

**TALLMADGE CHARTER TOWNSHIP
REGULAR BOARD MEETING
HELD ON
TUESDAY, JULY 9, 2013
AT 7:00 P.M.
www.tallmadge.com**

I. CALL TO ORDER James Van Ess, Supervisor, called the meeting to order and Joel Terpstra opened with prayer and the Pledge of Allegiance.

Members present: James Van Ess, Lenore D. Cook, Brenda Martin, Gerald Walt, Clifford Bronkema, Michael Eppink, Joel Terpstra and the Township Attorney, Ron Bultje.

II. CONSENT AGENDA Joel Terpstra moved, Michael Eppink supported, to approve the minutes of the June 18, 2013 regular meeting, to approve the bills to be paid in July of 2013 as presented and to accept as information the treasurer's report, legal update and correspondence if any. Motion passed unanimously.

III. PUBLIC PARTICIPATION

Matthew Fenske, County Commissioner, gave an update on resource study regarding water levels in Ottawa County, fracking seminar, support farmers breakfast at the Arlyn Walt farm, State of Emergency, and Road Commission study.

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

A. Public Hearing – James Kragt of 0-544 Kozy Kove is requesting a variance from Section 1.03B of the Private Road Ordinance to expand a private road in the R-1 Zoning District. The Supervisor opened the public hearing. James Kragt explained that he is requesting to add four additional lots on a private road. He currently has eight existing lots using the private road. This variance for a private road in the R-1 District was granted in 1998. A concerned township resident, Mr. Butkis, spoke in favor of allowing Mr. Kragt to create four more lots and one letter was received speaking against the variance.

The property is zoned R-1 and Mr. Kragt's request for a variance would expand a non-conforming use of a private road in the R-1 district. The Township allows private roads in R-P and Ag Districts only.

Mr. Kragt advised the property was historically zoned as industrial. He said in approximately 1985 the Township proposed to rezone it to the RP District, where private roads are allowed. However, Mr. Kragt said he objected, and the Township agreed with him to rezone the property to the R-1 District, where private roads are not allowed.

Mr. Kragt acknowledged that he was allowed to divide four lots in 1985, which are served by a private road. He stated that only one of the four lots has been built upon. The other lots remain vacant.

Gerald Walt moved to close the public hearing. Michael Eppink seconded the motion. Motion carried.

The Township Attorney reviewed the standards the Township Board must consider when deciding whether or not to issue a variance from the Private Road Ordinance.

The first standard is Section 1.09.A, that the variance will not be a substantial detriment to adjacent property and will not materially impair the intent and purposes of the Private Road Ordinance or the public interest. Increased financial return is not by itself a sufficient reason for a variance. The Township Attorney acknowledged that the variance could possibly be granted without causing damage to adjacent property, given that variances have already been granted to Mr. Kragt allowing him to have additional lots in the R-1 District which are served by a private road. However, the Township Attorney further indicated that the Township's purpose to allow private roads in the Ag and the RP Districts and not in the R-1 District or other districts is presumably to make sure that the larger lots in the Ag and RP Districts can be developed without the expense of constructing public roads. On the other hand, lots in the R-1 District and other districts are generally smaller and thus more accessible by public roads. He indicated that the purpose of the Private Road Ordinance to limit private roads to the Ag and the RP Districts where large lots are generally located, and to require public roads to access smaller lots allowed in the R-1 District, would be impaired by granting this variance to the Private Road Ordinance.

The second factor for the Township Board to consider regarding a proposed variance from the Private Road Ordinance is Section 1.09.B, that the condition or situation of the property in question, for which the variance is sought, is not so general or recurrent that it would be practicable for the Township to address the situation through an amendment to the Private Road Ordinance. In this case, the Township Attorney found that if the Township is willing to allow private roads in the R-1 District, an amendment to the Private Road Ordinance can easily be made. If the Township wants to maintain the requirement that lots in the R-1 District must be accessed by public roads, and that private roads are only allowed in the Ag and the RP Districts, then the requested variance should be denied.

The third factor for the Township Board to consider when dealing with a variance application under the Private Road Ordinance is in Section 1.09.C, that the property in

question for which the variance is requested has an exceptional shape or an unusual topographic condition or other extraordinary condition, so that the literal enforcement of the Private Road Ordinance would create practical difficulties or undue hardships for the owner of the property in question. In this case, the Township Attorney indicated that Mr. Kragt has not described any characteristics of the property involved which are exceptional or unique, and therefore there has been no basis created to justify a variance from the Private Road Ordinance.

