

**CHARTER TOWNSHIP OF FENTON BOARD OF TRUSTEES  
MINUTES FOR REGULAR MEETING OF OCTOBER 18, 2004**

**LAKE FENTON HIGH SCHOOL AUDITORIUM  
4070 LAHRING ROAD, LINDEN, MICHIGAN**

Supervisor Mathis called the meeting to order at 7:30 p.m.

Present: Mathis, Krug, Garfield, Carmody, Gatesman, Stiverson Office Manager  
Broecker and Attorney Cooley.

Absent: McDermott

**PLEDGE OF ALLEGIANCE:**

Supervisor Mathis led the pledge of allegiance to the flag.

**APPROVAL OF AGENDA:**

Motion to approve the 10/18/04 Fenton Township Board Meeting agenda as presented.

Motion by: Stiverson

Seconded: Gatesman

Ayes: All Present

Nays: None

Absent: McDermott

Motion carried. The agenda is approved.

**MEETING MINUTES:**

The minutes of the 10/4/04 regular meeting stand approved as presented.

**EXPENDITURES:**

Trustee Stiverson noted that the expenses included the final payment for the first phase of the Township Hall parking lot project. Trustee Gatesman questioned the large bond payment for the Torrey Road sewer arm. Office Manager Broecker clarified that the total included payments for several bond issues. The summary report only picks up one description. Motion to approve expenditures as presented.

Motion by: Stiverson

Seconded: Garfield

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, Stiverson

Nays: None

Absent: McDermott

Motion carried.

**PUBLIC HEARINGS:**

None

**REPORTS:**

**Ordinance Enforcement Quarterly Report**

Supervisor Mathis briefly reviewed the quarterly report from the Ordinance Enforcement Officer.

**CHARTER TOWNSHIP OF FENTON BOARD OF TRUSTEES  
MINUTES FOR REGULAR MEETING OF OCTOBER 18, 2004**

**Fenton Area Cable Television (FACT) Consortium Update**

Trustee Carmody reported that the next FACT Consortium meeting was scheduled for Thursday 10/21/04. A final review of the proposed franchise agreement is on the agenda. If any board members have input or comment please submit to Mr. Carmody as soon as possible.

**Traffic Signal – Linden Road/Thompson Road Intersection**

Supervisor Mathis reported that a flashing traffic signal will be installed at the intersection of Linden and Thompson Roads. The signal will flash yellow for Linden Road and red for Thompson Road. The decision to install the signal was based on a traffic study and accident history. The Township's share of the \$6,500.00 cost will be \$1,625.00.

**COMMUNICATIONS:**

None

**UNFINISHED BUSINESS-ADOPTION OF ORDINANCES:**

**Rezoning #R04-011, Fenton Twp. Planning Commission, parcel 06-17-200-013  
(13200 Ripley Road); PUD to R-3/1<sup>st</sup> Reading**

Supervisor Mathis reviewed a proposed amendment to the Zoning Ordinance to rezone property on Ripley Road, south of Lahring Road from PUD to R-3. This property was rezoned to PUD in 2001. The Planning Commission has initiated this rezoning because the density of the previously approved zoning no longer conforms to the Township's Future Land Use Plan, and because a site plan has not been submitted in the three years since it was rezoned.

Greg Meihn, representing the Kingsway Builders (the property owner), gave a brief history of the property. Since being rezoned to PUD in November 2001, the property owner has worked continuously toward the development of the land. The primary focus has been the availability of water for the development. Results from test wells on the subject property, combined with stricter EPA requirements for arsenic levels, led the property owner to seek public water from the City of Linden, which is adjacent to the property. Mr. Meihn stated that a letter was received from the Fenton Township Zoning Administrator giving them authorization to pursue obtaining water from the City of Linden. A tentative agreement was reached between Kingsway Builders and the City of Linden, however the DEQ determined that Linden's existing capacity was not sufficient to add this new development. To date the owner has spent over \$130,000 in their unsuccessful attempts to find a suitable water supply on the property. The City of Linden has now located a new water source and an agreement could be finalized in the near future.

The property owner is asserting that the rezoning of this property back to R-3 is legally without merit and would be considered a "taking", subject to litigation, for the following reasons:

- The project has not been abandoned. The owner has worked on the project continuously since 2001, primarily on issues related to water.

