

CHARTER TOWNSHIP OF PENNFIELD

REGULAR MEETING MINUTES

JULY 14, 2009

Supervisor Behnke called the meeting to order at 7:00 PM at the Pennfield Middle School Cafeteria. Present were Supervisor Behnke, Clerk Case, Treasurer Phillips and Trustees Bartlett, Beard, Bordine-Housemen and Ensign. There were nine residents present. A moment of silence was observed and Supervisor Behnke led the Pledge of Allegiance.

PRESENTATIONS/PROCLAMATIONS

None

PUBLIC HEARING

A Public Hearing/final approval of Pennfield Charter Township Ordinance #107B-07-09 of 2009 (an ordinance to amend the Pennfield Charter Township Zoning Ordinance with regard to outdoor, freestanding solid fuel-burning appliances) was held at the regular Board Meeting. One citizen spoke stating that are neighbors to the resident applying and they gave their approval. The Public Hearing was adjourned and the regular Board Meeting was continued.

CITIZEN/PUBLIC COMMENTS

None

ADDITIONS/DELETIONS

There were no additions or deletions to the agenda. It was moved by Treasurer Phillips and supported by Trustee Bordine-Houseman to accept the agenda as presented. **Motion carried.**

CONSENT AGENDA

It was moved by Treasurer Phillips and supported by Trustee Bordine-Houseman to approve the Consent Agenda. **Motion carried.** The consent Agenda consists of the following items:

- 1) Meeting minutes of June 9, 2009
- 2) Utilities Division monthly report (see Addendum A)
- 3) Code Compliance monthly report (see Addendum A)
- 4) Permits Department monthly report (see Addendum A)
- 5) Assessors Department monthly report (see Addendum A)
- 6) AMSA Construction Board of appeals appointments

DEPARTMENT REPORTS

POLICE: No officer was present to give a report so it will be posted to the Pennfield Website.

FIRE: Chief Smith gave the fire report. The stats for the month of June, 2009 as follows: There were 75 calls: 2 fire, 51 rescue & emergency, 7 hazardous condition (no fire), 3 service calls, 10 good intent calls and 2 false alarms. There were two drills for the month.

UNFINISHED BUSINESS

None

NEW BUSINESS

- 1) Adoption of Pennfield Charter Township Ordinance #104H-07-09 of 2009

ORDINANCE NUMBER 104H-07-09 OF 2009

AN ORDINANCE TO AMEND THE PENNFIELD CHARTER TOWNSHIP ZONING ORDINANCE WITH REGARD TO THE ZONING BOARD OF APPEALS.

THE CHARTER TOWNSHIP OF PENNFIELD ORDAINS:

SECTION 1. Chapter 18 of Appendix B of the Pennfield Charter Township Code known as the Pennfield Charter Township Zoning Ordinance is hereby amended to read as follows:

Section 18.01 Membership

*A. **Continuation of Present Zoning Board of Appeals-** The Zoning Board of Appeals existing at the time of adoption of this Ordinance shall perform its duties and exercise its powers as provided in Article VI of the Michigan Zoning Enabling Act, 2006 PA 110, as may be amended. [MCL 125.3101 - 125.3702]*

*B. **Composition and Terms** - The Zoning Board of Appeals shall consist of five (5) regular members appointed by the Township Board for a three (3) year term, unless staggered during initial appointment or subject to the term of office based upon appointment or election to the Planning Commission or Township Board. One (1) member shall be from the Planning Commission. In addition to the five (5) regular members, there shall be appointed two (2) alternate members. These alternate members shall also be appointed for a three (3) year term. The alternate member may serve as a voting member in the absence of a regular member or where such regular member has a conflict of interest. The alternate member will continue to serve until such decision is made.*

*C. **Vacancies** - Any vacancies in the Zoning Board of Appeals shall be filled by appointment by the Township Board. Vacancies for unexpired terms are to be filled for the remainder of the term.*

*D. **Officers** - The Zoning Board of Appeals shall annually elect its own Chairman, Vice Chairman and Secretary. The Chairman of the Zoning Board of Appeals shall not be an elected official or serve as the Chairman of the Planning Commission.*

