FINAL
CHARTER TOWNSHIP OF COMMERCE
****SPECIAL** ZONING BOARD OF APPEALS**
EDUCATIONAL MEETING
Thursday, January 25, 2024
2009 Township Drive
Commerce Township, Michigan 48390

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

ROLL CALL:	Present:	Rusty Rosman, Chairperson
		Clarence Mills, Vice Chairperson
		Robert Mistele, Secretary
		Rick Sovel
		Bill McKeever
	Absent:	Sarah Grever, ZBA Alternate Member (excused)
	Also Present:	Paula Lankford, Senior Planner
		John Kummer, Township Attorney

B. APPROVAL OF MEETING AGENDA
MOTION by Sovel, supported by Mills, to approve the Special Zoning Board of Appeals Educational Meeting Agenda for January 25, 2024, as presented.
ROLL CALL VOTE:
AYES: Sovel, Mills, McKeever, Mistele, Rosman
NAYS: None **MOTION CARRIED UNANIMOUSLY**

C. PUBLIC DISCUSSION (on matters for which there is no public hearing scheduled)
None.

D. NEW BUSINESS
EDUCATIONAL DISCUSSION:
D1. Article 30, Signs – Reexamine recent amendments to the Zoning Ordinance.

Attorney Kummer – As you will all recall from last year's educational session, there were amendments to the sign ordinance, and that was to make a more content neutral scheme based on some recent case law. I won't go back into that, but I did want to discuss, more in depth, what a sign variance or appeal review would look like, the motion and the record that would need to be built upon making a finding or determination, and to answer any questions that you might have. I also have some example questions of possible appeals that could find their way before you to test everyone's knowledge as far as how those rules would be applied.
The first being appeals we can address. The sign ordinance provides appeals from a ruling of any department or administrative official concerning the issuance of a permit, or the removal of a sign. That would be from the Building Department, from Jay James; you typically see a permit, either a denial or approval from him. You would really only be seeing the denials though.
For permit denials, they have within 30 days of that denial. We would go from the date of postmark that the denial notice is provided. If that is emailed electronically and they've been corresponding electronically, it is when that's delivered, when that's sent, that 30-day window would start then for an appeal before the ZBA.

Areas of review; we will have the preliminary areas of review that you'll always want to look at procedurally. So, was it timely? You would look at when that appeal was filed and when that decision was made. If it comes before you and it's an untimely appeal, then there's the procedural basis to not grant an appeal.

Chairperson Rosman – When you say untimely, I'm thinking of the post office. I mailed a check to someone, and I mailed it inside the post office, and it took 14 days to get to them. When you say a timely appeal, would that be from the date on the letter, the postmark on envelope, which the petitioner may no longer have, or when the Township sent it out? When would that date be for snail mail?

Attorney Kummer – As far as sending it, it would be the date that it was delivered. It's my understanding that Jay has sent correspondence by email.

Chairperson Rosman – I'm talking snail mail.

Attorney Kummer – Snail mail would still be the date sent, but it also would provide for them to be within that window on the date that it is mailed out. So, even if it is not received by the Township until 35 days after, if it is postmarked within that initial 30-day window, that's a timely appeal that has been filed.

Chairperson Rosman – Thank you.

Sovel – I'm assuming that we would never deal with that because if it's 6 months later, it would never get past Paula and we'd never see it.

Attorney Kummer – That would be the hope and expectation, but if it's something where it does, or it's not noticed, or it's one day; there are multiple layers when it comes to an appeal process. So, if something makes it to you and upon review, it appears untimely, I'm affirming that the ZBA does have the procedural basis to deny.
The next area of appeal would be whether the sign permit application included all required information pursuant to the ordinance. Now procedurally, the Building Department has the ability to provide what was submitted back to the applicant and say; *These areas are incomplete. In order for me to approve or deny, please complete these areas.* In the event that they fail to do so, and it's denied, and they take an appeal to the ZBA, you're still able to review whatever was provided as part of that application packet. If you're finding deficiencies contained within the application packet, and they find themselves before you, that is a basis for denial as well, for not complying with the Zoning Ordinance requirements of what needs to be provided in a sign permit application.
The last would be, obviously, the legal merits of the appeal. Do you find that it was applied correctly and interpreted correctly? Was there an error? Is this person entitled to have their appeal granted, or was the correct decision made in denying this permit, and is it denied? This is not the same as what you may be used to from years back, which were sign variance exceptions. There are no more exceptions granted under the new ordinance. It's simply a dimensional non-use variance, or an appeal from an administrative decision by the Building Department. So, it's a strict reading of how the ordinance operates, how it's applied, and whether that was done correctly or not as far as appeals go. Any questions as far as that?

