

<p style="text-align: center;">YANKEE SPRINGS TOWNSHIP Board of Trustees Special Meeting</p> <p style="text-align: center;">Wednesday, October 28, 2020 Shalinda Final Preliminary Plat Extension Request At the Township Hall at 284 North Briggs Road, Middleville, Michigan 49333</p> <p style="text-align: center;">MINUTES</p>	<p>FINAL MINUTES Page 1 of 5 October 28, 2020 Distribution Date: 11-09-2020</p>
<p>Meeting called to order at 7:00 p.m. by Supervisor Englerth.</p> <p><u>PLEDGE OF ALLEGIANCE</u></p> <p><u>Roll Call</u>: Present: Jansma, J. Lippert, Knowles, VandenBerg, Englerth.</p> <p><u>Staff Present</u>: Frank Fiala, Dave VanHouten, John Frigmanski, Sandy Marcukaitis, Brad Williams-Code Enforcement Officer</p> <p>Visitors: 8 (Not including Staff present). Please see <u>Acknowledgement of Visitors</u>.</p>	<p>PLEDGE CALL TO ORDER ROLL CALL</p>
<p>ACKNOWLEDGEMENT of VISITORS:</p> <p>Township Attorney Catherine Kaufman</p> <p>Attorney Chris Meyer - Shalinda Development</p> <p>Geoff Moffat - Shalinda Development</p>	<p>ACKNOWLEDGEMENT of VISITORS:</p>
<p>PUBLIC COMMENT: 3 Minute Limit:</p> <p>John Frigmanski of 12169 Pine Meadows Drive, across from Shalinda, commented that at the last meeting there were a couple statements made that weren't "exactly proper". Frigmanski commented that it was said that because of Covid, there was no burning to be done at that property, and there has been burning done there since last March. "Whenever he (S. VandenBerg) is there, it's burning. He leaves at night, it's burning." John Frigmanski commented that he wanted to clear the record up with this information.</p>	<p>PUBLIC COMMENT</p>
<p>PURPOSE OF MEETING:</p> <p>1. DISCUSS WITH TOWNSHIP Attorney – Shalinda Final Preliminary Plat Extension. 2. Requested Completion Schedule (Minutes of 10/8/2020) Note: E-mail received 10/22/20 from Catherine Kaufman Attached.</p>	
<p>At this time Shane VandenBerg, Trustee, moved from the board table to the audience at 7:03 p.m. per request of Supervisor Englerth.</p>	<p>Shane VandenBerg recused himself from the Board. 7:03 p.m.</p>
<p>C. Kaufman, upon request of Supervisor Englerth, commented that Trustee Knowles can vote on this matter and she didn't see a conflict. C. Kaufman commented on a previous situation regarding Mr. Knowles not voting. That did not present itself as an issue in tonight's meeting per C. Kaufman.</p>	
<p>J. Lippert, Clerk, asked how many extensions have been requested.</p>	

Chris Meyer, Legal Counsel for S. Vandenberg, commented that it wasn't until January of 2018, that the YS Board first approved the Shalinda Flat, then the plat was extended for one year in October 2019 to January 2021. "The extension isn't to finish the plat," according to C. Meyer. "The extension is to guarantee that the law under which the plat was approved, is not changed. So we are doing this in an abundance of caution...State law allows you to extend it for an unlimited number of one year periods. The township ordinance can be read as saying it can only be a one - one year extension.... Now, state law controls. He's got the right as the developer ... the proprietor under the plat, to develop his plat in accordance with state law... Under state law a developer gets an unlimited number of extensions if approved by the board... In this case it is COVID (reason for request)."