Section 18.02 Meetings

*A. **Meetings** - All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such times as the Zoning Board of Appeals may determine. All hearings conducted by the Zoning Board of Appeals shall be open to the public. The Secretary to the Board or their representative, shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall also keep records of its hearings and other official action. Three (3) regular members of the Zoning Board of Appeals shall constitute a quorum for the conduct of its business. The Zoning Board of Appeals shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.*

*B. **Hearings** - The Zoning Board of Appeals shall make no decision regarding a variance except after a hearing is conducted by the Zoning Board of Appeals. Due notice shall be given to all parties to the appeal stating the time and place of such hearing.*

Section 18.03 Jurisdiction

The Zoning Board of Appeals shall not have the power to make any change in the terms of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, and to authorize a variance as defined in this Chapter and the laws of the State of Michigan. The Zoning Board of Appeals shall not have the authority to hear appeals from a decision made in respect to any rezoning. The powers of the Zoning Board of Appeals include:

*A. **Hearing of Appeals**- To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or any other administrative official in carrying out or enforcing the provisions of this Ordinance.*

*B. **Granting of Variances** - A variance from the specific requirements of this Ordinance may be granted by the Zoning Board of Appeals in accordance with the requirements and procedures of this Chapter.*

*C. **Zoning Ordinance Interpretation**- The Zoning Board of Appeals may interpret the provisions of this Ordinance to carry out the intent and purposes of the Zoning Ordinance where the meaning of the provision is uncertain.*

D. Granting of Temporary Uses and Buildings

1. The Zoning Board of Appeals may permit, upon proper application, temporary uses not otherwise permitted in the district. Such temporary uses shall not exceed a duration of six (6) months, however, the Zoning Board of Appeals may grant one (1) extension, of up to an additional six (6) concurrent months, or less, when appropriate. Building and Zoning approval must be obtained before use, or construction begins.

2. The Zoning Board of Appeals, in granting permits for temporary uses, shall do so under the following conditions:

a. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district, nor on the property where the temporary use is permitted.

b. The granting of the temporary use shall be issued in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of the temporary permit.

c. All setbacks, land coverage, off-street parking, lighting and other requirements shall be made at the discretion of the Zoning Board of Appeals.

d. The use shall be in harmony with the general character of the district.

e. No temporary permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as provided for in this Ordinance.

f. Prior to granting a temporary permit the Board may seek the review and recommendation of the Planning Commission.

3. For temporary dwellings or structures and seasonal dwellings, the procedure as outlined in Section 3.17 (Temporary Dwellings or Structures and Seasonal Dwellings), shall be followed.

Section 18.04 Decisions

*A. **Procedure** - An appeal may be taken by a person aggrieved, or by an officer, department, or board of the Township. Such appeal shall be taken within twenty-one (21) days, as prescribed by the rules of the Zoning Board of Appeals, by the filing with the officer or body from whom the appeal is taken and with the Zoning Board of Appeals of a notice of appeal specifying the grounds for the appeal.*

*B. **Filing** - The party from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed was taken. These papers shall include a completed application form and site plan, including the following, unless determined to be inapplicable to the request and specifically waived by the Zoning Board of Appeals:*

1. Project Information, including:

a. the applicant's name;

b. name of the development;

c. the preparer's name;

d. north arrow

e. complete and current legal description and size of property in acres; and

f. small scale location sketch of sufficient size and scale.

2. Existing Features

a. property lines and dimensions;

b. zoning and current land use of applicant's property and all abutting properties and of properties across any public or private road from the site;

c. lot lines and all structures on the property, the Zoning Board of Appeals may require buildings and structures within one hundred (100) feet of the site's property lines, also be shown;

d. location of any access points on both sides of the street within one hundred (100) feet of the site along streets where access to the site is proposed; and

3. Proposed Construction

a. building footprints, setbacks, floor plans and elevations showing height and materials for all proposed structures, including any residential units, with the acreage allotted to each use;

b. location and dimensions of parking spaces;

c. details of site circulation and access design, including:

(1) indication of street right-of-way and pavement widths and pavement type;

(2) names of abutting public roads, proposed access driveways and parking areas, and existing and proposed pedestrian/bicycle paths; and

(3) written verification of access easements or agreements, if applicable.