Chairperson Rosman – It makes me think of Scooter's. They're about this big, and they wanted a sign this big, and they wanted a lot of them, and we said no. The guy who came, I'm still amazed, he said; *Well, they told me to come so I'm here.* That's not unusual for sign people.

Attorney Kummer – They can be persistent, and maybe not every municipality throughout the state is as diligent as this Board in strictly applying the Zoning Ordinance as written when it comes to appeals or variances. What may work for them in some municipalities may not work in others. Maybe that's why they tell them that they have to ask.
When it comes to our variances and appeals, for appeal purposes, there are permit denials and sign removals. For sign removals, the ruling would be on a determination for an order of removal. Removal is permitted when it is an unlawful sign, meaning it doesn't comply with the Ordinance in any specific way, which could be the size, location, structure, materials, or a damaged sign. A damaged sign is obviously damaged, which is defined within the Ordinance as well, or an unsafe sign. Then there are requirements for them to appeal for that as well.
You would apply the exact same criteria. If you get say an appeal for a determination that a sign must be removed because it's damaged, you would look at how the Zoning Ordinance defines a damaged sign. You would look at photographs possibly provided by the appellee as to the condition of the sign, and you'd make a determination of your observations and the application of the Ordinance, whether in fact it qualifies as a damaged sign. Any questions regarding that area of appeals?

No questions.

Attorney Kummer – We can move onto variances. As I said previously, the Township is unable to grant use variances. So, what would be before you, and what has always been, would be non-use variances. The Zoning Ordinance now allows only for variances, not exceptions, and it applies a practical difficulty standard. If you're discussing other variances, you might be familiar with the hardship standard and they'll talk about that. Some applicants come before you and discuss hardship. That's not one of the determining factors for you when it comes to sign variances. It's simply the practical difficulty standard. It's important to note that we defined within Article 30 a separate practical difficulty standard than what would apply to other non-use variances. The practical difficulty standard reads:

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

If you look at your sheet, each of those four bullet points for the factors to consider are broken down. So, that paragraph that I just read, each of those points will address each of those considerations.

The first being:

1. *The variance applicant demonstrates the existence of a natural or artificial feature of the applicant's property which obstructs the visibility of a conforming sign.*

Questions that you'd consider asking; What features obstruct the visibility of a conforming sign? Remember, it is the applicant's burden to justify the basis for a variance. So, while you may have photographs, or you may have your own observations, you want them to be able to make the record and explain what it is that they believe is a feature. Now, artificial features and natural features could vary. When you're thinking artificial features, what would you think of?

Chairperson Rosman – Gas line, like Lowe's.

Attorney Kummer – You're saying underground?

Chairperson Rosman – Yes, because when Lowe's, the one at Maple and M-5, they came because exactly where their sign was supposed to go, directly under it was the gas line. We didn't think that was a good idea, so we let them move it. On the other hand, it says "all". I take a look at Sedona Stone, and that building was built years before one of these showed up. Where their sign needed to go to measure properly was inside their bathroom. But, they couldn't meet "all" four of these, and it says "all".

Sovel – So let's discuss the landscaping issue. The only thing on this wording is putting the first two on the applicants. What if the adjacent property's landscaping at the boundary is such that it obstructs the ability to see it? This only deals with the applicant's property, and not the adjacent property.

Attorney Kummer – So, if we're talking about landscaping, if it is something that is obstructing visibility of a sign, then it may similarly be obstructing or encroaching into the sidewalk or a public right of way, or other issues.

Chairperson Rosman – I'm thinking of Applebee's.

Sovel – To me, sometimes there's a conflict. The Planning Commission wants landscaping, but at the same time, it can also cause problems with egress, and also from blocking the signs. They're looking at that property and not necessarily what's on the other side.

Chairperson Rosman – And the growth of the landscaping, when they plant it according to what Commerce Township requires.

Sovel – My way of reading this, and tell me if I'm wrong, it only talks about the applicant's property. Is that just on the sheet, or is there anything else in the Ordinance that didn't make it to this sheet that we need to look at changing?

