

Rochester Township

Board Meeting Minutes

August 11, 2022

Meeting was called to order at 7:00 pm by Chairman Jeff Orth.

Members present - Matthew Kitzmann, Jamie Neisen, Brian Zmolek, Nathan Clarke (telephone), Jeff Orth and Randy Staver

Guests – Pat McGowan, Dean Thompson, Bill Tointon, Jason Kappers, Roger Ihrke, Peter Tiede, Jeff Broberg, Gene Peters and sixteen members of the public.

Minutes – Jamie Neisen moved to approve the minutes for the July 14, 2022 meeting. Matt Kitzmann seconded. All voted in favor and the motion passed.

Deputy's Report – Deputy Dean Thompson reviewed the call report of 38 calls for service. Matt Kitzmann talked about a block party held in his neighborhood recently and said they appreciated the support of the Sheriff's department.

Nathan Clarke joined the meeting.

Rookery Lawsuit –

- Peter Tiede spoke. This case is still under advisement with the court and there have been no specific updates. Jamie Neisen asked about the deadline for taking action on the Pavilion Estates preliminary plat relative to the legal action. The response was that the deadline is the 16th of August and as such, a decision must be made this evening or schedule a special meeting;

2630 Wild Rose Lane SW –

- Peter Tiede spoke and summarized the feedback received from the court. He suggested that it makes the most sense to dismiss the case at this point based on the information we have. The township can start anew and gather detailed information if we wish to start a new case.
- Matt Kitzmann asked Peter to respond to some of the safety concerns the township has received. Peter stated that many of these concerns were not articulated in the current case and are very compelling.
- Matt Kitzmann moved to ask our attorney to request dismissal of the case without prejudice. Brian Zmolek seconded. All voted in favor and the motion passed with Nathan Clarke recusing.
- It was noted that the township should work forward by talking to residents, holding a public hearing, and gathering safety information to create a new record of issues as

well as possible remedies for resolution.

- Nathan Clarke reiterated the many issues surrounding this property and the construction. There are many instances of people traveling through the area to view the project as well as issues related to trespassing.
- Brian Zmolek offered to lead a work group to speak with neighbors.
- Matt Kitzmann noted that it is prudent to terminate the current legal action given the significant legal costs.

Pool Covers –

- Roger Ihrke spoke and stated that the Planning and Zoning Commission held a public hearing on the topic. The commission moved approval of the proposed language with the addition of language related to pool alarms.
- Brian Zmolek moved approval and adoption of the revised pool ordinance. Jamie Neisen seconded. All voted in favor and the motion passed.

Right of Way / Headwalls – Res2022_04_03 –

- Nathan Clarke spoke to the proposed resolution and whether it fulfills the township goals and also allows discretionary options for the township going forward. The sentiment is that the resolution appropriately addresses the intent.
- Matt Kitzmann moved approval of resolution Res2022_04_03. Nathan Clarke seconded. All voted in favor and the motion passed.

Audio / Video System –

- Matt Kitzmann provided an update. He has not been happy with responses received to date. He will be soliciting for recommendations and bids from other suppliers.

Preliminary Plat & Appeal – Pavilion Estates –

- Roger Ihrke spoke and stated that the Planning and Zoning Commission had denied the variance requests. P&Z struggled with whether to approve the preliminary plat while an appeal of the denial progresses or ask whether the developer should start the process over based on discussion that has occurred. Roger said that a decision must be made on the preliminary plat by August 16th. He said the options, which consists of 10 lots and is consistent with the EAW, would be to accept the plan as presented, support P&Z in denial of variance and the plat or move forward with a portion of the plan. Roger said that there is precedent for approval of a plan with variances. Depending on the boards decision on the appeal, Roger asked that staff be given time to draft a findings document and come back before the 16th.
- Arthur Handleman and stated that based on staff comments in their report there is a rational basis for the decision to deny. He further stated that the P&Z Commission can't recommend a different configuration. The developer would need to bring a revised plan forward which the developer chose not to do. Arthur said he believes that simply appealing the P&Z decision circumvents the process for considering a revised plan.

