

YANKEE SPRINGS TOWNSHIP
BOARD OF TRUSTEES
Special Board Meeting
Complaint – Planning Commission Member
Thursday, October 4, 2018
4:00 p.m.
Yankee Springs Township Hall
284 N. Briggs Rd., Middleville, Michigan 49333
MINUTES

FINAL MINUTES
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 YST BOT/Complaint PC
 10.4.18
 Draft copy
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 10-15-18 jcl
 Approved Nov. 8, 2018

Meeting called to order at approximately 4:05 p.m. by Supervisor Mark Englerth.

PLEDGE OF ALLEGIANCE

Roll Call: Present: A. Jansma, Englerth, Boysen, VandenBerg, Lippert

Also Present: C. Kaufman, YS Township Attorney.

Staff Present: C. Strickland, C. Biggs, G. Purcell, R. Beukema.

Visitors: 5 visitors

PURPOSE OF MEETING:

Special Meeting of Board with YS Twp. Attorney, Catherine Kaufman regarding complaint against a Planning Commission Member.

Complaint was from Bill Medendorp regarding Planning Commissioner Frank Fiala.

F. Fiala chose not to go into closed session.

Clerk Lippert requested complaint of B. Medendorp be attached to today's meeting.

Bill Medendorp added the following to complaint: "When Cathy (Strickland) put the orange pieces (like sticky notes) on there (FLU map) and he talked about the orange pieces of property and thanked her (Cathy) for gluing the orange pieces on there." Also B. Medendorp commented regarding the zoning map (on wall behind board members - (Future Land Use Map) –"with same color as the DNR property"- B. Medendorp added. Map is dated January 2018). Referring to the map, Medendorp asked the following questions: "Why is the zoning map back there? Who put it there? Who made it? and Who paid for it?"

Supervisor Englerth commented that he recently received a letter (marked second complaint) from Rebecca Harvey, Professional Planner. Harvey's letter was given to F. Fiala by M. Englerth at Fiala's home last night. M. Englerth noted it's a board decision whether that letter will be addressed today as well. M. Englerth commented that F. Fiala would also have a say at the table. Englerth commented that the letter of Harvey's addressed the same issue.

F. Fiala commented that R. Harvey's letter (attached) could be addressed as well as B. Medendorp's complaint. Fiala wished he had a little more time to address some of the items in the letter he received last evening, but Fiala wanted to get it "all on the table".

CALL TO ORDER

PLEDGE

ROLL CALL

PURPOSE OF MEETING

A brief recess was taken for Clerk to make copies of letter from R. Harvey to distribute. Fiala also had a letter that he distributed regarding his response to the complaint(s).

Recess: 4:15 p.m. Resume: 4:21 p.m.

Frank Fiala read the attached letter (his response) into record, dated October 4, 2018.

F. Fiala commented the “fuzzy” boundaries (soft edge boundaries) type of map that R. Harvey had recommended from Otsego. Fiala commented that when Harvey did the Yankee Springs FLU map that way (soft boundary), it didn’t look as well as expected. Fiala asked that further mapwork would be delayed until April when everyone was back in April. Fiala and Beukema asked R. Harvey about delaying. R. Harvey wanted to know why the Planning Commissioner was contacting her. Fiala commented that we no longer have a Zoning Administrator, and prior to not having a ZA, the Zoning Administrator was the contact person for R. Harvey. Fiala commented on the procedure that has taken place since YS Twp. did not have a ZA. Fiala commented that he had been kind of the “default” contact, and R. Harvey may have taken offense to that according to her letter. Fiala also apologized to any offense that was caused by talking about the maps (with the lines strategy) outside of the meeting. Fiala commented that he talked to the vice chair and acting chair without a quorum and indicated that to R. Harvey. Fiala commented on the workshop procedure, and PC meetings and working on things out in the open and commented that he was sure not trying to break rules.

F. Fiala commented that the township doesn’t have a good procedure for how to create and update a masterplan. At some point, the PC will say this is what we are going to go with and give to the Township Board. The Twp. Board will approve and adopt (or not) from there. Fiala noted the Zoning Enabling Act and the requirements of having a five year Master Plan. Fiala noted the delicate process that “we work hard at”.

