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ZACH MICHELS
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CHRISTINA MCEMBER
ORDINANCE OFFICER

DATE: September 18, 2018
TO: Dexter Township Planning Commission
CC: File
FROM: Zach Michels, Director of Planning & Zoning
RE: Zoning Ordinance Review- Water Quality, Water Quantity, Wetlands, Definitions

MEMORANDUM

The Planning Commission forwarded the text of a new draft zoning ordinance to the Township Board with a favorable recommendation on August 22, 2017. During its review of the draft zoning ordinance, the Township Board has remanded several sections to the Planning Commission for additional attention, voting *“to send §17.30 and §17.40 to the Planning Commission for further review, and deliberation in consideration of the memorandum submitted by Gajewski, and report back to the Township Board.”*

At its March 27, 2018, meeting, the Planning Commission reviewed and made changes to §17.30 Wetlands, but it did not discuss or make any changes to §17.40 Water Quality and Quantity.

At its June 26, 2018, meeting, the Planning Commission reviewed §17.40: Water Quality and Quantity. It did not take any action or make any amendments at that meeting. However, *“Chairperson [sic] Burch assigned a subcommittee to develop motions regarding §17.40 Water Quality and Quantity and §17.45 Stormwater Management. The committee members are: Mr Gajewski, Mr Ehman, and Mr Lewis (who will record minutes of the meeting). As a preliminary document it will be shared with the Director of Planning and Zoning, the Planning Commission members, and posted on the Township’s website.”*

On August 20, 2018, DPZ Michels received a draft of proposed changes to the draft zoning ordinance concerning definitions, §17.40 and §17.45.

On August 28, 2018, DPZ Michels received draft minutes from the subcommittee for meetings it held on August 14, 2018, and August 17, 2018, at the Portage Lake Yacht Club.



In order to hold a public hearing for draft zoning ordinance text, the Planning Commission is required to notice that public hearing at least 15 days before the meeting in a newspaper of general circulation within the Township and on the Township's website. Planning Staff did not submit any public notice for discussion of this draft text amendment for the August 28, 2018, Planning Commission meeting.

Following receipt of the draft minutes, Planning Staff tried to confirm whether or not the two subcommittee meetings had been publicly noticed. When such confirmation was not available, Planning Staff requested an opinion from the Township Attorney what, if anything, would be necessary in order to ensure the subcommittee's actions were in compliance with the Open Meetings Act and not place the legal standing of the draft zoning ordinance in jeopardy.

The Township's Attorney confirmed that the subcommittee is doing a governmental function generally held by the Planning Commission as a whole, is considered a public body for the purposes of the Open Meetings Act, and is required to follow the noticing and other requirements for each of its meetings. This has been the consistent opinion since the question was first asked with respect to the Zoning Ordinance Review nearly 5 and a half years ago.

The Township's Attorney further states if a subcommittee has already met in violation of the Open Meetings Act and prepared a draft for the Planning Commission to review and adopt, that the subcommittee may correct it by holding a meeting that complies with the Open Meetings Act and reenacting the decision.

Although a public hearing for discussion of the subcommittee's proposed amendment to the draft zoning ordinance, with respect to water quality, water quantity, wetlands, and definitions was noticed, as required, the subcommittee has not held a meeting in compliance with the Open Meetings Act; the draft language that the subcommittee prepared should not be presented to the Planning Commission for consideration at this time.

As recommended in the letter from the Township's Attorney, the subcommittee should hold a public meeting that complies with the Open Meetings Act and reenact its decision, and the Planning Commission may then consider the draft language at a public hearing.

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September 12, 2018

Harley Rider, Supervisor
Dexter Township
8660 Dexter-Pinckney Road
Dexter, Michigan 48130

RE: Open Meetings Act for Subcommittees.

Dear Supervisor Rider:

The Department of Zoning and Planning of Dexter Township has asked this office for an opinion on subcommittees of the Planning Commission and their relationship/obligation to comply with the Open Meetings Act (1976 PA 267, MCL 15.261 through 15.275).

The Open Meetings Act (OMA) applies to all meetings of a public body. MCL 15.263 defines a public body as:

[A]ny state or local legislative or governing body including a board, commission, committee, *subcommittee* [emphasis added], authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function..."

As the Planning Commission is working on revisions to the Dexter Township Zoning Ordinance, it has appointed at least one subcommittee to gather information and facts and to draft certain subsections of the Zoning Ordinance and to present that draft to the Planning Commission as a whole.

It is the opinion of this office that because the subcommittee is doing the governmental function generally held by the Planning Commission as a whole, that is gathering information and drafting a section of the Ordinance, that it is a public body for the purposes of the OMA and therefore is required to follow the noticing and other requirements for each of its meetings.

This contrasts with a subcommittee who may only gather information and present it to the Planning Commission in order for the Planning Commission to draft or decide on the language in the section of the Ordinance.

The OMA is a broad statute and it is always better to err on the side of following the Act for all meetings, than risk violating the statute by trying to interpret what should be noticed and held as an open meeting.

The subcommittees may already have met and may already have a draft prepared for the Planning Commission to review and adopt. If this draft was approved by the subcommittee at a meeting that was not in conformance with the OMA, the subcommittee may correct this by holding a meeting that complies with the OMA and reenacting the decision.

This office recommends that all subcommittees that have drafts they intend to present to the Planning Commission for approval and adoption into the Zoning Ordinance hold a meeting in conformance with the OMA and reenact the decision that approved the draft.

Yours very truly,
KEUSCH, FLINTOFT & FINK, PLLC


Mariah Evans Fink