Attorney Kummer – So this is within the Ordinance, and that's the language used within the Ordinance, but the variances have to be specific to a specific property. I would

contend that if it's a wooded area, or the surrounding topography which includes vegetation, whether it be trees, shrubs or hills, that's the natural landscape of that parcel. I would interpret and contend that if you have a hilly adjacent property, not their parcel but the parcel next to them, that has a tree buffer, that is still a natural condition of that property because what that property is surrounded by is a characteristic of that property. People purchase specific wooded lots that are surrounded by wooded lots because that is a feature of that property.

Sovel – So it sounds like you're saying we shouldn't necessarily take it literally as to the applicant's property. We can maybe expand it. Do we need to change the Ordinance to say like within 50 feet of the applicant's property or something?

Attorney Kummer – No, it doesn't need to be changed because the way an actual parcel exists, as far as what surrounds it, is specific to that parcel. The Ordinance needs to make clear that we're only looking from the perspective of that parcel. If it sits in a valley for instance, and there are two hills that go up, those are hills on the other side.

Chairperson Rosman – I'd like to be more specific. As you went south on Haggerty, from Maple to 14 Mile Road, we're talking about Applebee's in front of Home Depot, you could easily see their sign. But, if you were going north, from 14 Mile toward 15 Mile, until you had almost crossed the ingress/egress road, you couldn't see the Applebee's sign because of the growth of the trees. Those trees were planted 20 some years ago, and they grew. So, here we are understanding that it wasn't self-created. It wasn't their property. It wasn't hills and valleys. It was a tree that grew, and it wasn't their tree. So, what do we do as a ZBA, because you could not see it going north?

Sovel – She's kind of referring to #2.

Attorney Kummer – As far as …

Sovel – Visibility of the sign from the primary right of way.

Chairperson Rosman – It was only one direction that you couldn't see it from, not both.

McKeever – Didn't that have more to do with topography? I mean the trees are ornamental trees, and those are subject to maintenance, but the lay of the land is what …

Attorney Kummer – That's what I do want to note is that there are specific state laws and other ordinances that exist that govern right of ways, whether trees are going into it and how trees are maintained, property maintenance. We're not to grant variances because some other area of law is not being enforced or functioning ideally.

McKeever – Kindercare had come in and asked for an additional sign at the corner. They're on a corner lot and you couldn't see their existing sign because the landscaping around their existing sign was overgrown.

Chairperson Rosman – We said, *trim the trees.*

Sovel – That's your own property. You can't force an adjacent property owner to trim their landscaping.

McKeever – If an adjacent property has overgrown landscaping that's not maintained …

Sovel – How about trees?

Chairperson Rosman – It was a tree. It wasn't shrubbery. It was a tree that went up and went out, and they planted according to what was required by Commerce Township when they developed the property.

Attorney Kummer – That's a very fact specific example. It's a great question, but also, without looking at that property, and without looking at an example application or actual variance request, it's difficult to apply these factors hypothetically. There may be a sign location that complies with all requirements within the Ordinance that they can mitigate themselves. That's one of the requirements here is that it can't be mitigated by the property owner. So, while this sign is less ideal and less visible, maybe in its current location based on where it was built at the time, if they can move it elsewhere to a point where it's still visible, then they'd be required to do that before it would ever come to a variance request. It might not be an ideal location for them, and it might not be as visible as their sign once was, but something can still be visible even if it's 5 feet back for example.

Sovel – So you've just made the case for why there should be a little bit of flexibility. We used to have a lot of flexibility, and we're getting less and less. I know at one point Hans said there should be none, which I don't agree with because we can't contemplate every scenario. I don't have the legal wording. It still seems to me there should be some degree of flexibility that this Board should have ability to make.

Chairperson Rosman – I'm going to go back to that tree. I didn't have a problem letting Applebee's move the sign, because if they moved it closer to them, that was even worse. They were already as far out as they could go without us coming along and letting them move it closer to the road.

McKeever – Didn't we let them go higher?

Chairperson Rosman – A little bit.

McKeever – I thought that was one of the issues.

Paula Lankford – If I remember correctly, the land was low there, so they got a variance for the height as well.

Chairperson Rosman – Did we let them move it closer to the road also?

Paula Lankford – I don't remember.

Sovel – I'm thinking we just raised the pedestal.

Paula Lankford – I should pull that one because Rusty brings it up a lot.

Sovel – Was that contemplated in the 4 bullet points?

Attorney Kummer – I would say yes.

Sovel – What about the “all”. A lot of times they don’t meet all of them and it just seems like it’s not right. In this case, we should have denied it because they didn’t meet all of them, but we didn’t.