B. Medendorp, of 1905 Vista Point Drive, commented, “We are talking about maps and That. Let’s go back a little bit. That man right there, when they tabled that,, came up there and had the finger in your face and you gave themn permission to speak and they went to court.” Medendorp pointed and Englerth asked him not to point. Medendorp continued, “But what I’m sayin’ is when Shane had to go to court because he said something like ‘Oh, do you guys know how many gallons of water gone through the pipes?’

This is what the meeting’s about. They went after Shane! He went to court! I was at court watching him with Judge Doherty. Now we would argue did he say this or didn’t he? Yeah. Ok. We’re gonna have a recall. The whole conflict was, it was tabled. Purcell sat over there and there and they were at the meeting was right in front of Larry (Knowles) was right behind him. The conflict here is that at this meeting, Frank and I’m going back and forth a little bit, but Frank told Rebecca, ‘Draw a line through my property.’ He’s settin’ over there, so Rebecca draws a line. He’s talking about his property. What’s the difference between ‘ a few gallons a minute’ compared to ‘draw a line through my property’? Now when I start seeing this kinda stuff, I get upset. Shane don’t have to sit there with lawyers here to pay, when everybody else can do whatever they want. I talked to the Zoning Board and they don’t ever have recollection of how those lines got on the map. I’m going back and forth, I know.”

Englerth commented to Bill Medendorp that he was going to “help him out” and noted that

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BREAK

Attach

the meeting today was to weigh in about a Planning Commissioner's conduct being inappropriate when it came to drawing future land (use) maps. "What happened in the past with Mr. Vandenberg is not part of this complaint," added Englerth

Medendorp commented, "Article 29, 30,, he makes a comment 'What road are you on? Oh, that's right. You're on Vista Point. Go for it.'" Referring to a Planning Commission meeting and F. Fiala, Medendorp commented "It started out where Rebecca drew a line on all white property of Frank's. The mark is there and all of a sudden that map disappears. Frank brings in that map it was in box. He pulls it out and he lays it out in front of everybody. He was up there explaining about this and that and how it was. Later on I went to Cathy Strickland I said 'Who owns that property because it's the same colors as the DNR? And who owns it' and all of a sudden that map disappears then I see that map coming up and I'm sayin' is all of sudden we see Map 1, Map 2, Map 3 and now we got the fourth one that Rebecca made and I'm sayin' is how I got this 40 little acres and I know is - December 21 you heard Andy, what he said, on the tape, was 'We want to buy your property AND we want the mineral rights'...40 acres to drill, oh that's right, and my daughter couldn't build a house there? I asked an attorney, 'Did you read the map?' She said 'You should be able to build three places there according to the map.'...So what I'm trying to say is here I'm trying to find out why I can't do a thing with my property because I need 40 acres to drill oil that's for sure. And the DNR needs it for, or the government needs it for funds. Follow the money trail. M. Boysen asked "Bill are we getting off track here again?" Medendorp continued, "...I'm saying he's talking about things on my property. We see the maps changing. And I see things that he's (Fiala) doing and I can't go in that direction I was told. What he did to Shane, these people did to Shane. That's wrong."

Boysen asked if it were possible that maps could change after going through discussions.

S. Vandenberg commented that he was at the meeting. Vandenberg commented that Fiala got up and presented what he (Fiala) wanted to do with his farm. Vandenberg commented to Fiala that Fiala "was doing all the talking". Vandenberg continued addressing Fiala, "You were presenting what you wanted to do with your farm. Am I correct, Frank? Cause you know I'm not making this up...Isn't that why we are at this meeting because of that specific reason? Because Frank was participating trying to change the future land use map about this property?... To be more clear, that's where we are Bill. We're not talking about let's just say my situation a while back... We're talking about a completely different situation right now where Frank came up out of his chair, right next to map and pointing out to the PC what he wanted to do with his property."

Englerth allowed F. Fiala to speak after Fiala asked to comment.