Attorney Meyer read the following letter from B & R Excavating:

620

RECEIVED OCT 23 2020




Shalinda
Preliminary
Plat EXTEN

137124th Avenue Shelbyville, MI 49344 Phone: 269-672-4444 Fax: 269-672-4446 email: br200@sbcglobal.net

To whom it may concern,

Our firm was contracted early in 2020 by Shane Vandenberg to undertake previously engineered sitework and infrastructure installation to accommodate the 12 lot Plat of Shalinda 2020. We began preparation and staging the first of March 2020. Unfortunately, based on a Governors executive order issued on March 24th, we had to shut down operations. This executive order was lifted on June 1st, allowing us to resume work. Water main was installed for the entire length to serve all lot plus required fire hydrant assemblies. This installation was inspected and approved. We are adding added sand cover on the water main to prevent freezing this winter. Site clearing began shortly after the water main work, however, a burning ban took effect in Barry County on March 26th and lasted until April 28th, in addition, no burn permits were issued for 3 to 4 weeks due to dry and windy conditions in Yankee Springs causing further delays. As of this writing, work has resumed with nearly 90% of clearing completed, based on approved engineering plans. By early December, 2020, weather permitting, we expect to complete site grade changes necessary to allow installation drainage structures required by the Barry County Drain Commissioner, including disturbed site stabilization. We will then to halt work until spring 2021, due to winter conditions. Beginning early April, 2021 after frost conditions, we anticipate the following schedule:

- April to mid May-
Install all drainage structures, with Drain Commissioner inspections
Install all water service laterals to curb stops at ROW line, with Fleis and Vandenberg inspections.
- Mid-May to end of June
Place sand and gravel fill, compact, with Road Commission inspections and compaction tests
Complete entire site finish grades, stabilization and seeding
- July- Road paving, 2-1 1/2 inch lifts, with Road Commission inspections and materials testing as required
- Late July to End of September-[by Medema, VanKooten, engineers/surveyors]
As built plans for water, drainage and roadway
Final lot surveys
Lot irons placed at each corner
Final plat document prepared for signatures of public agencies
- October
Record final plat with Barry County register of deeds

Sincerely,
Ryan Martin 

Attorney Meyer commented that there are three key things to think about:

1. His client was not asking for any changes.
2. Almost anything the township has jurisdiction over is “in”. The rest is under the Road Commission and Drain Commission per Meyer.
3. The delays were not the fault of Mr. Vandenberg. (C. Meyer commented on everyone in the audience with masks (because of COVID).)

Geoff Moffat – Consultant to S J Vandenberg Construction, (the proprietor to this plat- per Moffat), commented that the contractor said the project would have been done had not COVID occurred.

For the Record: J. Lippert, Clerk, commented the letter (from B & R) was not dated on the letterhead. J. Lippert stamped the date of October 23, 2020 on the letter.

J. Lippert asked about the burning (under no burn) allegations. Attorney Meyer replied that he assumed that the township had enforcement procedures for this situation, and enforcement action would have to be taken.

C. Kaufman commented that state law is unlimited on one year extensions and noted that the YS Township ordinance is different. Kaufman commented that the board must policy-wise think about what is best for the township. Kaufman commented that this delay was not the fault of the developer. It (delay) was because of COVID according to Kaufman. C. Kaufman commented on possibly changing our subdivision ordinance because of situations such as this (COVID) in the future. Kaufman reviewed other options, such as going into an agreement and taking a bond, and Kaufman felt from her personal experience that “those things are more trouble than they’re worth.”

Englerth commented that normally when you bond for a project, you are in the final approval stage. Englerth spoke of the developer behind McDonald’s “sitting stagnant” for years due to the Great Recession, as well as, the PUD “where the old Baughman’s marina” was sitting stagnated for years. “And the best thing that’s happening now is that you’re seeing those projects finished up. The houses are going to go somewhere, and proper planning takes and puts them- you can take a 100 acres and divide it into ten lots so it’s an advantage to a subdivision and it benefits the community,” commented Englerth.

Motion by Englerth to grant an extension on Shalinda Plat for one year. NO SUPPORT. MOTION FAILED FROM LACK OF SUPPORT.

L. Knowles commented “I think we have to move forward. But when you say we can ignore the ordinance, I want to make sure how we ignore the ordinance. The way I read it, ‘The subdivision improvement agreement shall provide the following’ -not might.” L. Knowles referred to pg. 26 of the subdivision ordinance.

