

**MINUTES OF THE GAINES CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS  
FOR THE REGULAR MEETING HELD ON  
April 13, 2011  
AT THE GAINES CHARTER TOWNSHIP OFFICES  
8555 KALAMAZOO AVENUE SE  
CALEDONIA, MICHIGAN 49316**

**I. CALL TO ORDER AND ATTENDANCE.** The meeting was called to order at the Township Offices, 8555 Kalamazoo Avenue SE, at 7:01 p.m. by Secretary Steigenga. Attendance was as follows:

- A. MEMBERS PRESENT:** Ted Essenburg, Gayle McGrath, Ruth Ringnalda (Alternate), Dick Steigenga.
- B. MEMBERS ABSENT:** Don Drenth, Dan Fryling.
- C. OTHERS PRESENT:** Brian Tingley, Township Planner, Jenni Lamb, Recording Secretary, and Cliff Bloom, Township Attorney.

**II. CONSIDERATION OF MEETING AGENDA**

- MOTION:** By **RINGNALDA**, supported by **ESSENBERG**, to approve the agenda for the April 13, 2011 meeting as presented.
- YES:** Essenburg, McGrath, Ringnalda, Steigenga
- NO:** None.
- ABSENT:** Drenth, Fryling.
- MOTION CARRIED.**

**III. CONSIDERATION OF MEETING MINUTES**

- MOTION:** By **ESSENBERG**, supported by **RINGNALDA**, to approve the minutes for the March 9, 2011 regular meeting as presented.
- YES:** Essenburg, McGrath, Ringnalda, Steigenga
- NO:** None.
- ABSENT:** Drenth, Fryling.
- MOTION CARRIED.**

**IV. INQUIRY OF CONFLICT OF INTEREST:** None.

**V. ADVERTISED PUBLIC HEARINGS**

1. 7:05 PM – 4500 60<sup>th</sup> Street SE – Appeal/Interpret Zoning Administrator Decision Regarding Section 17.12 and Section 17.12 (L)(3) of Gaines Charter Township Zoning Ordinance.

Secretary Steigenga introduced the item.

Terry Heiss, attorney representing Hucul Advertising, thanked the Board for its consideration of the request and stated he disagreed with staff's position regarding the definition of "Abutting or Adjacent Property" in Section 28.2 of the ordinance. He stated that the definition of "lot" should also be considered and referenced three other existing billboards within the Township that were further from M-6 than he proposed billboard.

Steigenga opened and closed the public hearing at 7:11 p.m. as no one was present who wished to comment.

Steigenga found clarification from Bloom regarding the interpretation of Section 17.12 of ordinance. Bloom stated that in this case he feels the interpretation of the Zoning Administrator is correct.

Tingley stated that the exiting billboards referenced by Heiss were also adjacent to property owned by the Michigan Department of Transportation (MDOT). These parcels were considered to be part of M-6 and the M-6 right-of-way.

Steigenga stated that he feels “close” is not actually touching M-6 and does not qualify as adjacent and that the intent was for the location to be actually touching M-6 or M-6 right-of-way.

Heiss stated that he interprets it differently and feels that based on the distance of existing billboards from M-6, there should be no issues with his client’s request, and questioned what the procedure would be if the MDOT property was sold and become private property.

Tingley responded that the billboards would then be considered nonconforming structures and clarified that the ordinance had undergone text amendments to these particular sections in 2008 and that a comparison is not relevant.

Bloom reviewed actions that could be taken by Zoning Board members.

- MOTION:** By **RINGNALDA**, supported by **ESSENBERG**, to tentatively uphold the Zoning Administrator’s interpretation regarding the billboard parcel not being adjacent to M-6 contingent upon a final decision resolution being drafted by Township staff and the Township Attorney and being approved by the Zoning Board of Appeals at its next meeting.
- YES:** Essenburg, McGrath, Ringnalda, Steigenga.
- NO:** None.
- ABSENT:** Drenth, Fryling.
- MOTION CARRIED.**

Heist reiterated issues with the staff report as it related to the 4000 feet digital billboard spacing requirement. He stated that at the time of the initial application there were no other exiting digital billboards located within 4000 feet and that this is an unreasonable constraint on his client. He disagreed with staff’s claim regarding the southeast East Paris/M-6 billboard and its vested right to convert to a digital billboard.

Steigenga received a history of the CBS Outdoor litigation from Tingley, which ended in a negotiated consent judgment that allows CBS Outdoor to convert the southeast East Paris/M-6 billboard to digital. This billboard would be less than 4000 feet away from the proposed digital billboard.

Bloom clarified that CBS Outdoor could submit application for conversion at any time per the consent judgment.

Heiss stated that per the consent judgment has allowed the proposed digital billboard at the Target site is within 4000 feet of the digital billboard on the Kentwood Schools property. He is asking that his client receive the same treatment.

Steigenga opened and closed the public hearing at 7:39 p.m. as no one was present who wished to comment.