Frank Fiala commented, "At all those meetings we had several planning commissioners here, and as I best recall, and I think at a different meeting Bill ... had some things that we did in the changing of verbiage in the Master Plan. Fiala commented that his best recollection of Bill's reaction was "You're taking away all of our rights." Fiala commented that after the Master Plan language the PC worked on maps and Fiala was standing at the map and doing the talking. Fiala commented on how the PC went through the map from area to area and at one point Fiala commented "What about Recreation for some of this" by the state land. Fiala noted a PC commissioner commented that it was Fiala's land and it was asked what he (Fiala) might

want to do with that. Fiala commented that at that point, which Shane Vandenberg had pointed out, Fiala talked about his son coming along and wanting to keep it a working farm,... and that his son had some ideas from his travels and he was thinking of early retirement – kind of an executive retreat, trails, possibly a corn maze, etc. “..If I could not talk so much and do so much, I would have never brought that up....I didn’t even think about it. You could have knocked me over with a feather that some nine or ten months later, (referring to the recent complaint) when you say draw the line...Fiala went on to comment about an error that occurred with his property being changed (to dark green) on one of the first cuts of the FLU map. Fiala also mentioned another item that occurred in one of the mapping stages regarding DNR land, and potentially separating it into two categories and that may have been offensive to R. Harvey. Fiala commented that he just saw R. Harvey’s letter last night and tried to respond to it this morning. Fiala noted that it is part of his personality to stand up and go through processes just like he is doing tonight. He welcomed any comments or questions.

Kaufman commented that R. Harvey did contact her on this. Kaufman noted that the FLU map doesn’t rezone anyone’s property. “It’s very common ... there may be several changes as you go through the process. After this 63 day waiting period is over, the PC will hold a public hearing, there may be even more changes after that. The Township Board may reserve the right to a final approval the Master Plan by means of a Resolution. One person’s voting on the Master Plan is not going to be determinate of what comes out of that Master Plan. Especially in many places, the township board will reserve final approval of the Master Plan to itself to make sure it is reflective of what the community wants.”

Kaufman commented, “I think what is more concerning to me and to Rebecca, is not so much we change from fuzzy lines to straight lines on our Master Plan map, but the fact that there was communications after the first map was prepared and unanimously recommended for approval by the PC. There were communications after the fact, between Frank and Greg by emails and by Rich and the emails telling Rebecca what to do. There was decision making going on, although it wasn’t a quorum, outside of a meeting. That is concerning to me. I realize it wasn’t a quorum, and realize it wasn’t an Open Meetings violation, but there was.... some decision making and direction to change what was done at the previous PC meeting to something else. And I don’t really care if it involved his (F. Fiala’s) property or not. That very fact concerns me. I think if you look at last paragraph on Rebecca’s summary, (C. K. read the paragraph). So she’s not doing this because her feelings are hurt, she’s a professional. She’s been doing this a long time and so have I. It was a concern that she had that some decision that was made in a PC meeting was thereafter changed outside of the meeting. And that’s a concern. I just wanted to share that.”

Englerth commented, “I agree with that.” Englerth noted that a year (or so) ago, “...During that piece, Frank agreed to step down as Chair of the Planning Commission.” Englerth commented that reviewing his behavior again, “He continues to reach.” M. Englerth confirmed with C. Kaufman that the maps had changed between meetings. That was part of the complaint Englerth had received. Englerth commented, “One thing I say about government, if you don’t like it, ‘You don’t get your way. You have your say’- But you do it all in a meeting. ..Not outside the meeting.” Englerth commented that this concern of R. Harvey’s came to him a while ago. Englerth commented that in the time that Rebecca has

worked for the township, she hasn't complained about anything. Englerth commented that no one wants to embarrass and humiliate anyone, "...but we've been down this path in the past, and now we're at this path again. And that is what concerns me."

Fiala commented, "I appreciate that. I don't think there was ever an effort to make changes or strategy, or do anything about... I do not know what you are referring to on the maps. Once I went to planning and picked up the maps for Rebecca as a favor. Other than that...I don't know squat about maps... I talked to Rich and I talked to Greg about delaying this until they get back and taking a look at the map. That was all, there was never an intent, no decisions made, no open meetings act, no any of that type thing that I'm aware of. And I would welcome input from others."

