

THE CHARTER TOWNSHIP OF COOPER
Regular Township Board Meeting
August 14, 2023

The regular meeting of the Cooper Charter Township Board was held on Monday, August 14, 2023.

MEMBERS PRESENT:

Supervisor, Jeff Sorensen
Clerk, DeAnna Janssen
Treasurer, Carol DeHaan
Trustee, Jim Frederick
Trustee, Dan Williams
Trustee, Adam Tuinstra
Trustee, Fred Vlietstra

MEMBERS ABSENT:

None

Chief Emig and 10 interested people were present. Supervisor Sorensen called the meeting to order at 7:00 pm.

CONSENT AGENDA:

Items on the consent agenda:

- a) Board Meeting Minutes of July
- b) July Receipts and Disbursements Report
- c) July 2023 KCSO Calls for Service Report
- d) Ordinance Enforcement Report - July
- e) Treasurers Report – June 2023
- f) 2022/2023 Audit
- g) 2023/2024 Road Projects Worksheet
- h) HHW Reporter

The board and citizens were asked if they wanted any items removed from the consent agenda. Motion by Williams, supported by Vlietstra to approve the consent agenda as written. Motion carried 7-0.

ADDITIONS OR DELETIONS TO AGENDA:

Motion by Frederick, supported by Janssen to approve the agenda as written. Motion carried 7-0.

CITIZEN COMMENTS:

1. Resident presented the township board with a written dialogue regarding a complaint he filed with the ordinance officer about a neighbor's fence. See minutes for filed document.
2. Resident spoke about the above fence and says that as the president of the HOA for the neighborhood, he has asked the neighbor to remove the fence and has been refused.
3. Resident asked about a break in on 17th Street.
4. Resident complaining about the house on D Ave that is under a constant state of "construction."

CONSIDER FIRE DEPARTMENT REPORTS:

Motion by Williams, supported by Tuinstra to approve the reports and Fire Service Fee Invoice Revisions. Motion carried 7-0.

UPDATED ARPA FUNDS WORKSHEET, CONSTRUCTION EXPENSE WORKSHEET, AND CHANGE ORDERS:

Motion by Janssen, supported by Frederick to approve reports. Motion carried 6-1 w/Tuinstra voting no.

DISCUSSION: SMBA UPDATE

REQUEST FOR PAYMENT OF APPROXIMATELY \$297.00 TOWARD VETERAN HEADSTONE FOUNDATION:

Motion by Sorensen, supported by Frederick to approve the payment and then try to re-coop the money from the state or local veterans' affairs since the U.S. Government declined to make it right. Motion carried 7-0.

DISCUSSION – PROPOSED REVISION TO BEREAVEMENT LEAVE POLICY:

Motion by DeHaan, supported by Williams to keep the bereavement plan as it currently stands. Motion carried 7-0.

REVIEW QUOTES FOR TOWNSHIP HALL SECURITY:

Motion by Williams, supported by Vlietstra to approve High Tech Electrical for our Security needs. Motion carried 7-0.

DISCUSSION – DRAFT OF EMERGENCY SERVICES ORDINANCE

RESOLUTION 23-249 TO ADOPT THE 2022 KALAMAZOO COUNTY HAZARD MITIGATION PLAN:

Motion by DeHaan, supported by Vlietstra to adopt.

Roll Call Vote:

AYE: Vlietstra, Frederick, Janssen, Sorensen, DeHaan, Tuinstra, Williams

NAY: none

Motion Carried 7-0.

RESOLUTION NO. 23-248 TO ADOPT PROPOSED ORDINANCE NO. 265:

Motion by Janssen, supported by Williams to adopt.

Roll Call Vote:

AYE: Williams, Tuinstra, DeHaan, Sorensen, Janssen, Frederick, Vlietstra

NAY: none

Motion Carried 7-0.

TRUSTEE COMMENTS:

Trustee Frederick asked if the Road Commission has moved into their new building yet.

Clerk Janssen commented how much she appreciated the support of Deputy Clerk Deb Holtman for her assistance with the August Election while the clerk was in the U.P. interring her father.

Trustee Tuinstra asked if we have gotten a copy of the County Parks Master Plan.

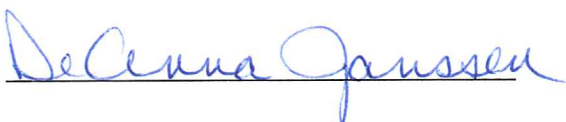
Trustee Williams commented how impressed he is with our ordinance enforcement officer. He was able to go on a ride along and really appreciated the way Chris deals with the public.

There being no further business to come before the board, the meeting was adjourned at 7:55 pm.


DeAnna Janssen, Clerk


Attested: Jeff Sorensen, Supervisor

I, the undersigned DeAnna Janssen, the duly qualified and elected Clerk for the Charter Township of Cooper, Kalamazoo County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Township Board of said Township at a regular board meeting held on the 14th day of August 2023.