Finally, the fourth factor for the Township Board to consider when deciding upon a variance request from the Private Road Ordinance is in Section 1.09.D, which requires that there be practical difficulties or unnecessary hardship from the strict enforcement of the Private Road Ordinance, so that public safety and substantial justice requires a variance. Again, the Township Attorney indicated that Mr. Kragt has not submitted any arguments to establish that this standard has been met.

The Township Attorney further noted that all of these factors must be met in order for an applicant to be entitled to a variance from the Private Road Ordinance, pursuant to Section 1.09.

The Township Attorney acknowledged that the Township had previously granted a variance to Mr. Kragt, allowing him to do land divisions for lots which would be accessed by a private road, even though the Private Road Ordinance does not allow private roads in the R-1 District. The Township Attorney indicated that at this point, the Township Board cannot correct past mistakes. However, neither should the Township Board exacerbate a prior mistake by making a new one, specifically by granting a variance under Section 1.09 of the Private Road Ordinance when the factors for a variance are not established.

In answer to questions from Township Board members, the Township Attorney acknowledged that Mr. Kragt does have other options. He could ask for the property to be rezoned to the RP District, where private roads are allowed. He could improve the private road, make it a public road, and thereby eliminate any need for variances from the Private Road Ordinance.

The Township Board noted that Mr. Kragt continues to have vacant lots which are available for further development. The Township Attorney agreed that those existing vacant lots could be relocated to other portions of Mr. Kragt's property, without the necessity for any further variance from the Private Road Ordinance, as long as the number of lots served by the private road did not increase.

On the basis of the above discussion, specifically including the Township Attorney's description of the standards in Section 1.09 of the Private Road Ordinance, Lenore Cook moved to deny the variance request for Mr. Kragt, because he did not meet the standards in Section 1.09 of the Private Road Ordinance. Specifically, granting the variance for an extension of a private road in the R-1 District will impair the intent and purpose of the Private Road Ordinance to require lots in the R-1 district to front on a public road. The

condition of the property in question is very general (i.e., it is zoned in the R-1 District) so that a general regulation to allow private roads in the R-1 District would be preferable to a variance, if the Township is willing to allow private roads in the R-1 District. The property in question is not exceptional or extraordinary in terms of its size or topographic conditions or any other condition which would make the enforcement of the Private Road Ordinance a practical difficulty or an undue hardship. For all of those reasons, the variance should be denied. Michael Eppink seconded the motion. Roll call vote was taken. Ayes: Martin, Terpstra, VanEss, Eppink, Walt, and Cook. Nays: Bronkema. Motion carried.

After the vote was taken, Lenore Cook explained that Mr. Kragt was granted a variance years ago from the Private Road Ordinance because he repeatedly indicated then he only wanted eight lots, and that is what was approved at the time.

Gerald Walt noted that potentially Mr. Kragt could simply extend the public road past the two requested lots, so that they are served by a public road, without converting the entire private road into a public road.

B. Brenda Martin moved, Gerald Walt supported, to contract with Advance Newspaper for our legal advertisement. Motion CARRIED

C. Brenda Martin moved, Joel Terpstra supported, to approve the recommendation of the Wright Tallmadge Fire Board and hire Michael Gavin as our new Fire Chief. Mr. Gavin will start January 1, 2014 and replace Al Brouwer who has given the Fire Board his notice of retirement effective January 1, 2014. Motion CARRIED.

D. Gerald Walt moved, Brenda Martin supported, to accept the bid to expand the fire station and remodel the township hall. Motion CARRIED by a unanimous roll call vote.

E. First Reading – Zoning Map Amendment – James McClellan is requesting to rezone a 2.5 acre portion of parcel 70-10-05-300-007 from Agricultural Zoning District to the Rural Preserve Zoning District.

VI SUPERVISOR COMMENTS AND COMMITTEE REPORTS

Supervisor: James Van Ess

Electronic Use Policy – All township employees and fire department must sign
Building Department working on Dangerous Building on Lake Michigan Drive
Cemetery update given to Board members – getting bids to put streets in at the
back of cemetery.

Planning Commission: Joel Terpstra

Recommended to Township Board approval of rezoning
Working on text amendments for Section 3.02 and Section 3.10 of current zoning
ordinances

Zoning Board of Appeals: Clifford Bronkema

Haz-Mat: Michael Eppink

Fire Board: Gerald Walt

Next Fire Board meeting will be September 5, 2013

VII. INFORMATIONAL ITEMS

- A. Fire Department
- B. Sheriff Department
- C. Wright Tallmadge Fire Board minutes
- D. List of Building Permits for June of 2013
- E. Planner and Zoning Enforcer

VIII. ADJOURNMENT Meeting was adjourned at 9:25 p.m.

Respectfully submitted
Lenore D. Cook, Clerk