

**MARION TOWNSHIP
BOARD OF TRUSTEES/PLANNING COMMISSION
JOINT SPECIAL MEETING
MAY 22 2019**

BOARD MEMBERS PRESENT: Les Andersen, Tammy Beal, Greg Durbin, Bob Hanvey, Scott Lloyd, Dan Lowe, and Duane Stokes

PLANNING COMMISSION MEMBERS PRESENT: Jim Anderson, Larry Grunn, Bruce Powelson, and Cheryl Range

OTHERS PRESENT: Dave Hamann, Zoning Administrator; John Enos, Carlisle Wortman

CALL TO ORDER

The meeting was called to order at 7:30 pm by Supervisor Hanvey and Planning Commission Chairman Larry Grunn.

MEMBERS PRESENT

The members of the Board of Trustees and Planning Commission introduced themselves.

CALL TO THE PUBLIC

Jean Root, 723 E. Davis, said she was a member of the Planning Commission in 2008 when the Home Occupation ordinance was put in place, and that the issue isn't an ordinance problem, it's an enforcement problem. The ordinances won't work if there's no enforcement. She feels that Howell Landscaping does not belong in a residential district; it belongs in highway service.

WORKSHOP

John Enos from Carlisle Wortman was present to lead the workshop, and thanked everyone for attending. He said the group met to discuss the master plan several months ago; the next step will be for the Planning Commission and Board to approve and hold public hearings.

Mr. Enos said the master plan focuses on who we are as a township and how to deal with growth. Part of the township's development is that people move to Marion to keep the rural character and private property rights. He works in a similar community as the zoning administrator and enforcement officer and one of the biggest issues is home occupations and enforcement of the rules. He's able to write tickets if property owners don't comply. The township needs to define exactly what a home occupation is. The township created language for home occupations in 1977. In 1996, it was amended to be more flexible.

Class 2 typically includes an accessory building and they would have to come to the township for approval. Uses have started to grow and they haven't come to the township. Some have gotten much larger than intended. Some communities say they only allow home occupations, no accessory buildings. When the residential use becomes secondary to the accessory use, it becomes a problem. Ordinances are only as good as the enforcement. He believes it should be complaint driven, not to drive around and look for violations. When there's a complaint and an obvious violation, it needs to be addressed right away. Start with a letter allowing them to correct. You have to set up a process to handle violations. Public hearings need to be held for those more intensive home occupations. You can limit what's allowed, such as number of vehicles, employees, noise, etc. He feels the language we have is pretty reasonable and comparable to other communities.

Les Andersen asked if for a Class II home occupation SUP, can we deny just because we feel it doesn't fit with the rural character. Mr. Enos said yes, but you have to explain why.

Dave Hamann said most people don't have the same definition of "rural". All of the subdivisions in the "Rural Residential" zoning district aren't rural, they're residential. The township needs to define "rural." There's a lot in RR that doesn't fit.

John Enos said there's nothing preventing the township from saying exactly where Class II home occupations will be allowed, i.e., not in SR or more dense areas

Les Andersen asked if a SUP can be allowed based on location, not zoning district. Mr. Enos said yes. He also asked if there is an option for Carlisle Wortman to handle enforcement one day per week

Mr. Enos said what they do in other communities is send a violation letter, and most times the problem is corrected. Mr. Andersen asked if the enforcement person from Carlisle Wortman could work on the list of existing home occupations. Mr. Enos said yes. The property owner needs to figure out how to comply or move the activity to another area. And these end up in court, which also costs money. Dave Hamann said he's doing the same thing now: he sends a letter, then a violation notice, then schedules a show cause hearing. The board needs to be ready to deal with multiple show cause hearings, and also deal with friends and neighbors.

Mr. Hamann said most of his complaints are neighbors complaining about junk and/or junk cars, or neighbor disputes that aren't really zoning related. He said he hasn't received complaints about home occupations. He said he put information in the last newsletter that's sent out with tax bill regarding home occupations, and not one person responded. He also said the township now has a form that needs to be filled out when applying for a land use permit that informs property owners about home occupations.

Mr. Enos said many of these end up in court. Ideally, the township would have dual roles: zoning and enforcement. Someone like a retired planner or police officer does enforcement for 14-16 hours per week. He or she can work closely with the zoning administrator, which keeps the board out of it. The zoning administrator could make decisions on how long to correct violations, etc.

Larry Grunn asked what kind of fines? Mr. Enos said it depends, but usually about \$100, and they have to go to court. The township could look at civil infractions, which is different than a misdemeanor. The attorney has to be involved, so it does cost money. Generally, the attorneys work out an agreement, so it usually doesn't get to a judge. Les Andersen asked if it's very expensive. John Enos said about \$40 per hour, because they're usually also planners. Mr. Grunn said these businesses keep growing, and the township knows about them, but because there aren't any complaints, nothing is done.