Attorney Kummer – These are all required.

Sovel – There are some unique cases … To me, the Zoning Board of Appeals is supposed to do more of the unique type stuff, but now our hands are tied if you can’t meet all 4 of these. Even though it’s unique, and it seems that practically it should be able to be given a variance, if we follow the rules, we have to say no.

Chairperson Rosman – They don't even have to come to the ZBA. They have to see all 4 of these in front of Paula.

Attorney Kummer – I understand that sentiment. The truth is, generally variances shouldn't be granted often. If an ordinance is functioning properly, it’s accomplishing the public purpose of its stated intent, and it’s being effectively managed and applied at the administrative level, there should be very few instances that things are needing to come before you. The hope is that everything is being thoughtfully drafted and applied with these types of the things in mind, to where there are solutions that would occur before an exception of a variance is needed.

Sovel – I’m assuming it’s working because we only met twice last year.

Attorney Kummer – I suppose that’s my point. There will be those instances where something maybe feels harmless, and it seems like it isn’t a big deal, but once you deviate from meeting all of the criteria to grant a variance because something doesn’t seem like much, it begins to set precedents. It’s a slippery slope. The reason “all” are required is based in part on Michigan case law, based on the way the Ordinance functions, the standard for practical difficulty is derived from Michigan case law as far as not being self-created, things of that nature. That standard has been refined over time by Michigan courts as far as what they deem most equitable and just, while still accomplishing the police powers and the purpose of ordinances. It may not seem fair in all instances, but it is why we require that “all” criteria be met.

Sovel – So, unique is subject to interpretation from a standpoint; if it’s unique but it’s repetitive, to me, it’s not unique any more. Like the ones that are a certain distance from the center right of way; they had come to us on a regular basis and those should be approved administratively or something to tweak it with the Planning Commission so it doesn’t need to come to us.

Attorney Kummer – If you comb through the entire Zoning Ordinance, you’ll see there are exception provisions. If something is coming up where you have something like that,

it can be forwarded on to be discussed and considered. Not in the context while a variance is pending, but ordinances change and they're living documents. Once it's introduced, the governing bodies review and approve it, and if they find that it still advances the same public purposes, and this is an appropriate carve out, those can be created. So, I would encourage anyone to let them know if you think a change of law is appropriate. That's something that is actionable. What we can't do, with the current laws, is to grant things that seem fair and just when the laws currently exist.

Paula Lankford – We had a lot of variance requests for setbacks and ground signs, like you were saying Rick. We did go through our Ordinance and we did make a change recently, the Planning Commission did, to allow averaging within 1500 feet on each side of the sign. Hopefully that will alleviate the requests you were getting.

Chairperson Rosman – Taking a look at this, going back to Culver's when they wanted a sign on the Target side, we would have to say no, 100%, based on this because it was self-created.

Sovel – Well, in my opinion, all signs are self-created because you don't have to have a sign to run a business. Signs are different than someone who has a septic in a certain spot, or they have wetlands where they can't build in a certain spot. That's not within their control. Signs are totally within someone's control.

Attorney Kummer – Touching on natural and artificial features, you guys named great examples and you've pretty much got it down, but rivers, streams, woods. That's why I mentioned, woods surrounding a property would qualify as a feature of that property, even if it's not trees on their parcel. Woods, roadways, canals, bridges, and buildings themselves. For example, you have all the buildable area within a parcel, and the building is in a position where there is no longer sign space because it occupies everything, then that's self-created. They created that site plan and they built that building there. They have occupied their ideal sign area and that's a self-created issue.

Chairperson Rosman – What if the building was built in the 1930's, way before there were ordinances? How do you deal with that?

Attorney Kummer – When we're talking about self-created of a prior property owner, it's when that structure was built, what was the Zoning Ordinance in effect at that time? So something is not self-created if the structure was built before we had setbacks and requirements. If for instance, someone is buying property and they install it all, then decide they also want a monument sign, whereas before they only had a wall sign on the building, but they've modified their parcel and they've already built a structure to the extent that they can't put it there any more, that's self-created. They cannot come before you a year later and say; *We're not getting the foot traffic we wanted. We would now like to now install a sign in violation of the setback because we can no longer meet the full requirements of the ordinance.* That's where you have to look at the parcel history as well as the ordinance in effect at the time the actions were taken. That goes to the point that self-created can be by the applicant, or by a prior predecessor in interest. If there are regulations and ordinances in effect at a time that a prior property maybe did a lot split, or made some odd division of a parcel that results in them needing

a variance, even if it was a prior property owner, the current property owner is still bound by those prior self-created difficulties.