Greg Purcell, Former PC Chairman, noted that he appreciated the opportunity to get a few things on the table. Purcell noted that "Planning by definition, is dynamic, not a static process". In regards to Mr. Medendorp's complaint, Purcell clarified that the map being discussed was the Future Land Use Map. Purcell noted that as for not recusing himself, the first thing Fiala did was say he owned the property, and was clearly transparent. Purcell noted that at the same time of the map discussion, Shane Vandenberg's property was discussed as well, as Shane had some concerns that he expressed about his property.

Purcell noted that these discussions were not formal sessions, that they were "workshops". "We even had some sessions advertised as workshops before or after the Regular Planning Commission session. Go back and look at the agenda. It clearly showed that."

Purcell commented on outside communication, and noted that the Future Land Use Map is a "dynamic thing". "We were talking to a lot of people. We invited in the DNR, the State Park and others and we had conversations with them to make that invitation. So it wasn't as if we were trying to put some binder ... and decide things separately, but Frank called and asked me about that when I was in Florida. I said 'Yeah. I'd be interested in having that kind of discussion.' It was not a 'Let's decide one thing or another thing, it was a let's look at these maps', because there were issues with regards to these sort of fuzzy maps (soft boundary) because it went through a subdivision and it bisected areas that were not going to be the same. So that was an issue as part of that."

Purcell commented, "I'm really kind of surprised that we are here. I really am, because Bill goes to the Planning Commission meetings regularly. He is invited to comment regularly. When he asked Frank about talking about his property, his (Fiala's) response was, 'We're looking for input from everybody, and Bill if you have any future plans for your property, we'd like to know about that, too. That was a comment that was made during the course of the meeting. So it's not as if we were doing something specifically to benefit Frank Fiala. And there was no benefit. He could derive no personal gain, because the underlying zoning did not change. Your attorney has said that. So there's no benefit to him there as part of this. It was a workshop session, and that's the way it is. I think Frank was being open, transparent, honest. I think the Planning Commissioner members were wholeheartedly going back and forth, with give and take, with regard to the Future Land Use plan, the verbiage and the map. If Rebecca thinks that we were doing something wrong, I really wish she'd brought it to my attention, as Chair, because I was the chairman of the PC during these times. And if your goal here is to

say, 'We don't want or like Frank Fiala being on our Planning Commission, have the guts and just go up and ask the guy to resign. Don't go for some trumped up charge here. Frank did nothing wrong in this process. Shane commented about his future land use plan with regard to his property, and were modifications made? Based on that, I consider that the same as the input (inquiry?). When Shane had other issues before with the township board, and the PC in regards to his subdivision, we said 'No' right there and that was appropriate. But when we were gathering information from all sources, putting it on the table to try to make the best decisions we could, that was part of the process was. Nothing inappropriate."

Purcell proceeded to comment on his respect for Frank Fiala and the work he has done for this township. Purcell noted that Fiala's property value or zoning hasn't changed "one iota". Purcell noted that he thought the Master Plan was in the 63 day public commenting process and it would be beneficial land use information to the township. Purcell also noted that last year a survey of the township residents was done. Purcell concluded, "Having more information is better to allow you to make better decisions. I'm really sorry to see this come to this sort of an issue. I really wish Bill would have just have talked to Frank about this or me or somebody about it. I don't know where all this communication goes from. That's all I have to say. I hope you will take this in consideration as part of your deliberations. Thank you very much."

C. Kaufman asked Greg Purcell, "Did you have more than a quorum in your worksessions?"

G. Purcell confirmed they had quorum. Kaufman commented, "So you are making determinations and decisions at an open meeting, that is a meeting, even if you call it a workshop." Kaufman referring to the email from R. Harvey with her summary of events commented, "... I've had some concerns with how I've seen things happen in the past... and if she (Rebecca) has this kind of concern, I'm concerned this township has an issue whether we like it or not, with transparency. So...call it a workshop it is still a public meeting. You still have to make decisions at meetings that are open to the public with public comment on the agenda. I've been thru many master plan processes.... I totally expect once the 63 day comment period is over and you get this back, there may be more changes. That doesn't mean they are doing anything to favor themselves... but my bigger concern is are any types of decisions being made outside of public meetings whether you call them workshops, PC meetings, whatever they are... it has to not be happening."