C. Stay of Proceedings- *An appeal stays all proceedings in furtherance of the action appealed from unless the officer or body from whom the appeal is taken certifies to the Zoning Board of Appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would, in the opinion of the officer or body, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order. This restraining order may be granted by the Zoning Board of Appeals or Circuit Court on application or notice to the officer or body from whom the appeal is taken and due cause shown.*

D. Notice - *Following receipt of a written request seeking a variance, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the request and shall give notice as provided in section 103 of the*

Michigan Zoning Enabling Act, 2006 PA 110 [MCL 125.101, et seq.]. If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103 of the Michigan Zoning Enabling Act, 2006 PA 110 [MCL 125.101, et seq.]. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) of the Act and given to the person making the request as provided in section 103(3) of the Act.

E. Decisions

1. The concurring vote of a majority of the membership of the Board shall be required to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant on a matter upon which the Board is required to pass, or to grant a variance in the zoning ordinance; except that a concurring vote of two-thirds (2/3) of the membership shall be necessary to grant a use variance.

2. The Zoning Board of Appeals shall render its decision upon any appeal or application submitted to it within a reasonable time after the hearing.

3. All decisions of the Zoning Board of Appeals shall be final.

F. Record of Actions - *For each decision of the Zoning Board of Appeals, a record shall be prepared. Such record shall include, at a minimum, the following items:*

1. Description of the applicant's request.

2. The Zoning Board of Appeal's motion and vote.

3. A summary or transcription of all relevant material and evidence presented at hearing; and,

4. Any conditions attached to an affirmative decision.

G. Appeals to Circuit Court - *The decision of the Zoning Board of Appeals shall be final. However, a person having an interest affected by the decision of the Zoning Board of Appeals may appeal to the Circuit Court. An appeal filed under this section shall be filed within 30 days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson, or within 21 days after the zoning board of appeals approves the minutes of its decision. Upon appeal, the Circuit Court shall review the record in*

accordance with the requirements of the Township or the Michigan Zoning Enabling Act, 2006 PA 110, as may be amended [MCL 125.3101 - 125-3702] The court may affirm, reverse, or modify the decision of the Zoning Board of Appeals, or may remand the decision to the Zoning Board of Appeals for further hearings or action.

H. Resubmission - No variance request which has been decided by the Zoning Board of Appeals shall be submitted for reconsideration within a one (1) year period from the date of the original application unless the Board finds that at least one of the following conditions exist:

1. That the conditions involving all of the reasons for the original denial have been significantly altered.
2. That new conditions or circumstances exist which change the nature of the original request.

Section 18.05 Conditions of Approval

A. The Zoning Board of Appeals may impose reasonable conditions in conjunction with approval of an appeal, variance, or any other decision which they are required to make.

B. Conditions shall be imposed in a manner in accordance with the Michigan Zoning Enabling Act, 2006 PA 110, as may be amended [MCL 125.3101 - 125.3702] and relate to the standards by which the decision is reached.

Section 18.06 Variance Procedures

A. Authority for Variances- The Zoning Board of Appeals, after public hearing, shall have the power to grant requests for variances from the provisions of this Ordinance where it is proved by the applicant that there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the Ordinance relating to the construction, equipment, or alteration of buildings or structures so that the spirit of the Ordinance shall be observed, public safety secured and substantial justice done. Further, so long as the requested improvement is in compliance with the building code adopted by the township.

B. Granting of Non-Use Variances - A non-use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing. Practical difficulty exists when all of the following conditions are met:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district;

2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations. Unique circumstances include:

a. exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter,

b. exceptional topographic conditions or other extraordinary situation on the land, building or structure,

c. the use or development of the property immediately adjoining the property in question,

d. the literal enforcement of the requirements of this chapter would involve practical difficulties

3. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

5. The variance will not impair the intent and purpose of this Ordinance.

6. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

C. Granting of Use Variances- Use Variances: A use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing. Unnecessary hardship exists when all of the following conditions are met:

1. That the condition or situation of the specific piece of property or the intended use of such property for which the variance is sought is unique to that property and not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations. Such unique conditions or situations may include:

a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter;

b. Exceptional topographic conditions or other extraordinary situation on the land, building or structure;

c. The use or development of the property immediately adjoining the property in question.