Chairperson Rosman – To be fair, Commerce really didn't have an ordinance until the 1960's, close to the 70's, and so much went on before that.

Paula Lankford – Actually, we had an Ordinance in 1955.

Attorney Kummer – Retention ponds would be another example of an artificial feature of a property. Natural ponds would be a feature. If someone develops a parcel and they put their retention pond in a specific spot, that's slightly different than if there is a lake there. The lake is not self-created as it was always there. So, those are the types of considerations you will take. You can't just look at a body of water as a body of water. Sometimes you have to look at how that piece of property was developed to create that body of water. Any questions on that?

No questions.

Attorney Kummer – And it should be noted that, under Michigan Law, ignorance of the Zoning Ordinance by a current or prior owner is not a basis.

Chairperson Rosman – Could you talk about #3 some more? "… cannot be practically removed or mitigated through the applicant's own reasonable efforts."

Attorney Kummer – Yes. So say that you have vegetation that is spilling over from an adjacent property, but there is also vegetation on theirs, whether it's branches that are extending over in the air onto their property line, or maybe some trees that continue the woods onto their property. Have they trimmed back those trees? And that's assuming that doing so would not be a violation of a site plan for instance. Have they taken steps to make that sign as visible as possible? Have they pulled all the levers to create the most visible sign possible? There are some signs that, aesthetically, will be more visible depending on the font, the color and the characteristics of it. There may be certain aesthetics that a business wants that are very difficult to read. Maybe you don't get the most aesthetic sign that suits your desires that you have to be standing or driving very close by to make it most legible. What actual efforts are being taken to make their sign visible?

Sovel – Can they ask for it to be electronic so it could be more visible?

Attorney Kummer – No.

Sovel – It said, what steps can we take?

Paula Lankford – Within the Ordinance.

Attorney Kummer – Within the Ordinance.

Sovel – It doesn't say that.

Attorney Kummer – For instance, white and black, as opposed to if someone is doing an antique wood sign with gunmetal lettering. There are different ways that something can be visible, and you would be looking for them to present reasoning as to why something isn't visible.

Chairperson Rosman – What do you do in a circumstance like you talked about with the tree, where you trim your side and you do everything, and your neighbor won't, and it obstructs the visibility?

Paula Lankford – Call the Ordinance officer.

Attorney Kummer – It depends. One, if their vegetation is lawful, and if it is, that's their right. And then you wouldn't do anything. And that would be a natural feature to that parcel. Is it surrounded by a heavily wooded lot next door? So, that may entitle them to come before you if they find that it's not visible. Things you'll be looking at will include what you as a ZBA define as far as a range of visibility, and as far as the degrees of visibility from a sign. Are you expecting it to be all the way down at the end of the road? Or is it a smaller window of visibility? And taking into account things like the speed of a road; a sign may be less visible on a 55 mph road than a 25 mph road. It may require a larger span of visibility than something that's on a 25. Is it before or after the entrance? There are those types of considerations as far as visibility that give the ZBA … I don't want to say freedom or wiggle room, but there's still a degree of subjective interpretation as far as if the sign is actually visible.

Chairperson Rosman – Instead of letting somebody have a monument sign, can we require that they put on a wall sign, rather than give them a variance? Is that what you're telling us we need to do with this? Find something that would work better for Commerce, versus better for them? Can I say they can put a wall sign on the building which would then be more in compliance? Is that what this is pushing me to do?

Attorney Kummer – No. Variance requests will come to you as far as what they're wanting to accomplish and what they're seeking. It's their burden to prove that what they want is what they're entitled to. If they have a different proposed plan, or they're seeking a larger wall sign, and if they already have their one allotted wall sign that they're entitled to under the Ordinance, and they're seeking to dimensionally expand that wall sign, that is a variance request they could file. If it's something where you have a large body of water along the roadside that pushes a commercial business back very far, to the extent that a monument sign is not possible, and the monument sign that they do put up closer to the building itself is less legible from the road, then maybe they get a larger copy area. They can dimensionally expand the area of the sign itself to be visible, and that's still accomplishing the intentions of the Ordinance. It doesn't have a large sign close to the roadway that's distracting motorists, which is contrary to the objectives of the sign ordinance. It's a dimensional non-use variance that's being considered, and it's for them to put forth what it is that they're asking for.