**CHARTER TOWNSHIP OF FENTON BOARD OF TRUSTEES  
MINUTES FOR REGULAR MEETING OF OCTOBER 18, 2004**

- The PUD rezoning was not a conditional rezoning; there were no expiration dates or time limits attached to the rezoning.

Supervisor Mathis questioned the letter from the Township Zoning Administrator. She and the other board members were not aware of such a letter. Mr. Meihn clarified that he was only using this letter to illustrate continuous work on the project.

Trustee Carmody stated that there is a history of negative relationships between Kingsway Builders and Fenton Township. He spoke of the Crossings/Silver Chase development at the corner of Owen and Jennings Roads. The apartment portion of that PUD development has not yet been built. That property was sold to another developer, who subsequently petitioned for annexation into the City of Fenton due to arsenic levels in the groundwater, a matter that is still in litigation. Mr. Carmody expressed serious reservations about the owner's "goodwill", in light of the threat of litigation over this issue. He is opposed to obtaining water from the City of Linden and sees this property as a mirror image of the Owen Road property. He supports lower density and hopes the owner will consider working with the Township to develop the property in a manner more beneficial to the Township.

Clerk Krug expressed concern that there are now two instances where the property owner's solution was to seek public water from adjacent cities, rather than incur the expense of putting in a well system.

Trustee Gatesman stated that rezoning to R-3 would not prevent the development of the property. He does not see it as a taking.

Joseph Asher of Kingsway Builders addressed some of the concerns raised by the board members:

- This property is not a "mirror image" of the Owen Road development. For the Owen Road site, the owner attempted to purchase water from the City of Fenton and attempted to pursue an Act 425 Agreement between the municipalities. Both proposals were rejected.
- Attempts were made to access water on the subject property. Water capacity problems and arsenic issues resulted in the decision to seek water from the City of Linden. There is no desire to annex into Linden. While the cost of obtaining water may be more expensive outside the city, the property tax rates are much higher inside the city.

Trustee Carmody disagreed with the statements made by Mr. Asher.

Trustee Stiverson asked Attorney Cooley for his opinion. Mr. Cooley confirmed that the Township Board is within its legal rights to rezone the property. Rezoning under these circumstances, however, could make the Township vulnerable for a taking lawsuit. If the owner could prove a loss of money and/or loss of property value, there would be exposure and risk for the Township.

**CHARTER TOWNSHIP OF FENTON BOARD OF TRUSTEES  
MINUTES FOR REGULAR MEETING OF OCTOBER 18, 2004**

Public Comment:

Lewis Walterhouse, 13191 Ripley Road

Mr. Walterhouse stated that the 2001 rezoning was not consistent with the Master Plan at the time. He stated that the Township Board approved the rezoning despite a recommendation of denial from the Planning Commission. Rezoning the property back to R-3 would not be a significant risk for the Township. Mr. Walterhouse also expressed concern regarding impact on water, roads and sewers.

Sonya Brown, 12159 Jennings Road

Ms. Brown stated that this is an opportunity for the board to set a good precedent and rezone the property back to R-3. The threat of a lawsuit should not affect their decision.

Dave Franz, 3435 Breezepointe

Mr. Franz stated that the City of Linden paid for the test wells on the subject property so the owner may not have as much invested as is being portrayed. He also noted that the City of Linden is looking at selling water outside its boundaries as a way to increase revenue.

Lorraine Zimmer, 6391 Acorn Way

Ms. Zimmer doesn't believe the owner stands to lose a significant amount of money. \$130,000.00 is not substantial compared to the total cost of a development. The board should stand up against developers and do what the residents want.

Dan Zawlocki, (no address given)

Mr. Zawlocki stated that the 2001 rezoning to PUD was a mistake. This is an opportunity to correct that mistake. He questions whether the owner ever intended to put in a well system.

The second reading of the proposed rezoning ordinance will be conducted at the 11/1/04 meeting.