G. Purcell commented, "...The only parties that are going to know that are the parties involved in the conversation. I was one of them...there were no decisions that were made... 'I'd say that's worthwhile; let's put that on the agenda for discussion amongst the full PC'. So I was not involved in making in any decisions outside of the Planning Commission. In fact, we were trying to contact/induct? people to get more information so that we could make the best decisions on the Planning Commission."

Discussion occurred on "workshops".

Englerth commented, "We went down this road a year ago with a complaint... I got a complaint six months ago. I asked Rebecca to put it in an envelope and we put on a shelf. Now we have formal complaint." Englerth commented, "...This is not a witch hunt... we are doing our job as a board and we brought the attorney in, and we take our responsibilities

seriously. We're trying to follow the law and we are doing the best we can about a bad situation... Mr. Medendorp had a complaint. He has the legitimate right... this board has an obligation to deal with it. That's what we are doing. It's tough for everybody....It breaks my heart. It tears at it."

BOARD DELIBERATION

C. Kaufman commented that she had made her concern apparent and had nothing more to add.

A. Jansma inquired about workshops because the township board has workshops.

C. Kaufman commented that any time there is a quorum of the elected body, "it's a meeting". So they have to be posted... For a lengthy process, such as the Master Plan, "It is wise to schedule one workshop session a month separate from your regular PC meeting because there is so much work to do," added Kaufman. "...But simply because you call it a workshop doesn't mean it isn't a public meeting...and that would apply to the board as well," Kaufman noted. Kaufman noted that it was very common for boards to have worksessions (or workshops) to limit the time of their regular board meetings.

S. Vandenberg asked F. Fiala if Frank's name was on the deed of the farm F. Fiala referred to when going over the FLU map. Fiala confirmed that he, F. Fiala, had full ownership of the farm in question.

J. Lippert inquired about "soft edge" maps. Discussion followed regarding the status of the FLU map and some issues that PC members had with the soft edge map style.

At approximately 5:20 p.m., Supervisor Englerth commented that he felt that he has heard enough information and had enough clarification. Englerth asked with the board's consent to have a moment with Fiala and Mendendorp outside, separately.

RECESS: 5:22 P.M.

RESUME: 5:28 P.M.

Supervisor Englerth commented that F. Fiala has accepted that he made a mistake... "Mr. Medendorp said that if Frank admitted to that, that it wasn't a major crime. It was a misstep and he (B. Medendorp) is going to withdraw his complaint," noted Englerth. Englerth also commented that he has talked to legal counsel, and that C. Kaufman agrees that it is the best path. "That tomorrow morning we all have to get up and work together and have to act like a community," added Englerth. The board was in full consensus with this- that this is the path it would go down.

F. Fiala commented, "I do apologize.... I'll be so dog-gone sensitive for as far out as I can see...I will watch myself and try to not talk so much..."

B. Medendorp commented, "I was told that Purcell said I had trumped up charges...Take that out of the minutes."

Englerth commented at this time he would ask Frank Fiala and Bill Medendorp to shake hands and “Let bygones be bygones ... and put this behind us.”

At that time, Medendorp and Fiala shook hands. Englerth thanked Fiala and Medendorp and the board. The audience applauded.

At this time, **Boysen** asked Fiala if Fiala had any problem going forward from this point, with Rebecca (Harvey).

Fiala commented, “I do not.” Fiala noted there were some issues that he might have to talk to Rebecca about individually. “I support Rebecca... I was her sponsor coming in here... She’s been doing this forever and really knows her stuff. I appreciate the help she gives us and the ZBA. I’m really sincere in that. She’s a great lady,” noted Fiala.

Englerth commented that any retaliation toward Rebecca Harvey will not be tolerated. Englerth also commented that R. Harvey was put in a bad spot and that she was not trying to cause trouble. “There’s a reason we pay her by the hour. If we cannot respect that. If we don’t think she has value, then let the township board know’cuz we’ll quit writing the check for all that, because it costs a lot of money. But we have to all work together. So this thing of forgiveness, I expect everybody to move forward in a positive direction,” added Englerth.

OTHER BOARD ITEMS:

Englerth mentioned the situation on Barlow Lake regarding an amended plat vs. a supervisor’s plat vs. an assessor’s plat.

