

WEST LAKELAND TOWNSHIP

Regular Meeting

Nov 15, 2011

7:00 p.m.

Oak-Land Jr. High School

Present: Chairman Dan Kylo, Supervisor Dave Schultz, Supervisor Steve Ebner, Mr. Ed Semrud, Treasurer; Ms. Sue Agrimson, Clerk; Mr. Scott McDonald, Attorney; Mr. Duane Stensland, Building Inspector, Mr. Frank Ticknor, TKDA, Township Engineer, Mr. Dave Dupay, Planning Commission Chair

Public hearing –Conditional Use Permit, Todd and Erica Fultz

Chairman Kylo called to order a public hearing at 7:00 PM to consider an application by Todd Fultz and Erica Fultz, owners of the property at 2270 Neal Ave North for a conditional use permit in the SFE district for operation of a wedding or other similar ceremony facility in Section 19, West Lakeland Township. The subject property is bounded by Neal Avenue on the east side and lies approximately ½ mile south of 30th Street. Mr. Fultz explained the request, where having a large lot with a number of historic buildings; he and his wife would like to host ceremonies. The proposal is similar to what is done at Camerose Hill and elsewhere in the area. Mr. Fultz noted that they do not live on the property, but spend considerable time there, and have invested in improvements to the property and the buildings. The ceremonies would provide a source of income to offset the cost of maintaining the property. Mr. Fultz noted that they had recently hosted a Halloween event, with over 100 children, and 75 adults, and 65 cars. There were no issues from that event, and no traffic concerns. This demonstrates that events of this scale can be held on the property without disrupting the neighborhood.

Mr. Dupay presented the recommendations from the planning commission. The planning commission noted that this use is not specifically allowed in the SFE district as a conditional use. Consideration might be possible when considered as a home occupation, and that would require the board to determine that the use fits under the ordinance definition. The considerations for both town and county definition are that the use is subordinate to the use as residential. The county code requires that the business is created and run by the occupant of the dwelling. The planning commission recommended conditions, should the request be approved. The conditions included hours of operation from 10 AM to 8 PM or dusk, not in hours of darkness on Friday, Saturday or Sunday; parking on the site, with no overnight parking and monitored traffic control; maintaining the vegetation on the site; maximum attendance of 250 persons per ceremony and 75 ceremonies per year; signage only for event days; no social gatherings or receptions; a representative of the business on the site for all ceremonies; and no township liability. Concerns were raised over the sightlines on Neal Avenue with regards to traffic control. In addition the driveways would need to be evaluated by the township engineer to ensure it is sufficient for the traffic.

Mr. Fultz asked that it be considered as an allowed use as a place of worship, as he considers a wedding ceremony a place of worship which would be a permitted allowed conditional use in the SFE zone.

Mr. Robert Dew, 2008 Morgan Ave, submitted written comments to the clerk, and asked that these be included in the record. He was disheartened that the application as presented and sent with the public hearing notice did not hold the detail, including the proposed conditions and the consideration as a place of worship that was under current discussion. Mr. Dew also expressed concerns about the traffic that could affect the

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neighborhood for the weekends in the spring, fall and summer. With 35 homes in the neighboring development, this would increase traffic 10 fold on the local streets. Written comments also address the effect on property values. The use is not in keeping with the comprehensive plan, which portrays the SFE zone as rural residential. In Mr. Dew's opinion, the use is commercial, and belongs in a commercial zone. Mr. Dew noted that the buildings on the site are old, dating back to the 1800's, but are not registered as historic. Mr. Dew also raised concern about parking that number of cars on a non-impervious surface over time. Chairman Kylo acknowledged Mr. Dew's comments had been received, and cosigned by 13 additional residents.

Mr. Paul Sauvell, 2387 Morgan Ave, indicated he purchased his lot to enjoy the quiet, rural residential lifestyle. The conduct of these ceremonies would drastically change the nature of the property, and was not the type of activity expected when they purchased the lot. He also has concerns as a bicyclist, for safety on the streets for himself and neighborhood children.

Mr. Steve Lockridge, 13224 23rd St N, also chose this neighborhood because it did not have any commercial activity and had minimal traffic. His opinion is that the roads do not have the width or sufficient shoulders to accommodate all these additional cars. He questioned the categorization as a place of worship, in that open services were not part of the proposal.

Mr. Joseph Wren, 12772 22nd Street, is directly west of the property under review. If he had any idea a business could be established on the site, he would not have purchased that lot. Written comments were also received from Mr. and Mrs. Wren.