2. That the building, structure, or land cannot yield a reasonable return if required to be used for a use allowed in the zone district in which it is located;

3. That the proposed use will not alter the essential character of the neighborhood or the intent of the Master Plan.

4. Prior to Zoning Board of Appeals decision on a request for a Use Variance, the Board of Appeals may request that the Planning Commission, upon presentation of the application by the applicant, consider such request and forward a report to the Board of Appeals. If requested by the Board of Appeals, such report shall be limited to the Planning Commission's review of the effect of the proposal on the existing or intended character of the neighborhood and the ability of the property owner to use the property for a use already permitted under the existing zoning classification.

Section 18.07 Fees

The Township Board may prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals to the Zoning Board of Appeals. The fee shall be paid to the Township Treasurer at the time the application for the appeal or variance is filed.

SECTION 2. SEVERABILITY. Sections of this Ordinance shall be deemed to be severable and should any section, paragraph, or provision hereof be declared by the courts to be unconstitutional or invalid, such holdings shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

SECTION 3. REPEAL. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect. The repeal does not affect any act done or offense committed, or any liability, penalty, forfeiture, or punishment acquired thereunder.

SECTION 4. SAVINGS CLAUSE. A prosecution which is pending on the effective date of this ordinance and which arose from a violation of an ordinance repealed by this ordinance, or a prosecution which is started within one (1) year after the effective date of this ordinance arising from a violation of an ordinance, shall be tried and determined exactly as if the ordinance had not been repealed.

SECTION 5. EFFECTIVE DATE. Public hearing having been held hereon, the provisions of this Ordinance are hereby adopted, and this Ordinance shall take effect seven (7) days after publication of this Ordinance or a summary thereof which publication shall occur in a newspaper of general circulation in the Township within fifteen (15) days after adoption.

Moved by: Treasurer Phillips Supported by: Trustee Bordine-Houseman

Supervisor Behnke – Yes Trustee Ensign – Yes

Clerk Case – Yes Trustee Bordine-Houseman – Yes

Treasurer Phillips – Yes Trustee Beard – Yes

Trustee Bartlett – Yes

Vote shows 7 yes, -0- no and -0- excused. **Ordinance #104H-07-09 of 2009**

stands adopted.

2) Adoption of Pennfield Charter Township Ordinance #107B-07-09 of 2009

ORDINANCE NUMBER #107B-07-09 OF 2009

AN ORDINANCE TO AMEND THE PENNFIELD CHARTER TOWNSHIP CODE OF ORDINANCES WITH REGARD TO OUTDOOR, FREE-STANDING SOLID FUEL-BURNING APPLIANCES.

THE CHARTER TOWNSHIP OF PENNFIELD ORDAINS:

SECTION 1. Section 22-1(a)(6) of the Pennfield Charter Township Code of Ordinances is hereby amended to read as follows:

(6) The installation or operation of an outdoor, free-standing, solid fuel-burning appliance that burns wood, coal, corncobs, wood chips, paper pellets, agricultural products or other solid fuel in any zoning district within the Township except unplatted R-1 Low Density Residential, AGP Agricultural Preservation, and AG Agricultural Districts. In addition, outdoor, free-standing solid fuel-burning appliances are permitted in unplatted R-2 Medium Density Residential districts subject to the following limitations:

(i) The lot upon which the burner is located and operated shall have at least 200' of road frontage and be at least 2 acres in size,

(ii) The burner shall be designed and used only for the purpose of heating in-ground swimming pools,

(iii) Operation of the burner shall be limited to the period of May 1 to October 1 each year, and

(iv) Chimney height shall extend at least 24 inches above the roof of the unit housing the appliance or shall meet manufacturer's guidelines on chimney height, whichever is greater. Chimney stacks shall have a spark arrester installed at the top of the chimney.

In R-1 Low Density Residential, AGP Agricultural Preservation and AG Agricultural districts, the chimney height and setback restrictions shall be in compliance with the manufacturer's guidelines or, if there are none, the chimney height shall be at least 2' above the roof line of the highest structure within 200'. Chimney stacks shall have a spark arrester installed at the top of the chimney. Proper permit(s) shall be obtained from the Township prior to the installation of any outdoor, free-standing, solid fuel-burning appliance including any outdoor furnace, outdoor boiler or outdoor stove. This subsection shall not be deemed to bar, limit, or otherwise affect the rights of any person to take private legal action regarding damage or nuisance caused by the use of a free-standing, solid fuel-burning appliance.