Sovel – So are you saying that if they come to us with one variance, our remedy is the equivalent of two variances because now we're giving them some number to make it more visible. I'm assuming we can't invoke an additional variance that they didn't request.

Attorney Kummer – Correct. As the ZBA, I would be voting on the variance that is submitted.

Sovel – But what I heard you say is to maybe make it a larger sign, then I'm now giving them the equivalent of a second variance, that they didn't ask for, to remedy the first variance request.

Attorney Kummer – It would be up to them to ask for that, and it would be up to them to look at …

Paula Lankford – I think you are talking about two different things. John's talking about somebody asking for a larger wall sign because they are sitting back so far. So, they've already asked for it. Rick, you're talking about giving them more wall sign because they can't have a ground sign.

Sovel – I was under the impression that … I wasn't thinking they wanted a larger sign, they just wanted it closer. What Rusty was saying is we could give them a wall sign instead, but to do that, we'd need to make it larger so it could be readable. But they didn't ask for a larger sign as a remedy. Can we give a second variance that they didn't request as a remedy, instead of the monument sign, give them a larger wall sign, if they didn't ask for a variance on the size?

Attorney Kummer – I understand. That's not an instance I've encountered. In my review, it has been those that have been sought as opposed to additional variances added. I know that we've also shifted the removal of conditions as being part of this decision process. So, that's something I can see if there are case files applicable to that which address that issue, and I'll follow-up.

Sovel – We actually offered that to Zerbo's, and he declined. He wanted us to approve or deny the pedestal sign. He wasn't looking to do a trade-off. He didn't accept it, but we offered that.

Chairperson Rosman – He gave up the monument sign to have another wall sign.

Paula Lankford – Correct.

Attorney Kummer – And I do remember reading the full meeting minutes for Zerbo's.

Sovel – That was a tough one to read.

Attorney Kummer – We are somewhat out of the Zerbo's realm because we're not in design exception area. There was a lot of liberty in that, in both the request received, the discussions and compromises made. It's much more strict as far as the record made on the basis of the variance that's being sought, for the type of the sign being sought, and each person could bring multiple variances for the different types of signs, within different districts, within different overlays, for different signs. There are all different types that someone would be entitled to, for instance, if something specific is going on with that property. You might get a permit appeal based on special events that are

ongoing, or a request for a special event sign, or a property development sign. We're very much more outside of the Zerbo's realm of discussion, of what I would expect to see, and more focused on what it is in their application packet that they're asking for specifically, and if that request meets these four requirements.

Paula Lankford – Rick, also, you couldn't entertain a variance for a larger wall sign because it wouldn't have been advertised for that. You'd have to stick with what they ask for.

Attorney Kummer – Now, if that's something that they reference, they would not be precluded from submitting another variance request. But, before you is the variance request that has been submitted and as Paula has noted, that's been noticed.

Chairperson Rosman – Paula, if Culver's came back today and they were in front of you at the desk, most likely they would not have come to us based on this.

Paula Lankford – Correct.

Attorney Kummer – Does anyone have any questions on those four criteria?

Sovel – Just one oddball question. If it's in a PUD, does it make any difference?

Attorney Kummer – That's one of the example problems that I had.

Chairperson Rosman – A PUD.

Sovel – Five & Main for example.

Attorney Kummer – A PUD has different allowances that can operate outside of the Zoning Ordinance. I will defer to Hans as far as what's …

Sovel – As far as negotiating, it's not something that comes before us?

Attorney Kummer – Yes.

Paula Lankford – Yes, a PUD is basically its own ordinance, so you follow those rules.

Sovel – So we shouldn't have to be involved with any variances if it's in a PUD, from a sign standpoint?

Paula Lankford – Correct, we would not send anyone to the ZBA in a PUD.

Attorney Kummer – Not an odd question at all. Did anyone else have any other questions on that?

No questions.

Attorney Kummer – One final point, and then I have some example problems we can get into for the remaining minutes, or you may think of other questions. One, remember

that it's up to the applicant to justify the variance and provide the proof. You all come to this Board very knowledgeable and very informed. You're aware of the ins and outs of the Township, but it's still a record for them to make in proving why it's required. You don't want to be pulling in a ton of outside knowledge in speculating or making cases for them. It's for them to present as far as their needs, and it's their record to make. And then you have a record to make which is your ruling. So, you'll just want to make sure, and that's why we noted some of the questions on here to ask. If there's something on your mind, based on your knowledge of the Township and the Ordinance and how it operates, you can ask them those questions of course, and they can answer. And as far as when you make the motion, just make sure that if something is granted, we're going through each of those items and listing the rationale for why and creating your own record.