Mr. Timothy Cusack, 12786 22nd street, also borders the property under review, raised concerns about the ability to use his property as he desires with the activity next door, and has concerns about the traffic that will result.

Ms. Bonnie Nelson, 12979 20th St, raised concerns that the Fultz' family does not live on the property. She also commented on the narrow street and small shoulders on Neal Ave. She also asked if the portable latrines would be moved after each use.

Mr. Mike Magler, 2200 Neal Ave, raised a concern with the consideration as a place of worship, in that it may allow for alcohol to be served. He lives adjacent to the property, and does not want alcohol served for any purpose. Mr. Fultz agreed that alcohol would not be provided, and would provide measures to ensure it was not on the site.

Mr. Fultz responded that he wanted to provide a use that was not intrusive into the neighborhood, and would do what was necessary to manage the traffic and noise. There are a lot of home occupations in West Lakeland, so a business use in the SFE district is not unknown. He noted the number of improvements, included increasing the plantings along the lot line, to improve the property and minimize impact on the neighbors.

Mr. Thill, as the developer of Artisan, also raised concern about the additional traffic. A traffic study for Neal Ave has been requested, and will not be done until at least the summer of 2012. Until that time it is a 55 MPH road.

Mr. Votova asked if this were a for profit enterprise, in that most places of worship are not for profit, and per the IRS definition, must be not for profit. This is intended to be a for profit enterprise.

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Mr. McDonald noted that the consideration before the board was to determine if this use qualifies as a place of worship under the Township code. It does not qualify as a home occupation use. If not a place of worship, the use is not allowed, and if determined to be a place of worship, it is allowed, but conditions can be placed on the operation.

Chairman Kyлло closed the public hearing at 8:02 PM.

Call to Order

The regular meeting of the West Lakeland Board of Supervisors was called to order at 8:02 PM.

Approval of the Minutes

The minutes of the October regular meeting were reviewed, and minor corrections made. Supervisor Schultz moved to approve the minutes as corrected. Seconded by Supervisor Ebner, the motion carried.

Treasurer's Report

In Mr. Semrud's absence, Ms. Agrimson provided the treasurer's report. The report reflected receipts of \$12,000 in October, and expenditures of \$15,000. Chairman Kyлло moved to approve the report as presented. Seconded by Supervisor Schultz, the motion carried.

Review and Pay the Bills

Chairman Kyлло moved to pay the invoices presented. Seconded by Supervisor Ebner, the motion carried.

Review Conditional Use Request from Mr. and Mrs. Fultz

Chairman Kyлло noted that the comments received in the public hearing portion of the meeting will be taken into consideration in the decision.

Supervisor Ebner agreed with a number of the concerns raised. He also has concerns about the volume of traffic, and what it would mean for safety on the roads and for road conditions over time. He also questioned if this use qualified as a place of worship.

Mr. McDonald noted that the IRS has provided a definition of a place of worship, but there are few other legal guidelines. The IRS definition has 14 factors of consideration, of which some, not all must be met. The qualification as a place of worship is done in the totality of these factors. These factors include a distinct legal existence, creed, formal code of doctrine, distinct religious history, ordained clergy, established liturgy, regular services, schools for religious instruction, and schools for preparation of ministers. Most of the factors do not appear to apply in this instance. Per the County code, a place of worship is a building where there are regular assemblies for public worship. Parking standards in the township code for places of worship is one space for every three seats.

Chairman Kyлло noted the request was for a conditional use as a place of worship to conduct wedding ceremonies. If determined to be qualified as a place of worship, the secondary consideration would be the appropriate conditions to apply to that use. His

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opinion is that this use does not qualify, in that it is intended to be a for profit venue, not a place for assemblies for public worship. He does believe the Fultz' would be responsible in the execution of the use, but the use is not allowed, in his opinion. There are also concerns about the amount of traffic and number of people being brought into a residential neighborhood.

Chairman Kyлло further noted that a similar use, Camerose Hill, does exist in the township, under a valid home occupation permit issued in 2002, and was in fact in operation prior to the adoption of the code regulating home occupations.

Supervisor Schultz also expressed concern that this use did not seem to meet the criteria of a place of worship, but was a for profit wedding venue.

Chairman Kyлло moved to deny the application as requested as not allowed under the definition of a place of worship as interpreted from the county code, IRS regulations, and common sense judgment, and directed the attorney to prepare a resolution to that effect. Seconded by Supervisor Ebner, the motion carried.

Renewal of Gravel Permit for Harddrives, Inc.

