetland Board, but treated as a new use permit application and the applicant has to acknowledge that up front.

Attorney Dovre stated the ordinance requires an applicant to submit a copy of a contract if they have one. If not, an accurate cost estimate has to be submitted as well as who will be performing the work.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre stated that every administrative permit will have a preservation notice recorded with the Register of Deeds and the applicant has to acknowledge up front that notice will be posted on the property to indicate that there is a pending permit and are required to have the work and mitigation areas accurately staked and marked. Pictures of the property will be on file and open for public inspection.

Mr. Labadie stated the fast track permit process would no longer be necessary since the administrative permit process would include minor projects.

There was a consensus of the Committee to recommend that the fast track permit process be removed from the ordinance.

Attorney Dovre referred to page 3 regarding administrative permit review and approval. He stated the director has to review the application to determine whether it is complete and if not, he must provide written notice to the applicant as to what needs to be provided. If the director determines that an administrative permit should be issued, he proceeds with the steps outlined in the notice provision. If the administrative permit is denied by the director, the request is then referred to the Wetland Board as a new permit.

Attorney Dovre stated that if the director decides that an administrative permit should be issued, notification is provided to everyone who would have received notice of a public hearing of a traditional Wetland Board hearing. The members of the Wetland Board will also receive notification in a manner so designated. The notice will also be posted on cable and the website; however, it will not require a newspaper publication.

Attorney Dovre stated the following items must be included in the notice: (1) the applicant's name, (2) property address, (3) description of request, (4) location of the application for review at the Township offices, (5) an actual date on which the administrative permit could be issued (he suggested that it be at least 21 days after the date of the notice), (6) explain the right of persons or associations entitled to notice to file written objections or challenges to the administrative permit on or before the date of intended issuance. The objections or challenges must be based on and include some substantiation for claims that the director has not properly interpreted and/or applied the chapter in the ordinance and that the proposed operations warrant a broader review or that feasible and prudent alternatives exist.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre stated that if no objections are received within the time allowed, the director shall issue the permit. If objections are filed, the director must provide copies to the applicant and could still approve the permit for issuance which is subject to the appeal period. If the permit is issued, the director has to provide written notice to anyone who filed objections. If the director determines that the challenges or objections may have merit, he provides written notice to the applicant that the permit is denied and a new request must be filed.

Attorney Dovre stated the final provision enumerates the items which must be included with an administrative permit. There has to be a deadline for doing the work and mitigation as established by the director and a bond or other performance guarantee for 125% of the cost to ensure the project is done satisfactorily and in a timely manner.

Mr. Labadie referred to the performance guarantees and expressed concern that requiring 125% of the cost of the project might be burdensome for some individuals.

Mr. Sher asked if the applicant would have to come up with money or a bond. Attorney Dovre stated that cash is always good. However, surety bonds and letters of credit are also good if they are properly drafted. He stated a personal bond could also be used which is similar to what a judge gives to a defendant who is cited for a misdemeanor traffic violation. He stated the personal bond involves the individual signing a piece of paper promising to return to court on a specified date and acknowledge that they are going to be at risk for a dollar amount if they do not return.

Attorney Dovre stated that within the context of the administrative permit, the performance guarantee could be expanded to include a personal bond which results in the township having a lien on the applicant's property.

Ms. Macon agreed with the personal bond resulting in a lien on the property in the event the applicant failed to meet the requirements for completion of the project. Attorney Dovre stated the downside of a lien on the property would involve the Township fronting the costs to get the work done.

Sara Oltarz-Schwartz, Wetland Board member, expressed concern that a personal bond could cost the Township more money for a minor project to get the work done. Therefore, she felt there needed to be some type of assurance up front. She questioned what the cost would be to the Township with respect to legal fees in the event an applicant was not able to pay for the costs.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre stated the process could be set up without requiring the involvement of the Township Attorney. He stated the proposed language requires the applicant to provide the name of the contractor as well as a cost estimate.

Mr. Spector stated the purpose of the personal bond is to ensure that the project would be started and completed. Attorney Dovre stated the personal bond would be similar to a secured promissory note. The ordinance language would be drafted in such a fashion so that it could be placed on the delinquent tax roll and certified in September.

Mr. Spector asked that when the director makes a determination and there are objections, would those individuals be required to file a written objection with the director. Attorney Dovre stated that was correct and indicated that the objection had to be based on and include some substantiation.

Mr. Spector asked if the administrative permit process would basically replace the fast track permit process. Attorney Dovre stated that if the administrative permit process is created, there would be no need for the fast track permit process.

Mr. Spector stated he understood that and questioned the review of the Wetland Board. Attorney Dovre stated the notice is provided to the Wetland Board as well as residents and subdivision associations.