C. Kaufman commented “I think we can get around it, ...the issue; the challenge here is, the state law is broader. Your provisions are narrower. It doesn’t mean your ordinance is wrong, it just provides less flexibility. If you wanted to default to the state law, in this case given the situation of COVID, then I would if there was a recommendation or a

**MOTION to EXTEND
for One Year**

motion to approve, I would counsel that it would include because of the situation with COVID and because of the unexpected ramifications or results there from- we are going to allow one more additional year extension- and to try to distinguish it. I don't generally advise to go this way. I would think a portion of this subdivision ordinance is so tight that it never expected this type of this situation. I am concerned because we have a developer that has half of his utilities in the ground, so if we do instead decide to move forward and go to this alternative..." C. Kaufman referred to the subdivision ordinance, page 26: "In lieu of completion of all applicable public improvements prior to the approval of the final plat, the township board may permit, that's a may. It's not a shall, the proprietor to enter into a subdivision improvement agreement by which he covenants to complete within no later than two (2) years following the date in which the final plat is signed." Kaufman noted, "We haven't given final plat approval yet." Kaufman commented that it would be much more burdensome on the township.

Kaufman commented, "I'm advising that because of the very unique situation and because the state law allows you to do otherwise and then I would advise that we go back and look at the subdivision ordinance and amend it after the fact."

L. Knowles inquired, "So we can go around it?"

C. Kaufman commented, "I would advise in this particular case, we can go around it."

L. Knowles then mentioned part 200 of the General ordinance, mentioning fees. "If I read this right, this shouldn't be costing the taxpayers anything."

C. Kaufman commented on a set fee for processing and generally anything over and above is "Additional Professional Assistance" and is pulled out of escrow."

For the Record: Clerk Lippert noted that this item (above) was covered in the township's resolution #06-01-2007 Escrow fees and Shane VandenBrink did pay escrow fee of Fleis & VandenBrink per J. Lippert.

Lippert inquired regarding Section 3.8 Conditions of Final Plat Approval, Options A, B and C, which C. Kaufman reviewed for those in attendance.

Lippert also commented that this board is going out right now.

Geoff Moffat commented that the board's and S. VandenBerg's goal is to complete the project. All the water is in, sewer and hydrants are in, the only thing left are curb stops from water main, and the lateral connection to each customer is all that is left (under the township's jurisdiction), "\$6,000 to \$8,000, tops". G. Moffat commented that the Road Commission and Drain Commissioner just wanted the work done and didn't care about a bond. G. Moffat added, "...there really isn't any need to have any sort of surety, because you can't get a final product until it's all done and approved by various agencies"

At this point in the meeting, **Treasurer Jansma** thanked C. Meyer, for the completion schedule for the infrastructure on the Shalinda Plat. Jansma also thanked Shane for giving the board the plan. Jansma noted that she wanted S. VandenBerg to be successful in accomplishing his goals. Jansma noted "But, we, as a board, also have a fiduciary and ethical responsibility to the township."

FINAL MINUTES

Page 4 of 5

Special BOT Meeting

SHALINDA EXT. Request

October 28, 2020

Motion by Jansma, with support from Knowles, to support the request for an extension from Shane VandenBerg for the completion of the work as outlined by Ryan Martin of B & R Excavating which was faxed to us on October 21, 2020 for the 12 lot plat of Shalinda Development with the following provisions: Mr. VandenBerg will submit to the Yankee Springs Township Treasurer, an amount of \$5,000.00 to be put in escrow so the township will have funds to pay expenses incurred because of township costs related to this development. This estimated dollar amount is itemized as follows: Attorney fees - \$3,000.00, Engineering - \$1,800.00, Miscellaneous Costs - \$200.00. This escrow amount must be paid by December 1, 2020 at or before 12:00 noon with cash or a certified check. If it is not paid by that time, the request is automatically denied. As money is spent from that escrow account for costs related to the development those amounts will be repaid by Mr. VandenBerg within 30 days of the expenditure. The township treasurer will be required to send an invoice to Mr. VandenBerg within three (3) working days of the expenditure. In exchange for this extension, Mr. VandenBerg will have up to October 21, 2021. ROLL CALL VOTE: Englerth: Yes, Jansma: Yes, Knowles: Yes, Lippert: Yes. YES: 4, NO: 0, MOTION CARRIED.