Chairperson Rosman – You did a good job with the motion to approve and the motion to deny. That's very helpful. And it's dated on the bottom guys.

Attorney Kummer – Especially the motion to deny, because that can be appealed, so you want to make sure everything is in there as you go into each of the factors of the standard within the Ordinance.
The other being, for ZBA votes, you'll need a true majority vote. I'm sure you all know; the majority vote of the ZBA, as opposed to just the majority of the quorum.

Sovel – It has to be three no matter what.

Attorney Kummer – Yes, so there's that as well. It's also worth noting, there's nothing precluding you from asking an applicant for more information, tabling the matter and adjourning it. I know there are some requirements as far as a variance being heard within 90 days. It's not heard within 90 days, it's just scheduled within 90 days. If something comes up and it needs to be tabled and adjourned, ZBA members need more time to think about it, nothing requires that decision be made the first time that it's before the ZBA.

Chairperson Rosman – Also, we are requiring that they stake it out so we can see it.

Sovel – Winter is a little bit challenging.

Chairperson Rosman – Yes, thank you for the pictures. John, I will say for all of the variances, whether it's dimensional or a sign, we all physically go and look, and what a difference it makes from reading to looking. Pictures are great, but being there is quite something. I think it should be part of every variance.

Attorney Kummer – Just make sure you're driving the speed limit when you go by the business.

Chairperson Rosman – Sometimes, especially at 5:00, you don't have a choice.

Attorney Kummer – If no one has any questions, it sounds like everybody has a pretty good grasp on it.

Paula Lankford – I want to point something out. You were talking about landscaping earlier and the Planning Commission requirements. We are now addressing that in our reports to the Planning Commission, and to the developers, regarding the need to develop their landscaping plans so that it does not hinder any signs that they are planning. We are trying to head that off at the pass.

Attorney Kummer – Expect that some appeals that seem black and white may still come before you. People decide they have exhausted their administrative remedies and if they want to make that request, they can, and they can come before you. So, we'll do some questions. Say for example, a permit was submitted for a special event sign and the property owner has previously used up all of its allotted 14 days annually for the special events signs that they're allowed, but they're hosting a charity event for a local tragedy. So, they've asked for 7 more days of special events signage that the Building Department has denied, and they come before you on appeal. How is the ZBA required …

Sovel – The 7 days would expire before we'd have a chance to look at it.

Attorney Kummer – No, the 14 days were used months ago. We're talking about an event that's planned.

McKeever – But we only meet quarterly, so is that a burden on the applicant to be taken into consideration?

Sovel – I'm not sure it works in our realm of meeting schedules.

Attorney Kummer – If an appeal is filed, there would need to be a meeting called.

Sovel – Outside the timing issue, what are you trying to say?

Attorney Kummer – The point being that there would be no basis for an appeal. There may be an instance where you get an appeal where a special meeting is called to comply with the Zoning Ordinance requirements for an eventual hearing on an appeal, but it may not have merits. It may be that simple of a "no", but someone chooses to come before you, because in some municipalities maybe someone appeals something and they appeal to the sensibilities of someone else. A ZBA might deviate from what the actual ordinance is, but you're not that ZBA. People may ask for things that seem obviously contrary to the ordinance. It's not necessarily something that can be prevented at the administrative level.

Paula Lankford – One of those examples is, "Corporate is making me go to the ZBA to exhaust all avenues because they say I have to have this sign."

Discussion continued regarding examples of similar requests.

Attorney Kummer – Another example; an appeal was filed for a request for a projecting sign in a TLM district. The style is craftsman, it's very attractive, and they offered to remove their current nonconforming pole sign in exchange. May this appeal be granted? Projecting signs are not permitted in TLM, but it's a very nice sign and you'd be losing

an eyesore of the nonconforming, so you'd get to eliminate nonconformity. Could this appeal be granted?

McKeever – That never seems to work out in the long run.

Attorney Kummer – No, the projecting sign is only permitted in the B district, within the overlay, so the answer would be no.

Paula Lankford – Wouldn't the answer be no as well, because you'd have to put a condition on that variance?

Attorney Kummer – Correct, and you can't condition anymore, even if they're asking to self-impose conditions. We're not doing conditions.