C. Kaufman commented on the “paper road” situation. Kaufman commented that normally the residents would come to the township and ask the township to vacate the road for them, but generally that has to be done through a circuit court process. Generally the property owner initiates litigation. They have to name the township, the Road Commission, the Drain Commission, and any other people that might be affected in the subdivision. “So generally when that happens, ... the township just enters an appearance. We sit there and wait. The only reason you’d be concerned in any way is if there is utilities in that paper road that we need to retain any ? or something like that. Generally, it’s of no effect to the township, and at the end of the litigation, you may have to adopt a resolution to vacate the road in accordance with the circuit court. So ... if that is what the people want to do, they can initiate the litigation if they want to,” noted Kaufman. (To be continued... Englerth said he would keep Kaufman in the loop (regarding the status of this situation).)

Also discussed: Articles of Incorporation for GLASWA, and how it would have to be amended in order for Larry Knowles to sit on this board and have the same position (at GLASWA). Boysen noted that the board opted not to change the Articles of Incorporation. Boysen asked Kaufman if it was her understanding that going forward if one of the townships does not agree to that the Articles cannot change.

OTHER BOARD ITEMS

Attach E-Mail
9-7-2018

C. Kaufman commented that her law partner wrote an email about a year ago. Kaufman commented that she did know that the sewer authority is seeking a second opinion.

Kaufman commented that she had a vague recollection of her partner's email and believed that a series of events would have to take place.

Boysen asked, if the YS Board disagreed with Knowles holding both a trustee position and being Director of GLASWA, what would be the YS Board's next step?

Kaufman commented on looking at the Incompatibility of Offices Act, and or Public Officers' contracts or something similar. Kaufman also commented that a decision would be made regarding violation of those acts and then going from there.

Lippert handed Kaufman the email of R. Thall to L. Knowles, along with the minutes (of the Nov. 2017 Board Meeting) at the time of R. Rottschafer's resignation and the nomination of L. Knowles to take Rottschafer's vacated spot on the Board.

Kaufman mentioned that G. Leep (of GLASWA Board) contacted an attorney in September 2018. (Clerk handed out copies of E-mail from Roger Swets dated 9-7-18)

Kaufman read letter aloud from R. Thall's (Kaufman's law partner) email to L. Knowles last November 13, 2017 regarding Trustee appointment.

Kaufman mentioned that R. Swets, an attorney from a different firm has requested approval of YS Township to give an opinion to GLASWA board regarding L. Knowles holding a position as Director of GLASWA and being an elected Trustee on the Board.

Englerth commented that this was the first he knew about G. Leep's/GLASWA's request for another opinion.

A. Jansma asked is there is a difference between appointment and being elected.

C. Kaufman said original email from R. Thall was based on appointment, but she has to look up election law as to answer A. Jansma's question.

S. VandenBerg mentioned a supervisor at the City of Wayland had to resign that position to work with GLASWA.

Boysen commented that the Board needs to have a plan if L. Knowles cannot hold a seat.

Kaufman commented that the board has directed her (Englerth asked for board objections – there weren't any) to find out what the next steps are for the Board since Larry Knowles has won the election and is taking a seat on the Board. -(The Board has opted to not amend the Articles of Incorporation which was needed to have L. Knowles sit on the Board and maintain his position as Director of GLASWA).

Another item: Regarding Paul Heystek who has moved out of the township and has requested to stay on the Planning Commission until his term expires in December (2018).

Kaufman commented that once you are no longer a qualified elector in a municipality, then you are technically not eligible (to continue a PC position). Kaufman noted that there is a law that you can have one non-resident on your board. Englerth advised Kaufman that the board had made an appointment just last night for the PC position. Kaufman commented, "If you appointed somebody last night, his vacancy has been filled. The new person can come in after the term (of P. Heystek) expires." C. Kaufman commented that she would like the new appointee for P. Heystek to start in January at the end of Heystek's term.

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ADJOURNMENT:

Motion by Jansma with support from VandenBerg to adjourn at 5:52 p.m. Approved by all.
Motion Carried.

Respectfully submitted:

Date: Draft Copy Circulated 10-15-18 jel

Approved by Bd. Of Trustees Nov. 8, 2018

Deb Mousseau

Recording Secretary 10.4.18

Approved : _____

Janice C. Lippert, Township Clerk

ADJOURNMENT