Mr. Kevin Gannon, of Harddrives, Inc., formerly Tower Asphalt, could not be present for the review of the renewal of the gravel permit. This review will be rescheduled.

Lot Line Adjustment, 2235 Oakgreen

Mr. David Mills, 2235 Oakgreen, appeared with a completed survey that shows the 2.5 acres to be purchased from his neighbor, Mr. Ed Bigaouette, and appended to his existing lot. The release from the mortgage company to allow the lots to be combined is pending the disposition of the existing mortgage, and will be resolved in the next year. The desire is for the survey and legal description indicating the combining of the two lots, to be approved, pending execution at a date in the future. Chairman Kyлло moved to approve the lot line adjustment, based upon the survey from EJ Rood and Sons dated Oct 25, 2011 and a letter of understanding received to agree to combine the new parcel with the existing parcel, and to hold the approval in abeyance for up to one year, and to be executed when the deeds are registered. The motion was seconded by Supervisor Schultz, and carried. Mr. Mills was requested to post an escrow for the pending legal work.

22nd Street Project

Mr. Ticknor reviewed the status of the cooperative agreement request for work on 22nd Street. The request is still under review at the Minnesota Department of Transportation. The next step is to draft a response to the comments provided from each functional group that has reviewed the request. This is also an opportunity to modify the request with any additional information, such as the most recent traffic count. The deadline for response is November 29th.

The question was also raised if it would be prudent to begin preliminary planning so that, if approved, the timeline to execution could be reduced if 2012 funding was to be used. Supervisor Schultz noted that he has received quotes for borings on the street, ranging from \$2700 for the area immediately in the work area, and \$4,000 for the full

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street. Mr. Ticknor estimated that the technical work to prepare the staff layout, first phase of planning, would be about \$4,000.

Chairman Kylo moved to authorize \$4,000 for American Engineering Testing or to Braun Intertek, to complete borings for 22nd Street. Seconded by Supervisor Schultz, the motion carried.

Chairman Kylo moved to authorize Mr. Ticknor to respond on behalf of the township to MnDOT's letter for further comments on the 22nd Street request for cooperative funding to meet the November 29, 2011 deadline. Seconded by Supervisor Ebner, the motion carried.

Chairman Kylo moved to authorize expenditures up to \$5,000 for Mr. Ticknor to prepare the staff layout for the 22nd Street project. Seconded by Supervisor Ebner, the motion carried.

Corrections to Town Ordinance

The revisions proposed to Section 12, replacing 12.5.6 through 12.5.10 were given to the supervisors for review. Changes to Ordinance Section 14, special well advisory area, were also provided for review. The discussion was tabled until the next regular meeting.

Nonconservation Land in West Lakeland Township

The township received a letter from Washington County, dated Oct 18, 2011, regarding a parcel of land, 0.02 acre on Olene. The township has first option for the land for public use, prior to being placed up for auction. Chairman Kylo moved that a response be drafted indicating that the township preference was for the county to auction the forfeited property to the adjacent landowners. Seconded by Supervisor Schultz, the motion carried.

Search Committee for Township Treasurer

The committee reported that it has received 2 applications and 2 additional resumes for the position. Resumes were provided to the supervisors for review. The Township also received a proposal from the City of Bayport to provide accounting and treasurer services on a contract basis. Chairman Kylo moved to have the clerk contact the applicants and schedule a special meeting in order to conduct personal interviews, focusing on the last week of November and first week of December. Seconded by Supervisor Ebner, the motion carried.

Additional Business

The Township holiday gathering is scheduled for December 12th, from 5 to 7 PM. The regular meeting is to follow.

Mr. McDonald reported on the results of the court hearing for Michelle Dudgeon. She pled guilty to one charge, the other was dismissed. The judgment was a fine, suspended fine, and the authorization to inspect the property with 24 hours' notice.

Mr. Stensland brought forward a request for 13812 24th St Ct in the Artisan development for review of the driveway, rain gardens and pool. He needs additional expertise in evaluating this proposal. The assumption was that Valley Branch would

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provide additional engineering review of the surface water management. Supervisor Schultz moved to authorize Mr. Ticknor to contact Valley Branch Watershed District and coordinate review and inspection efforts for erosion control at 13812 24th St Ct, with the expense to be charged to the driveway escrow. Seconded by Chairman Kylo, the motion carried.

Adjourn

Supervisor Ebner moved to adjourn the meeting. Seconded by Supervisor Schultz, the motion carried. Chairman Kylo adjourned the meeting at 10:00 PM.

Respectfully Submitted



Elizabeth A. Vance
Deputy Clerk