SECTION 2. SAVINGS CLAUSE. A prosecution which is pending on the effective date of this ordinance and which arose from a violation of an ordinance repealed by this ordinance, or a prosecution which is started within one (1) year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance and which was committed prior to the effective date of this ordinance, shall be tried and determined exactly as if the ordinance had not been repealed.

SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect on the date of publication pursuant to MCL 42.22, which publication shall take place within thirty days from the date of adoption and shall be in a local newspaper of general circulation.

Moved by: Treasurer Phillips Supported by: Trustee Bordine-Houseman

Supervisor Behnke – Yes Trustee Ensign – Yes

Clerk Case – Yes Trustee Bordine-Houseman – Yes

Treasurer Phillips – Yes Trustee Beard – Yes

Trustee Bartlett – Yes

Vote Shows 7 yes, -0- no and -0- excused. **Ordinance #107B-07-09 of 2009 stands adopted.**

3. It was moved by Treasurer Phillips and supported by Trustee Bordine-Houseman to approve the Reen/Lahusky special land use permit (construction of four additional mini-storage buildings at Pennfield

Self Storage, LLC., at 19915 Capital Avenue, N.E. with the condition that the water run-off be evaluated by the Calhoun County Drain Commissioner or similar authority.) **Motion carried.**

TREASURER'S REPORT

June, 2009 report shows the following balances on hand:

General Fund \$1,267,769.38

Metro Act-Maint \$7,512.22

Parks \$12,978.24

Public Safety \$0.00

Sewer \$879,910.16

Water \$526,815.24

Trust & Agency \$7,324.67

Tax Collection \$46.93

Paving Assessment \$0.00

TOTAL: \$2,702,356.84

It was moved by Trustee Bordine-Houseman and supported by Trustee Bartlett to receive and place on file the Treasurer's report. **Motion carried.**

PAYMENT OF BILLS

It was moved by Treasurer Phillips and supported by Trustee Bordine-Houseman to approve the payment of the monthly bills in the amount of \$114,990.53.

CITIZEN/PUBLIC COMMENT

Three citizens spoke. 1) Reminder of Neighborhood Watch Meeting on July 23rd at 7:00 at Grace Community Church 2) Optimist Club update on recycling program 3) Request to have the speed limit reduced on Pennfield Road.

TOWNSHIP BOARD COMMENTS

Clerk Case reminded everyone of the upcoming Primary Election on August 4th for the 19th District State Senate Seat. Trustee Beard commented that the local Boy Scout Troop would like to attend an upcoming board meeting to learn about local government.

ANNOUNCEMENTS MADE BY THE CHAIRPERSON

Supervisor Behnke made the following announcements: The next recycling weekend is July 25th and 26th. The next Township board meeting is scheduled for August 11, 2009. It was moved by Treasurer Phillips and supported by Trustee Bordine-Houseman to adjourn the meeting at 7:40 PM. **Motion carried.**

Robert P. Behnke, Jr. Kathleen R. Case

Township Supervisor Township Clerk

ADDENDUM A – DEPARTMENT REPORTS

UTILITIES

There were 1, 200 meter reads for the month of June, 2009. The stats for the month are as follows: 13 corrective work orders (repair/install meters, radio read boxes, repair wires),

29 Miss Digs. The monthly bacterial samples came back negative.

ASSESSOR/ZONING

All Homestead & Property Transfer Affidavits are current. 10 transfers of property were processed for the month of June. Six were market sales and four were foreclosure related.

CODE ENFORCEMENT

It was necessary for the Township to arrange for a contractor to do property maintenance for seven properties. This included mowing, removing debris and securing structures. All costs were billed to the property owners. There were 41 complaints/violations for the month of June which are listed below:

3 – front yard parking

4 – junk, trash & rubbish

4 – inoperable vehicles

30 – tall grass & weeds

2 – township ordinance

1 – unsafe structure

PERMITS

The following permits were issued for the month of June, 2009:

Building 7 permits (PB09-020 thru PB09-028)

Electrical 4 permits (PE09-016 thru PE09-019)

Mechanical 8 permits (PM09-023 thru PM09-030)

Zoning 1 permit (PZ09-008)