McKeever – So when we grant a variance for someone to put their sign in the right of way, based on the placement of the building being built years ago, there was always a condition that should any utility work require the removal of the sign …

Sovel – That's not the same.

Attorney Kummer – It's conditions unrelated to the sign itself that are prohibited. So, we're talking about a conditional removal of a separate sign somewhere else. Or, a condition of landscaping, or a condition of X, Y, and Z. If we're talking about just the sign itself, that's different.

Sovel – There's another word to describe what you're talking about, versus a regular condition.

McKeever – We're not responsible to pay for the replacement of the sign.

Attorney Kummer – That's fine.

Sovel – And actually, my understanding is that even if we don't put that wording in there, they're still responsible if the utility needs to get at their utility, they have the right to move it.

Paula Lankford – So John, you can still put a condition, as Bill said, if they wanted to add that in there.

Attorney Kummer – That verbiage that previously existed would be fine.

Chairperson Rosman – What else do you have?

Attorney Kummer – The applicant applied and was denied a request to design an existing nonconforming sign. The structure and sign area would remain the same, but there would be a new font, new colors and improved compliant illumination that complies with the Ordinance. It would improve the overall aesthetic of the sign and bring it up to date as far as illumination. Is this permitted? Would you grant that appeal?

Sovel – Why do they need to have an appeal?

McKeever – The sign ordinance …

Chairperson Rosman – It's a maintenance issue.

Sovel – It's not a variance issue.

Attorney Kummer – So you'd grant that appeal, right.

Chairperson Rosman – He doesn't need to be before us.

Sovel – Paula, it would never get to us.

Attorney Kummer – Yes, exactly. So, we may not always have Jay and Paula. It's a reinforced concept that people are entitled to an appeal and mistakes can be made. We're always looking at the Ordinance ourselves, interpreting it and applying it, and someone might be entitled to an appeal, and an appeal may be grantable.
A permit application was submitted for a second freestanding sign for a shopping center. The permit application was denied as only one freestanding sign is permitted. The appellee explains that they are a large shopping center on multiple lots that require additional signage. What would the ZBA's response be?

McKeever – No, unless they're on a corner lot.

Attorney Kummer – Correct. No sign exceptions exist anymore; only variances. This is a unified development site.

Chairperson Rosman – He should have checked with the community before he bought the property.

Attorney Kummer – Yes, you guys are good.

Discussion took place and Attorney Kummer noted that as much as this Ordinance is different, it still has its similarities as well.

Mistele – How do you determine the primary right of way for the sign?

Paula Lankford – It's whatever the Master Plan is from the RCOC. It depends on the road.

Mistele – If someone had to put up a sign, and the obstruction would obscure it from either direction … I'm looking at the denials. *Describe at least one adjacent right of way where the sign is visible.* So, if it was blocked from the west side, but you could see it coming east, is that something we should be …
Attorney Kummer – The primary right of way will still be the same road. Maybe I misunderstood you, but regardless of which direction you're going, it would still be upon the same roadway, so it would still be the primary right of way. It doesn't mean the side

of the road. If we're talking on Haggerty, another road way that maybe intersects nearby, we're saying that Haggerty would be the primary right of way adjacent to it.

Mistele – So it should be visible in both directions. Okay.

Attorney Kummer – Correct.

Sovel – So something else that's not really ZBA, but we don't have an ordinance that stops people from cutting down trees. It's their property and they can do whatever they want. Other communities like West Bloomfield have a very strict ordinance. Recently, the Department of Insurance has approved, in the State of Michigan, insurance companies, if they file for the right to do so, they can now cancel your homeowner's insurance if you have trees overhanging your roof line that cover more than a percentage. They get to pick a percentage, 25% or 40%, whatever. So, they are going through and not renewing homeowner's insurance policies. As more companies adopt that rule, it will be interesting to see communities who have that rule will be unable to enforce it.

Discussion took place regarding tree protection ordinances and changes to insurance laws.

Chairperson Rosman – John, you did a great job.

Sovel inquired with Paula Lankford regarding specifications for residential signage.

E. ADJOURNMENT:

- **NEXT REGULAR MEETING DATE: THURSDAY, JANUARY 25, 2024, AT 7:00PM.**

MOTION by Mistele, supported by Mills, to adjourn the meeting at 6:36pm.
ROLL CALL VOTE:
AYES: Mistele, Mills, McKeever, Rosman, Sovel
NAYS: None MOTION CARRIED UNANIMOUSLY

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Robert Mistele, Secretary