DeAnna Janssen, Clerk
Cooper Charter Township

August 14, 2023

For consideration of the Cooper Township Board, submitted by Woody Isaacs and Cindy Schrauben of 4407 Stony Avenue:

Existing fencing located at 4179 Stony Ave, in R-3 residential zoning district



Cooper Township Zoning Ordinance, Section 120.360:

1. *No fence in excess of six (6) feet in height shall be erected, constructed, located, or maintained in any residential district. In addition, no fences in excess of 48 inches in height shall be erected, constructed, located, or maintained in any front yard in any residential district (emphasis added).*
3. *All fences hereafter constructed shall be of ornamental nature (emphasis added) consisting of wood, vinyl, chain link and/or metal, brick, or block standard fencing materials. The finished portion of the fence shall face outward, toward adjoining properties. In no case shall items such as, or similar to, the following be used in the construction of any fences: Pallets, tires, scrap metal, etc.*

Note: Fence is approximately 8' high and is within the front yard setback (directly abutting Stony Avenue right-of-way line. Please consider, if you hired a contractor to build an ornamental fence at your home, would this be acceptable?

Contacts made to Cooper Township Zoning Enforcement, and responses received:

- **May 21, 2023:** Schrauben email was sent to Sorenson and Mihelich stating that there is a fence located at 4141 Stony Avenue which does not comply with 120.360 of the Zoning Ordinance.
- June 5, 2023: Schrauben emails again, asking for this issue to be addressed.

- **June 16, 2023: Having still received no response, Schrauben sends a third email, including a photograph of the fence in question.**
- June 16, 2023: Mihelich responds by email, stating that the fence in question is a legally non-conforming use.
- June 16, 2023: Isaacs responds by email, asking why 120.330 (D) would not be applicable (regarding forced removal of non-conforming uses after a 10-year grace period).
- June 20, 2023: Having received no response, Isaacs responds again by email, asking for a response and a copy of the pre-2017 zoning ordinance.
- June 21, 2023: Mihelich responds by email, stating that he will provide the prior fence ordinance. Additionally, Mihelich makes an argument for the fence to remain, based primarily on the concept of “securing food for harvesting.” **Please note:** There is no food growing in the fenced enclosure as of August 2023, only weeds.
- June 21, 2023: Isaacs responds by email, formally asks for an independent opinion from Township counsel. Isaacs also notes that the prior Zoning Ordinance has not yet been provided as promised.
- June 21, 2023: Mihelich responds by email, making a statement that Isaacs considered to be extremely disrespectful, as follows:
So I can potentially escalate the appropriate question, is it your determination that a fence to protect the auxiliary thereto personal garden from trespass and destruction is a non-conforming use of a residentially zoned property?
- June 21, 2023: Isaacs responds by email, notes that he is sympathetic to the concept of growing food on one’s property, so long as the activity conforms to the Township’s ordinances, and again asks for this issue to be reviewed by counsel.
- June 21, 2023: Mihelich responds by email with a PDF attachment described as “Fence ordinance prior to 2017 amendments,” however, the document is actually an amendment regarding swimming pool fencing.
- June 22, 2023: Isaacs responds by email, notes the discrepancy with the email attachment, and requests an affirmative response from the Township regarding independent review by the Township attorney.
- June 22, 2023: Mihelich responds by email, and notes that the original ordinance has been sent off-site for scanning and cannot be provided.
- June 23, 2023: Isaacs requests the ordinance amendments from the Township Clerk and receives them by email the same day.

- June 23, 2023: Isaacs responds to Sorenson and Mihelich by email, noting that ordinances 120.360 (A) (1) through (3) have been in place since adoption in 2002. The fence in question was constructed no earlier than 2005, therefore, it has never been in compliance and is not a legal non-conforming use. Isaacs **again** requests the Township attorney's review.
- July 7, 2023: Isaacs responds by email, asking for an update.
- July 20, 2023: Isaacs responds by email, again asking for an update.
- July 21, 2023: Mihelich responds by email, stating that he has conferred with the attorney, and makes an argument that the statute of limitations has expired for action by the Township. Mihelich states that the Township will not be taking further action on this issue.
- July 21, 2023: Isaacs responds by email, asking for the attorney to explain the Township's position in a letter over their signature. Isaacs also references a 2022 decision by the Michigan Supreme Court, which struck down a lower court's decision regarding statute of limitations related to a very similar zoning enforcement matter in Fraser Township.
- July 21, 2023: Mihelich responds by email, stating as follows:

We reviewed this. An active use in violation of zoning law on the property is different than a structure erected for a conforming use.

At this time, the Township will not be proceeding with any further resources on this issue. As an HOA, you could pursue as an active violation of your rules but the judge will take state law into accord.

- July 21, 2023: Isaacs responds by email, again presenting an argument for action by Cooper Township and requesting the Township attorney to describe in writing why the MSC decision would not be applicable to this situation.

No further responses have been received from Cooper Township. Based on the "structure erected for a conforming use" argument, it seems that any property owner in Cooper Township could construct anything they like, so long as they argue it is in service of a permitted use. Therefore, as a residential property owner, under this theory, I could construct a 5-story house directly abutting the property lines (violating any setback requirements) since it's a residence in a residential zoning district? This argument is illogical, and I am reiterating my request to receive a copy of the Township Attorney's opinion on this matter.

Please note: The owner of the 4179 Stony Avenue property may claim that they received "approval" from the HOA. However, I am on the Architectural Control Committee for our Association, and I can affirmatively state that the property owner did not submit a plan for formal approval, as is specifically required by our Bylaws. They, therefore, do not have, and never have had, approval from our HOA.

Thank you for your consideration.