FINAL MINUTES
Page 5 of 5
Special BOT Meeting
SHALINDA EXT. Request
October 28, 2020

MOTION MADE

PUBLIC COMMENT :

Geoff Moffat asked for the details of the motion made by A. Jansma (for reference) when the minutes are in draft form.

PUBLIC COMMENT

J. Meyers commented that he appreciated the board's time and he felt they got "a good result here and look forward (?-not on audio) plat next year."

Hazard Pay Reimbursement for Election Workers (November Election)

Jansma recommended \$100 per person - 20 estimated election workers.

Motion by Jansma with support from Lippert to adopt Resolution to pay \$100 per person to election workers due to COVID-related conditions (re:August Election other Townships were paid for the August Primary) Roll Call VOTE: Knowles: Yes, Lippert: Yes, Englerth: No, Jansma: Yes, VandenBerg: Yes. Yes: 4, No: 1. MOTION CARRIED.

**Hazard Pay
Reimbursement for
Election Workers**

ADJOURNMENT:

Motion by Lippert with support from Jansma to adjourn the meeting at 7:43 p.m. All ayes. MOTION CARRIED.

Approved by: Bd of Trustees on Date Nov. 18, 2020

ADJOURNMENT

Respectfully submitted:
Deb Mousseau, Recording Secretary 10.28.2020

*attach to
Minutes 10.28.2020*

Janice Lippert

From: Jan Lippert <janliphasmal@gmail.com>
Sent: Saturday, October 24, 2020 6:21 PM
To: Janice Lippert
Subject: Fwd: Interpretation of Open Meetings Act Amended to allow limited electronic meetings
Attachments: image001.jpg

Copy for board

----- Forwarded message -----

From: Catherine Kaufman <kaufman@michigantownshiplaw.com>
Date: Wed, Oct 21, 2020, 1:09 PM
Subject: RE: Interpretation of Open Meetings Act Amended to allow limited electronic meetings
To: Janice Lippert <JaniceLippert@yankeespringstwp.org>
Cc: janliphasmal@gmail.com <janliphasmal@gmail.com>

Governor Whitmer signed a bill on 10/16/2020 which amended the Open Meetings Act to allow for continued use of virtual meetings through the end of 2020 – and thereafter if certain requirements are met (designation of local emergency, etc.). Last week, before the Governor signed the amendment into law, the Open Meeting Act did not allow for virtual meetings. That is why last week both the ZBA and the PC had to have their appointed officials (at least a quorum of them) in attendance in person at their meetings. Last week was a very tricky week, as the Governor's authority under the Executive Orders had been held unconstitutional by the Michigan Supreme Court, which meant there was no authority to hold virtual meetings for public bodies.

Also, there are now regulations issued by the Michigan Dept. of Health and Human Services (MDHHS) that impose the limits on how many people can attend public (indoor) meetings. Currently – if the meeting room is at least 1,000 square feet – 20 people can attend a meeting, with proper social distancing and masks, etc. (note – someone cannot be prevented from attending the public meeting if they are medically or otherwise unable to tolerate a mask.) The Township should follow its COVID plan for meetings, but cannot prevent someone from attending a public meeting for failure to wear a mask if they are medically or otherwise unable to wear a mask.

At this point, the Board can meet totally through a virtual meeting. I can set up a zoom meeting for special board meeting on 10/28/2020 or I can attend in person. Please let me know what the Township's preference is.

*I, Janice Lippert Clerk opted to go with
"20" people in attendance. New Incoming
Board will
make their
preference.*

Catherine P. Kaufman

Bauckham, Sparks, Thall, Seeber & Kaufman PC