- Bill Tointon spoke and wished to set the record straight that an amended plan was submitted on April 28, 2022 and not June 13th. He feels it is an issue of fairness. He believes the developer has followed the rules in complying with township ordinances and the proposal is consistent with the GDP and EAW and that the developer has not changed their position. He asked why the plan wasn't conditioned which often happens. Jamie asked why the developer didn't wish to continue the meeting to consider options. In response, Bill said they have already extended several days and wish to move forward.
- Nathan asked if Arthur or Roger recalled whether the P&Z Commission meeting could have been continued. Arthur said that they could not continue the meeting unless the developer agreed which they did not wish to do. Given that the extension would expire by that Friday, the Commission was forced to vote on the variance request. It was noted that it is better that the town board make the final decision rather than the Commission if there is a possibility of legal action in the future.
- Peter spoke and stated there would be concerns if the variance requests and approval or denial are consistent with previous actions taken by the Board.
- Bill reiterated that they had already made changes that reduced the need for variances from six to three.
- Roger reiterated that staff recommends approval with certain stipulations and recommended approval as presented.
- Matt concurred with the idea that a better planning process would have helped in this proposal. With that being said he does not feel this is a good basis to deny this proposal given that previous proposals with variances have been approved.
- Matt Kitzmann moved to accept the preliminary plat as presented with the variances.
- Nathan Clarke stated it should be incumbent on the board to listen to the recommendations of the P&Z Commission. He said that it seems inconsistent that the township is being asked to abide by township ordinances while also considering a proposal with variances.
- Roger clarified whether the board is approving the original or updated plan and the response was the updated plan. Brian Zmolek asked Peter if the P&Z Commission must decide based on what was presented to them and whether the board can consider what is in front of them now. Peter replied yes, the board can consider what is in front of them now. Brian asked the developer if they would be willing to present the revised plan to the P&Z commission.
- Jeff Orth recessed the meeting for 15 minutes so the developer could consider that option.
- Bill Tointon spoke and said that Arthur has already said he wants 9 lots, there is a new commission member joining soon and that based on other uncertainties they would like the Board's decision this evening.
- The motion failed for lack of a second.
- Peter Tiede spoke and said that the Board should decide. If they do not then there would be an argument that the appeal is essentially approved after August 16th because of the expiration of the deadline.

- Nathan Clarke moved to affirm the decision of the Planning and Zoning Commission for denial. The motion failed for lack of a second.
- Brian Zmolek spoke and stated that the best option is negotiation of the development agreement to achieve what is desired.
- Based on a question from Brian Zmolek Roger Ihrke said if nothing is adopted and with the prior rezoning of the land to R-1, there could only be a single dwelling constructed and it could be placed anywhere they wished on the property.
- Jeff Orth stated that although the decision is difficult, the Board should make a decision. It is complicated in that the Board may follow the recommendation of planning staff or that of the Planning and Zoning Commission which differ. Matt Kitzmann said that it would be inappropriate to change the rules for this project at this juncture.
- Brian Zmolek reiterated that it will be important to review the revised Olmsted county land use plan so that any changes the township might wish to make are consistent.
- Nathan Clarke said he believes that the past practice of approving a given project with variances should not be justification to approve this project.
- Matt Kitzmann moved to approve the appeal of the variances as stated in the staff report and approve the preliminary plat with three variances. Brian Zmolek seconded. The motion passed 3-2 with Nathan Clarke and Jamie Neisen voting nay.

Long-term Land Use Planning –

- Nathan Clarke spoke about tools and options to facilitate development to ensure orderly development and transparency. He questioned whether a moratorium could be established while the topic is discussed. Jamie Neisen agreed and cited numbers indicating considerable growth in the township of about 10% per year in permits over the last couple of years which he believes is too fast.
- Brian Zmolek asked when the county would be adopting its new land use plan and whether the township should wait to see what that plan entails. Matt Kitzmann suggested putting together a work group and it should include Pat McGowan so that Joint Powers could also appropriately plan for equipment to support the growth. Brain stated that the work group should include Planning and Zoning Commission members as well as public representatives. Jamie asked Nathan Clarke if he would serve as the town board representative and he agreed.
- Nathan asked Peter Tiede about a moratorium and Peter said that option exists but it can't be used simply as a delay and that substantive work must occur toward land use planning. The township could adopt an interim ordinance which allows time for research.
- Matt suggested forming the work group to begin gathering data while waiting for the county to adopt their revised plan. Arthur Handleman spoke and said that he doesn't think a moratorium is needed but perhaps a 3 to 6 month pause. Peter noted though that the township can't just stop someone from proposing a new development.

Conditional Use Permit – Woodland Valley Estates – CUP-22-01 –

- Roger Ihrke spoke and said that the Planning and Zoning Commission had approved the CUP and it just needed to be presented to the Board.

Woodland Valley Estate – Final Plat –

- Roger Ihrke spoke and stated the plat is consistent with prior approved plans with appropriate corrections made by the developer.
- Bill Tointon spoke and said he agreed with the staff analysis.
- Jamie Neisen moved to adopt the final plat. Brian Zmolek seconded. The motion carried 4-1 with Nathan Clarke voting nay.