- MOTION:** By **MCGRATH**, supported by **RINGNALDA**, to tentatively uphold the Zoning Administrator’s interpretation regarding the digital billboard spacing issue contingent upon a final decision resolution being drafted by Township staff and the Township Attorney and being approved by the Zoning Board of Appeals at its next meeting.
- YES:** Essenburg, McGrath, Ringnalda, Steigenga.
- NO:** None.
- ABSENT:** Drenth, Fryling.
- MOTION CARRIED.**

2. 7:15 PM – 4500 60<sup>th</sup> Street SE – Dimension Variance requests to allow a billboard on property not adjacent to M-6, and within 4,000 feet of another digital billboard, per Section 17.12.

Steigenga introduced the additional requests for dimensional variances. The requests address the adjacency to M-6 and digital billboard spacing.

Bloom stated that public hearings for both requests could be held at the same time but for the sake of clarity motions should be made separately.

Steigenga opened and closed the public hearing for both dimensional variance requests at 7:42 p.m. as no one was present who wished to comment.

Heiss reviewed the request for dimensional variances and finds that the review standards used by staff do not apply to these requests. He stated that the focus should be only on the proposed use, and not be applied to all potential uses of the property.

McGrath disagreed and stated that would be comparable to allowing the keeping of horses on a lot that is not large enough.

Bloom concurred with McGrath and stated that the standards apply to the property as a whole.

Ringnalda found that there are several different review standards, and that they revolve around the "uniqueness of the property", "adverse effects", "practical difficulty/unnecessary hardship" and "recurring nature" areas..

**MOTION:** By **RINGNALDA**, supported by **ESSENBERG**, to tentatively deny a variance for the applicant regarding the requirement that the parcel on which the billboard is located must be adjacent to M-6 contingent upon a final decision resolution being drafted by Township staff and the Township Attorney and being approved by the Zoning Board of Appeals at its next meeting.

**YES:** Essenburg, McGrath, Ringnalda, Steigenga.

**NO:** None.

**ABSENT:** Drenth, Fryling.

**MOTION CARRIED.**

Steigenga reviewed the second portion of the variance request to locate another digital billboard within 4000 feet, per Section 17.12 of the Zoning Ordinance.

Heiss stated he would rely on his previous argument and submitted material to support the request and his client's position.

Bloom clarified that this portion of the request pertains only to whether or not a billboard could be digital. If all of the other requests were approved and this denied, a static billboard could still be erected.

Ringnalda stated this had been a tough decision, precedent must be considered when making decisions, and there has to be concrete proof provided.

**MOTION:** By **MCGRATH**, supported by **ESSENBERG**, to tentatively deny a variance for the applicant regarding the minimum spacing between digital billboards requirement contingent upon a final decision resolution being drafted by Township staff and the Township Attorney and being approved by the Zoning Board of Appeals at its next meeting.

**YES:** Essenburg, McGrath, Ringnalda, Steigenga.

**NO:** None.

**ABSENT:** Drenth, Fryling.

**MOTION CARRIED.**

Bloom complimented the ZBA members, staff, and the applicant’s attorney for the hard work, which has helped to make a very informed decision.

Heiss also thanked all involved for their time and consideration in this matter and found from Bloom that the resolutions would become effective as soon as they are adopted..

**VI. PUBLIC COMMENT ON NON-AGENDA ITEMS:** None.

**VII. GENERAL DISCUSSION.**

1. Election of Officers:

**MOTION:** By **RINGNALDA**, supported by **MCGRATH**, to leave election of officers tabled due to members that were not in attendance.

**YES:** Essenburg, McGrath, Ringnalda, Steigenga.

**NO:** None.

**ABSENT:** Drenth, Fryling.

**MOTION CARRIED.**

Bloom complimented Township on its handling of medical marihuana regulations and stated that Gaines Charter Township actions have set a standard for other neighboring communities. He believes the requirement that primary caregivers personally deliver the medical marihuana to their registered patients is the first of its kind in Michigan.

Steigenga stated that he will not be available to attend the May meeting, but found that other members would be available to meet.

**VIII. ADJOURNMENT**

**MOTION:** By **MCGRATH**, supported by **ESSENBERG**, to adjourn.

**AYES:** Essenburg, McGrath, Ringnalda, Steigenga.

**NAYS:** None.

**ABSENT:** Drenth, Fryling.

**MOTION CARRIED.**

Meeting adjourned at 8:08 p.m.

**CERTIFICATION**

I hereby certify that the above is a true copy of the minutes from the March 9th, 2011 regular meeting of the Gaines Charter Township Zoning Board of Appeals held at the time and place mentioned above pursuant to the required statutory procedures.

Respectfully submitted,

\_\_\_\_\_  
Richard Steigenga, Secretary  
Gaines Charter Township  
Zoning Board of Appeals

Dated: \_\_\_\_\_, 2011