

# Summit Township Zoning Board of Appeals Thursday, November 12, 2015

PRESENT: Jack Shelby, Vice Chairman & Planning Commission Liaison; Bob Dubois, Secretary & Township Trustee; Charles Nelson, Larry Dunn, Tony Hollow, Scott Blakemore, Debby Kelly and John Worden, Zoning Administrator

ABSENT:

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It was with great sadness, to learn of the death of colleague and friend, Zoning Board of Appeals Board Member Charles Neese, passed away on Wednesday, November 11, 2015. Charles Neese was a valued member of Summit Township, and he will be missed.

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Vice Chairman Jack Shelby welcomed new members Charles Nelson and Scott Blakemore to the Summit Township Board of Appeals.

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Vice Chairman, J. Shelby, called the meeting to order on Thursday, November 12, 2015 at 7:00 p.m. in the Township Hall Meeting Room at 2121 Ferguson Road.

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A motion was made by L. Dunn, supported by D. Kelly, to approve the minutes of the Thursday September 10, 2015 as written. The motion carried unanimously.

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Election of Zoning Board of Appeals Chairman for remainder of 2015.

A motion was made by J. Shelby, supported by B. DuBois, to elect Charles Nelson as the Zoning Board of Appeals Chairman for the remainder of the 2015 calendar year. The motion carried unanimously.

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Case# 15-11-0025 – Zoning Ordinance Interpretation – Clubs and Lodges – Epicurean Development, LLC, Applicant

A public hearing was held at the request of Epicurean Development, LLC of 175 Eaglehurst Drive, Jerome, MI, to determine whether the Applicants' proposed land use is within the scope of "Clubs and Lodges" in a commercial (C-2) building zone. "Clubs and Lodges" are listed as a permitted use in both C-2 and C-3 in the Summit Township Zoning Ordinance Sec 150.145(38).

Chairman C. Nelson instructed the audience on the meeting process, informed them they would be able to comment during the Public Comment section of the meeting and issued a reminder that the meeting was not a debate on morality or alternative lifestyle choices.

He then gave a detailed history of this application stating:

In late January 2015, the Applicant applied for a building permit to use the subject property as a "membership club", but did not submit any building or site plans. Township staff advised Applicant that they could not approve the proposed use of the subject property without complete building and site plans, but provided Applicant approval to do internal building renovations only. Site plan approval was never granted. Based on the Applicant's later-submitted site plans and other information that came to the Township, it became clear that Applicant's contemplated use was actually a "Swingers Club", which was not a use within the permitted category in the C-2 District under the Zoning Ordinance. A Stop Order was issued by the Township in March 2015 as to any further work on the building. Work ceased. Applicant then sought the intervention of the Circuit Court but the court held it could not make a determination as the Applicant's administrative remedies had not been exhausted. Thus, this application was filed with the Township Board of Appeals for an interpretation of the Ordinance as to whether a "Swingers Club" is a permitted use in the C-2 District under the classification "Clubs and Lodges".

The Applicant has variously described the proposed land use in statements to the Township and other written materials. Applicant's descriptions have included a "dance club" and a "private membership club" that serves "hotel guests" and has "no employees". According to Applicant, 50% of the club members would be shuttled to and from area hotels to the subject property. Applicant's or its tenant's website for the proposed land use shows the use would be a "Swingers Club". That website links with the website for "The Swing Lifestyle" network, which features other "Swingers Clubs" across the United States. Consumption of alcohol on the subject property on a BYOL basis is also part of the proposed use.

The initial Township Zoning Ordinance dates to 1956, and makes no reference to "Clubs and Lodges", but the use of the term "Clubs and Lodges" is not new to the current Zoning Ordinance. The 1961 and 1967 Zoning Ordinances allowed a land use in the residential (R-1) district for "community buildings, country clubs, fraternal lodges or similar club or social clubs (but not residential club or a club operated as a commercial enterprise) after approval by the Board of Appeals. This was replaced by the conjunctive term "Clubs and Lodges" in the 1971 Ordinance and has essentially come forward in subsequent Zoning Ordinances so that "Clubs and Lodges" are permitted uses in commercial (C-2) districts.

Chairman C. Nelson added despite the decision reached by the Township Zoning Board of Appeals, the losing party will be appealing to the Circuit Court.

Representing the applicant were attorneys Fred Lucas, of Lenawee County, Michigan; Paul Burns, of Brighton, Michigan; and Philip McKenna CEO of Major Midwest USA Community Planning Consulting Firm.

Representing Summit Township were attorneys William Fahey and William Thomson

Presentation by each party began with the Applicants' attorneys. Attorney Fred Lucas argued the current property zoning allows for clubs and lodges as a permitted use. The Applicant received all permits and construction commenced. At a later time, a decision was made by the Township as to the interpretation of "Clubs and Lodges" and the Applicant received a stop work order. The Applicant has complied with all requests made by the Township, but believes this is an attempt to stop the Applicant from opening their club.