Mr. Enos said although enforcement is complaint driven, obvious violations need to be addressed to avoid future problems. Les Andersen said that Marion Township has a reputation for allowing these types of activities. Mr. Enos said the township is centrally located and is appealing.

Mr. Andersen thinks anybody with any type of home occupation should have a permit. Mr. Enos said if they're not impacting anyone, he doesn't feel it's necessary (Class 1), and just adds more bureaucracy.

Bob Hanvey asked about a situation where an individual has an office in an accessory building, and no one knows he's there, would he be required to go through public hearings and the Planning Commission. Mr. Enos said you can never write an ordinance to cover all situations. Tammy Beal said in a case like this, have the owner come to the Planning Commission and Board and it will be approved.

Les Andersen asked if a SUP can have terms associated with it which would allow it to be rescinded when it changes owner. Mr. Enos said yes; some communities require that they be renewed each year.

Greg Durbin said with complaint-driven enforcement, the township still needs to verify that a violation exists, and enforcement should be a simple task. A majority of people will respond if they get a letter

from the township. Establishing tickets, fines, etc., just complicates it. Where does the money from fines go? It forces the township to create a new level of bureaucracy.

Mr. Enos said he would never base a violation on a neighbor complaint. It does have to be documented by the township. Bob Hanvey asked if the township can be the complainant? Mr. Enos said yes.

Les Andersen asked about “grandfathered” businesses. Mr. Enos said it’s hard to addresses those. If it was created before 1977, they can continue. Mr. Enos said the only way to handle those is to have general law language.

Dan Lowe said the ordinance needs to be enforced; otherwise, it’s a waste of time. Les Andersen asked if Mr. Lowe would support having an independent enforcement officer. Mr. Enos said if the township knows about some of these situations, those could be the test cases. The language talks about the process, and the board’s job isn’t to be policemen or a jury. Mr. Lowe said if the township gets started on the big, obvious ones, word gets out and they start to take care of themselves.

Bob Hanvey asked if the township gets in trouble with selective enforcement. Mr. Enos said always, but you have to start somewhere and when the violator brings you evidence of multiple similar situations, you investigate those too. Les Andersen said the board members aren’t going to admit it, but they’re not going to attack the guy who shouldn’t be there because they want to be re-elected. Mr. Lowe said he doesn’t care about being re-elected. Mr. Durbin said if the board is doing a good job, the residents will respect that, and to say that board members should back off is totally wrong. Dave Hamann said he’s never received a written complaint from a board member.

John Enos suggested that the township spend the next three or four months being more vigilant about enforcement. The zoning ordinance has the process: show cause hearing after notification, then to the attorney.

Cheryl Range said the language that was submitted about the nuisance ordinance includes the steps for enforcement.

Bob Hanvey said he’s having a hard time with the wording. Mr. Enos said the current language is pretty solid. Mr. Hanvey has a problem with the accessory structure part of it—there are people who use an accessory structure and don’t bother anyone. Mr. Enos said if they don’t have outdoor storage or signage, it would be okay.

Jim Anderson said the issue is definition, and the difference between a business and occupation. He agrees with Mr. Hanvey that there are a lot of people who have a business inside their home and the township would never know. There has to be some logic/rationale applied and has to be quantifiable.

Dan Lowe suggested using number of trips per day as a criteria.

Jim Anderson, Dave Hamann, Bob Hanvey, and John Enos will meet to discuss definitions.

Les Andersen said the Board of Trustees should have enforcement as an agenda item at an upcoming meeting. Greg Durbin agreed that there should be funds in the budget for enforcement.

The board members asked the zoning administrator to send a letter to the lawn service on Coon Lake Road regarding his home occupation.

Les Andersen asked the PC and Board members to drive down Triangle Lake Road and look at the new house that was built. He feels the township needs to revisit zoning requirements on lakes.

CALL TO THE PUBLIC

Jean Root said she feels there needs to be a definition for home business vs. home occupation, and that the property owner should have the burden of proof when a violation is issued.

Tim Ryan, 459 E. Davis, said he believes the show cause hearings will shake out the disagreements. He also said you can't mix different uses such as retail, wholesale, residential, commercial, together; he also said that landscape suppliers are all universally commercial.

Rick Bigham, 4748 Hawthorne, said there are multiple businesses on Brighton Road between D-19 and Hawthorne that generate too much truck traffic. They also use Hawthorne, which is a private road, to turn around.

ADJOURNMENT

Trustee Les Andersen motioned to adjourn at 9:47 pm. Tammy Beal seconded. **Motion carried.**

Planning Commissioner Cheryl Range motioned to adjourn at 9:47 pm. Jim Anderson seconded. **Motion carried.**

Submitted by: S. Longstreet

Tammy L. Beal, Township Clerk Date

Robert W. Hanvey, Township Supervisor Date

Larry Grunn, PC Chairman Date