Receiving Bids and Awarding Contract on Lilly Farms 4th – Res2022_08_01 –

- Jamie Neisen asked if all bidders had submitted appropriate documentation. The reply was yes. Jamie also asked if anyone knew about the proposed winning bidder and previous work they have done. Pat McGowan said that Griffin has done previous work which was very acceptable. Jason Kappers spoke and said they have also done previous work with Griffin which was acceptable.
- Jamie Neisen asked if we had actually received a check or a bond. Randy responded that we received a check in the amount of \$710,159.69 which is 125% of the bid amount of \$568,127.75. The township will manage the funds and issue payment for bills received. Matt Kitzmann moved to accept the winning bid and resolution. Brian Zmolek seconded. The motion passed 3-2 with Nathan Clarke and Jamie Neisen voting nay.

Investments – Certificate of Deposit –

- Randy Staver introduced the topic. Most township funds are held in simple checking and savings accounts and receive very modest interest. We have received information from two local banks offering certificate of deposit options that the township may wish to consider. Matt Kitzmann asked if there are rules prohibiting ways in which townships may invest funds and penalties for early withdrawal.
- Jeff Orth asked Roger Ihrke about some recent discussions he has had relative to some TCPA investments. Roger noted that these investments generally do not pay interest on interest. Instead, interest is remitted to the investor at the conclusion of each term and holders must determine re-investment options.
- Randy will research the topic further and bring back information.

Planning & Zoning Commission Candidates –

- Jamie Neisen entered the name of a potential Planning and Zoning Commission member candidate. Jamie and Jeff Orth have spoken with the candidate. The candidate was recommended by a current P&Z member.
- Jamie Neisen moved to accept Joseph Pleticha as a public P&Z Commission representative. Brian Zmolek seconded. All voted in favor and the motion passed.

Rochester Public Utilities (RPU) Underground –

- Jamie Neisen has spoken with Roger Ihrke about placement of utility lines. Roger had said that as a new trail is being constructed, he has asked that overhead lines be replaced with underground lines. Jamie asked whether there is an option to install underground lines from Wright Road to Bamber Valley Road. Jamie called RPU for their opinion and they will put together some numbers.

Reports:

Treasurer's Report –

- Treasurer Randy Staver reported. Nathan Clarke noted a discrepancy with a couple of account numbers switched. Jamie Neisen moved approval of the treasurer's report. Matt Kitzmann seconded. All voted in favor and the motion passed.

Rochester Township Claims – Jamie Neisen moved and Brian Zmolek seconded to accept and pay Rochester Township claims #5061-5077 in the amount of \$139,951.81. All voted in favor and the motion passed.

JPB Claims – Jeff Orth asked if we have appropriate security on fuel storage. Dean Thompson said he would take a look at what we have in place currently. Jamie Neisen moved and Matt Kitzmann seconded to accept and pay Joint Powers Board claims #5898-5919 and the Rochester Township share in the amount of \$17,825.39, and a payroll share of \$9,655.19. All voted in favor and the motion passed.

Road Maintenance Supervisor Report –

- Pat McGowan reported. They continue to spray and lay down chloride as well as continuing on planned road work and repairs. He spoke about a potential new hire and asked if he needs to take those requests to the Personnel Committee. The response was yes.
- Jamie Neisen said that the new MSRS representative would like to meet with appropriate staff to answer questions about the retirement program. Jamie said he will forward the email to Pat.

TCPA Report –

- Jeff Orth reported. Financial performance has been good. Jeff talked about another option for the TCPA office which would be to add a third person. Roger Ihrke said that they are talking to Express Temporary to see if there is an individual with appropriate interest and skills.

Board of Adjustment Report –

- No meeting this month.

Planning and Zoning Commission Report –

- Arthur Handleman reported. He feels the commission is heading in the right direction. He is glad to be getting a new member.

Board Chair Report –

- Nathan Clarke talked about speed concerns and the idea was suggested that the township potentially use some ARPA funds to purchase a speed trailer for the township. It was also suggested that funds be used to upgrade the sound system to acceptable quality. Finally, Matt Kitzmann talked about use of camera technology to monitor things like fuel storage security.

Upcoming Meetings –

- Planning and Zoning Commission – September 13, 2022 – 7:00 pm.
- Joint Powers Board – October 21, 2022 – 9:00 am – Cascade town hall

Meeting Adjourned – Jamie Neisen moved to adjourn the meeting. Matt Kitzmann seconded. All voted in favor and the motion passed. Meeting was adjourned at 9:35 pm.

Respectfully Submitted,

Randy Staver, Clerk / Treasurer

Jeff Orth, Chairman