**Rezoning #R04-012, Nancy Swanebeck, parcel 06-03-100-036 and part of 06-03-100-037 (3345 Ray Road); AG & R-3 to R-1/1<sup>st</sup> Reading**

Supervisor Mathis reviewed a proposed amendment to the Zoning Ordinance to rezone property on Ray Road from AG and R-3 to R-1. 40 feet of the AG parcel is being split off and combined with the R-3 parcel. The resulting combined parcel would then be rezoned to R-1. Trustee Gatesman reported that the Planning Commission has unanimously recommended approval of the rezoning.

Public Comment:

Kirsten Hawes, 4282 Owen Road

Ms. Hawes questioned the purpose of the rezoning. It was clarified that the owner of the AG property wishes to split off and sell to her neighbor a 40-foot strip of land to be

**CHARTER TOWNSHIP OF FENTON BOARD OF TRUSTEES  
MINUTES FOR REGULAR MEETING OF OCTOBER 18, 2004**

combined with his existing parcel, (currently zoned R-3). The Planning Commission suggested rezoning the resulting parcel to R-1 to better fit the Land Use Plan.

There was no further discussion. The second reading of the proposed rezoning ordinance will be conducted at the 11/1/04 meeting.

**UNFINISHED BUSINESS-OTHER:**

None

**NEW BUSINESS:**

**Lot Split #LS04-002, Anthony Blom, division of lot 164 of Restwood Park plat, (adjacent to 15212 Restwood Drive)**

Supervisor Mathis reviewed a request to divide lot 164 in the Restwood Park Subdivision. Mr. Blom explained that part of the parcel would be combined with lots 138 and 139 to form a single parcel on Restwood Drive. The remainder of lot 164 would become its own parcel fronting Hunts Fork. Trustee Gatesman stated that the requested division would result in conforming lots and the Planning Commission has recommended approval of the split.

Motion to approved the requested division of parcel 06-30-502-070, lot 164 of Restwood Park, as presented.

Motion by: Gatesman

Seconded: Stiverson

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, Stiverson

Nays: None

Absent: McDermott

Motion carried.

Clerk Krug thanked Lake Fenton Community Schools and Superintendent Ralph Coaster for hosting tonight's meeting. Mr. Coaster announced that he would be happy to conduct a brief tour of the new high school after the meeting for anyone at tonight's meeting.

**PUBLIC COMMENT - AGENDA OR NON-AGENDA ITEMS:**

Alex Brown, 12159 Jennings Road

Mr. Brown, a sixth grader at Torrey Hill Middle School, invited the board and audience to attend a debate in this auditorium on October 26<sup>th</sup>, beginning at 6:00 p.m.

Dave Franz, 3435 Breezepointe

Mr. Franz again voiced his concern regarding school speed limit signs near the new high school as they relate to actual school hours, especially "flex" hours on Wednesday. Mr. Franz stated that the recently repaved section of Rolston Road looks great and hopes that Jennings Road will be one of the next roads considered for improvement. Mr. Franz also repeated his previous issues with illegal off-premise signs being placed by builders and realtors on weekends. He suggested that the Ordinance Enforcement Officer could alter his schedule occasionally to investigate these problems. It was also suggested that withholding building permits may also get the builders' attention.

**CHARTER TOWNSHIP OF FENTON BOARD OF TRUSTEES  
MINUTES FOR REGULAR MEETING OF OCTOBER 18, 2004**

Randy Kinne, 14216 Landings Way

Mr. Kinne asked about the status of the Lewenz lawsuit. Attorney Cooley confirmed that both parties had signed the necessary documents to dismiss the lawsuit. It now only needs the judge's signature to be complete.

Paul Sharp, 4425 Thompson Road

Mr. Sharp asked when the new speed limit signs would be placed on Thompson Road. Supervisor Mathis responded that the speed limit reduction has already been approved and she will check on the status of the signs.

Dave Hawcroft, 3302 Ponemah Drive

Mr. Hawcroft inquired as to the capacity of the old and new Lake Fenton High Schools, and the current enrollment. Lake Fenton Superintendent Ralph Coaster stated that the capacity of the old high school was 420. Capacity for the new high school, (based on a state-mandated calculation method that does not accurately predict growth), is 550. Current enrollment is 480. Mr. Hawcroft stated that this represents another reason to limit growth and density in the Township.

**ADJOURN:** Meeting adjourned at 9:10 p.m.

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Bonnie Mathis, Supervisor

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Robert Krug, Clerk

**Minutes Posted 10/19/04**