Mr. Spector asked if the Wetland Board could file objections. Attorney Dovre stated the members of the Wetland Board would be entitled to receive notification. He stated that with a short 21-day time frame, he did not feel it was appropriate to actually create a situation in which the Wetland Board as a body had to meet and take a position on an administrative permit. He stated that a member could file objections on the recognized grounds and the director would have to review that objection and make a call. Therefore, the Wetland Board would still have an opportunity for input.

Ms. Macon referred to paragraph (e) on page 4 and indicated that there appeared to be two different scenarios. She stated that the administrative permit would include a deadline for performance and a penalty for not completing the project by the deadline. She saw two circumstances for non-compliance or incomplete performance: (1) the work was started and not proper and (2) the work was not started at all. She felt the two circumstances should be separated and responded to differently.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Ms. Macon stated a lien on the property would be appropriate in a situation in which the work was started and improper or not in compliance with the permit. She stated that if a permit was issued and the permit was not acted upon at all the following should be done: (1) the Township should void the permit, (2) require a mandatory fee to compensate for staff time devoted to a project that did not occur, and (3) a mandatory six-month postponement of any subsequent re-application.

Mr. Herbert expressed concern that Mr. Labadie would have to handle the objections from the Wetland Board and felt the entire purpose of the ordinance could be defeated by having individuals creating false issues.

Gerald Chudler, Wetland Board member, agreed and indicated that when the fast track permit process was created, the objection he had was that there was a lot of pressure on the staff to keep up with it.

Attorney Dovre stated the ordinance currently indicates that a fast track permit approval shall be effective immediately and remain in effect for a period of 60 days. He stated that his draft included a deadline for performance of operations and mitigation established by the director. He did not include a time frame in his draft because different projects warranted a different deadline. However, a specific deadline could be included. He stated that if an applicant did not meet the deadline, their permit lapses.

Attorney Dovre stated that in drafting the proposed changes, his understanding was that the fees which would have been charged to the applicant would have covered staff time for everything up to the point in which the director approved the permit and indicated that completion of the project be done by a specific date. So if an applicant allows their permit to lapse with no activity, it would not be necessary to collect additional funds if the fees were set up correctly.

Attorney Dovre stated that barring an individual from making a subsequent application was not addressed in the draft. Ms. Macon stated that her earlier suggestion was to postpone subsequent application by an individual and indicated that there is a penalty for failure to act within a reasonable amount of time unless there are extenuating circumstances.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre stated his reservations with respect to including a provision for deferral, subject to exceptions is that it builds another decision into the ordinance that could be scrutinized by anyone. Ms. Macon stated there were only so many extenuating circumstances that would be valid. Attorney Dovre stated although that was true, someone would still have to make a call on whether those extenuating circumstances were valid.

Mr. Spector stated the administrative permit would only include minor projects and therefore, it would not require the involvement of the Township Environmental Consultant. Therefore, the standard fee paid to the Township up front would cover the administrative costs.

Mr. Sher asked how Mr. Herbert's concern relative to objections by the Wetland Board would be addressed. Attorney Dovre stated that although the proposed ordinance changes were set up such that the Wetland Board members would receive notice and could file objections on the recognized standards, appeals of an administrative permit approval cannot be done by members of the Wetland Board. Rather, the appeals would be limited to individuals and associations who were entitled to notices. He expressed concern with a decision-making body having appeal rights to the Township Board.

Mr. Herbert asked whether an appeal of an administrative permit should be handled by the Wetland Board rather than the Township Board. Attorney Dovre stated the Wetland Board would have the opportunity to comment on a case and if there was something which they felt was not considered by the director, it could be brought forward. However, he did not feel they should be able to do that in order to force the matter to appear before them as an appeal.

Mr. Labadie indicated his agreement with the language regarding the appeal process. He stated the administrative permits would only involve very minor projects and therefore, he felt there should be a lesser cost and a more expedient process.

Mr. Chudler stated that what the Township viewed as minor projects might be viewed as major projects to the petitioners. He provided an example of a case that was scheduled to appear before the Wetland Board involving two neighbors arguing over the removal of shrubbery and indicated that it could possibly result in a lawsuit. He stated that type of request would normally go before the director to make a decision relative to an administrative permit.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Mr. Labadie stated he would send that type of request to the Wetland Board because it involved an argument between neighbors on a property and he would not allow them to cut or trim the trees in the area of the boat launch because he did not feel it was necessary to do so. Therefore, those applicants were asking for something beyond a standard that would be in place in some fashion.

Mr. Chudler asked if he felt comfortable taking on the administrative permitting process. Mr. Labadie replied, "Yes, on minor projects."

Mr. Spector stated that Ms. Macon spent a substantial amount of time on this issue and the Committee at that time felt there was enough interest in the community to have an administrative permitting process.