Philip McKenna, spoke on behalf of the Applicant, stating he is a municipal planner for eighty (80) different counties. At the request of the Applicants attorneys, Fred Lucas and Paul Burns, he reviewed the approved site plans, zoning map and other documents from the online Summit Township Zoning Ordinance as a Municipal Planner. He expressed strong feelings that the actions of the Township were inappropriate. The Applicants' application was for a club, and its building permit was granted by the Township Building Inspector. The granted building permit states that it complied with the Township Ordinances. The Applicant started construction, but was later issued a Stop Work Order. Further, he added, that the plain language of the ordinance is being ignored, and provided a printout containing dictionary definitions of "Club" and "Lodge". The dictionary defines these as an association that has membership.

At that time, neither the Township attorney, William Fahey, nor the Board of Appeals members had questions for municipal planner Philip McKenna.

Co-Counsel for the developer, Attorney Paul Burns, spoke on behalf of the applicant on municipal law. He shared he had been in municipal law since 1980 and asked the board to carefully understand what the Applicant is requesting. The Township Zoning Officer originally made a decision and the Applicants site plan was administratively approved. Afterward, the Applicant invested \$150,000 in improvements (after purchasing the property for \$100,000), and then at a later time received a Stop Work Order. This is the townships third (3<sup>rd</sup>) interpretation, and Attorney Fahey is asking to put language in the ordinance that isn't there. Under the current ordinance, a baseball club and a wine tasting club are not permitted uses for this location unless they are a fraternal club. The Applicant is asking for the board to support the original request, not add any additional language to the ordinance and to reverse the stop work order.

Attorney Paul Burns provided letters and emails of support for the Application. These were received by Chairman C. Nelson and marked Exhibit A.

Philip McKenna provided the dictionary printouts to the board members. These were received by Chairman C. Nelson and marked as Exhibit B.

Attorney Fred Lucas concluded the Applicants' presentation by adding an additional comment stating, "It's an unpopular use, but popularity should have nothing to do with what the ordinance interprets. Whether you like it or not is not relevant."

Attorney William Fahey spoke representing Summit Township stating he had no Exhibits to add tonight but that he had submitted all documents from the Circuit Court case to the Zoning Board of Appeals. He continued by stating the purpose of the township zoning ordinance is to regulate how a property is going to be used, and the Applicant has not provided that information. He has heard that this would be a place that couples can be shuttled in from a local hotel, consume alcohol and meet up with other couples, switch hotel keys, and go back to the hotel with a different partner. He emphasized that this is not a moral or immoral conversation, instead a discussion if this use falls under a "Club or Lodge" according to the zoning ordinance.

He started by adding the consumption of alcohol, stating a commercial (C-2) district requires a

conditional use for the property to allow for the consumption of alcohol. The Applicant would have to make a special application for why they should be able to use and have alcohol on the property.

He continued by addressing and defining "Clubs or Lodge", stating in 1961 when it was first introduced to the ordinance, it was a community building that was used for social clubs and fraternal clubs. Over the years, it was gradually reduced to "Clubs and Lodges", as a shortened nomenclature and contains one hundred and eighty six (186) uses under the ordinance.

He continued stating the two (2) reasons the Application is not a permitted use are as follows:

- 1) The consumption of alcohol
- 2) The property use does not comply with the definition of "Clubs and Lodges"

From the audience a gentleman spoke loudly, interrupting and stopping Attorney William Fahey's presentation.

Chairman C. Nelson addressed the individual creating the outburst, and requested his name. When he would not provide his name a Jackson County Deputy was asked to remove the individual. The individual refused to leave and said it was his constitutional right to attend this open meeting. The Deputy remained next to the individual until the individual agreed to comply with the chairman's request.

Attorney William Fahey continued stating that when the Applicant visited the Township office and spoke with the Building Inspector and the Zoning Administrator he provided vague information. He was instructed to present a complete Site Plan but did not provide this information so site plan approval did not occur. The Applicant was instructed by the Township office that he would be limited to only internal changes to the structure until the additional proposed use information was provided. Later, when the Township had all the information they had no choice but to submit a Stop Work Order to the Applicant.

Attorney William Fahey added a liquor license is not required to have liquor on the premises. The proposed use is BYOL and will be unlicensed, unregulated and unpoliced.

Co-Counsel for the developer, Attorney Paul Burns, responded that the case was a moving target. The letter from Attorney William Fahey did not mention the consumption of alcohol and he pointed out that BYOL is a permitted use under the current zoning ordinance and referenced the Elks and other fraternal organizations that serve alcohol. He classified the explanation of the business provided by Attorney William Fahey as an assassination of the Applicant's character. The Applicant has not withheld any information from the Township. They made an application for an administrative site plan, provided sealed architecture documents, and received a building permit before starting construction. The Applicant's business will not violate any local, state or federal laws, and will not have a liquor license (alcohol will not be sold), no food service, and have no employees.

Chairman C. Nelson questioned who will oversee the use of alcohol.

Co-Counsel for the developer, Attorney Paul Burns, answered volunteers will do the monitoring.

Public Comment:

Peter Bormuth, who interrupted the meeting earlier, is in support of the application.

When Chairman C. Nelson asked Mr. Bormuth to remove his hat as a sign of respect, he refused, stating the hat was made from beaver and is a religious symbol so he did not have to remove it.

Mr. Bormuth continued to express support for this modern social club.

Judy Bivins questioned if the applicant intended use for the property as a swingers club.

Chairman C. Nelson reminded the audience this meeting was not to discuss morality.

Fernando Viaald pointed out that the applicant did not provide construction plans until after the construction had started. Additionally, he expressed opposition to the application and concern that the applicant was starting a prostitution club.

Betsy Burns was not in support or opposition to the application, instead she expressed support for people to make their own choices for their lives.

Public Comment closed.

Chairman C. Nelson asked for questions from the Zoning Board of Appeals members.

D. Kelly remarked that she was unable to locate the definition of "Clubs and Lodges" in the Zoning Ordinance.

B. Dubois commented that he feels the Township has a responsibility to the residents that every application goes through the same thorough process to meet all township requirements, and the application tonight does not do so.

A motion was made by Chairman C. Nelson, supported by B. Dubois, to deny the application for Epicurean Development, LLC on 4200 Spring Arbor Road citing that under the Ordinance as now framed the proposed use of the subject property by the Applicant is not a permitted use in the C-2 District. An amendment of the Ordinance would be necessary in order to allow such activities as permitted in that District.

Reason for Decision:

*Authority:* The Zoning Board of Appeals has the authority to interpret the language of the Zoning Ordinance pursuant to Section 150.369(A)(3).

*Original Ordinance:* In looking to the Zoning Ordinance terminology over the years, it is inconceivable that the drafters and those passing would have considered a "Swingers Club" as falling within "Clubs" in a R-1 District. It is unlikely that anyone in Jackson County was aware of "Swingers Clubs" in 1961 or 1967. Looking, therefore, to the intent of the Ordinance at the

time of its original adoption, it did not encompass the Applicant's use of "Swingers Club" within the permitted "Clubs".

*Present Ordinance:* In the subsequent Ordinances, the intent was further clarified by referring to "Clubs and Lodges" together. The Zoning Ordinance does not simply permit all "clubs", but specifically permits only "Clubs and Lodges". Reading the two terms together as required by the Zoning Ordinance, "Clubs and Lodges" specifically refers to service clubs and fraternal lodges, and specifically to the meeting and dining facilities operated by such fraternal organizations as the Elks, Eagles and Masons, etc. Inasmuch as there has been no amendment of the Ordinance to enlarge the meaning, but only the amendment to combine "Clubs and Lodges" as allied uses, the term much stand as not encompassing the Applicant's use.

*Common or Standard Use:* As shown by the dictionary meaning, and common usage, in the community described above, a "Swingers Club" is not encompassed within the "common or standard use" of "Clubs and Lodges". Section 1500.006 ("Any term not defined herein shall have the meaning of common or standard use.")

*A name does not make is so:* Just adding the word "club" to the title does not make the activity one which is recognized in the community or in the Ordinance within the term "Clubs and Lodges". If we have a Pedophilia Club, or to give it class, "The Socrates Pedophilia Club", is that within "Clubs and Lodges" under the Ordinance? It is no more within the scope of "Clubs and Lodges" than Applicant's "Swingers Club".

*Consumption of Alcohol:* The proposed use of the property is to include unlicensed and unsupervised use of alcohol by means of BYOL. Under Section 150.145(61) and (62), "drinking establishments" are not permitted uses in the C-2 District. Furthermore, there are no employees to supervise consumption of liquor. There are no employees to act as bouncers or enforcers of common decorum. It will be up to the Township to respond to guests who overindulge or who, as a result, engage in violent acts contrary to the safety and general welfare of the Township. Such an establishment acts in derogation of public health, safety and general welfare.

Role Call was taken

Vote:

Chairman Charles Nelson: Yes

Tony Hollow: Yes

Debby Kelly: No

Larry Dunn: Yes

Jack Shelby: Yes

Bob Dubois: Yes

Scott Blakemore: Yes

The motion carried.

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## Election of 2016 Officers

A motion was made by L. Dunn, supported by T. Hollow, to retain Chairman Charles Nelson, Vice-Chairman Jack Shelby and Secretary Bob Dubois for the 2016 calendar year. The motion carried unanimously.

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A motion was made by Chairman Charles Nelson, supported by D. Kelly to adjourn the meeting at 8:08 p.m. The motion carried unanimously.

Respectfully Submitted

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B. Dubois, Secretary