Mr. Labadie stated the proposed administrative process is unparalleled anywhere else in the State of Michigan because it is based on design criteria and standards in a sense where there is not full discretion by the director because the application is required to meet those criteria and standards.

Attorney Dovre asked if the Committee was comfortable with the language indicating that an appeal of the director's decision by the property owners and lake associations would go before the Township Board. Mr. Sher replied, "Yes."

Attorney Dovre referred to page 5 and indicated that if an individual did not agree with the discretionary conditions, they would not be able to obtain an administrative permit and would have to go before the Wetland Board to obtain relief from any of those conditions.

Attorney Dovre stated that compliance with everything in the design criteria and standards as determined by the director is required for minor projects to be considered for an administrative permit and may be required for other use permits by the entity with final approval authority.

Attorney Dovre stated that if the design criteria and standards were valuable enough for administrative permits, then they probably should be something that the boards and commissions making decisions on more formal permits, could also take into account.

REVIEW OF PROPOSED WETLAND ORDINANCE CHANGES (DOVRE, LABADIE)
(Continued)

Attorney Dovre referred to the language in the ordinance which indicated that in the absence of a demonstration by the applicant to the board or commission that compliance with one of the design criteria and standards is not feasible and prudent, it is not necessary to assure the operation will cause the least possible damage and encroachment. He stated that basically applicants will have the burden of proof to show why they feel it is not necessary to apply the design criteria and standards in the project.

Attorney Dovre referred to Section 12-75 and 12-95 on page 7 which enumerated the items that could be approved by administrative permit subject to any restrictions or limitations if it falls within the definition of a minor project.

Mr. Spector asked if Ms. Macon was satisfied with the proposed ordinance changes. Ms. Macon stated this process was one which the Board elected from 2000 to 2004 indicated should be done. However, it was never done and therefore, the Township Board elected from 2004 to 2008 can indicate that it is now seeing that appropriate actions happen as indicated.

NEW BUSINESS

DISCUSSION OF ANY OUTSTANDING ITEMS

Ms. Macon referred to page 3 of the 11/21/06 minutes and indicated there was one open item regarding whether the Committee received permission from the Township Board to move forward on the following items: (1) consistent meeting rules, (2) review of off-site practices and (3) consideration of pro-active roles for boards and commissions.

Ms. Macon referred to the minutes of 11/27/06 and indicated there were two open items. She stated that in the motion on page 7 the Committee agreed that there should be a common definition of what it takes to be removed from a board or commission. The Committee agreed that the State standard of misfeasance, malfeasance, and non-feasance would be appropriate. She stated that the item needed to be presented to the full Board for their consideration.

DISCUSSION OF ANY OUTSTANDING ITEMS (Continued)

Ms. Macon referred to page 10 of the 11/27/06 minutes in which Mr. Herbert indicated that Mr. Flaisher believed a system currently exists regarding customer feedback on the work of various boards and commissions. The Committee needed to indicate to the full Board that they were recommending that the Supervisor's opinion be adopted or discuss it and determine that there needs to be a system for feedback regarding the work of various boards and commissions.

Mr. Spector stated there was a problem with consistency of the meeting rules for the boards and commissions. Ms. Macon stated the Committee agreed that the rules should be consistent and that discussion was necessary; however, they have not asked the Township Board for permission to have that discussion.

Mr. Spector asked whether they could require the boards and commissions to adhere to the current Meeting Rules and Guidelines used by the Township Board. Ms. Macon stated that was an item which needed to be discussed on a future agenda.

SETTING OF PERSONNEL COMMITTEE MEETING AGENDA ~ (A) GRIEVANCE APPEALS (IF ANY) AND (B) JOB DESCRIPTIONS (DEVELOPMENT DIVISION)

The meeting was turned over to Mr. Spector at this point.

Mr. Herbert stated that according to the Firefighters contract, there was a possible grievance. He stated that in the chain of grievance appeals, an appeal comes to the Personnel Committee. There were only two units that have that provision. He stated it was possible that it would be submitted in time for the next meeting.

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Mr. Herbert stated there is an implementation date of 04/01/07 for the Development Division and the job descriptions were due during the month of January. He stated the four department heads were currently working on the job descriptions and they should be ready for distribution to the union within two weeks. He stated that only two or three job descriptions would have to be changed.

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Proceedings of Personnel Committee Meeting
Monday, January 8, 2007 — 3:00 p.m.

AUDIENCE GENERAL COMMENTS / QUESTIONS

None.

ADJOURNMENT

There being no other business, the meeting adjourned at 4:41 p.m.

Robert Spector
Personnel Committee Chair

Transcribed by: Millie Gray, Recording Secretary