

Public Hearing – Civil Infractions Ordinance
January 12, 2011

Jenkins opened the public hearing for the proposed Civil Infractions Ordinance. The purpose of the hearing is to hear public comment regarding the use Municipal Civil Infractions to enforce the township's ordinances. Attorney Schaedler was present. The rules of the hearing were read by McGrath. Questions were asked regarding the flyer that has been passed around, asking who drafted them and is the information accurate. Attorney Schaedler stated that the flyer is not accurate as written. Presently, the township is using a misdemeanor system, which is a criminal charge. The township must prove in court that the person is guilty beyond a reasonable doubt; with Civil Infractions, the resident only needs to be found responsible by a preponderance of the evidence. If the resident is found to be responsible, there is no criminal record. If the township adopts civil infractions a violator may request an informal hearing with no attorney; or a formal hearing before a judge. The burden of proof is on the township to prove by a preponderance of the evidence that the person is responsible. The zoning officer, township supervisor, sheriff, fire department, or others designated by the board will be able to write a ticket. Fines may be paid at the ordinance enforcement bureau, which may be established at the township hall. The ordinance provides that the township has legal remedies including asking the judge to assess fines and costs against the responsible party. The fines, if assessed, are at the discretion of the judge. Under a misdemeanor enforcement system if you are found guilty of a violation, you have a criminal record and any fine or court cost is paid to the county. The monies are kept by the county, no compensation is sent to the township. Using the Civil Infraction method, only the court costs go to the county; fines are paid to the township. Fines listed are only suggested until the ordinance is adopted. The maximum penalty for a misdemeanor is \$500 and up to 90 days in jail per offense; each day is a new and separate offense. Comments were stated that property is private property, and the residents do not want to see the board set up additional rules. The board stated the reason for seeking the change in enforcement procedures is because it is an easier and faster method to obtain compliance. The first step in any zoning complaint is a telephone call or a visit to request compliance. If the township is not successful in making contact, then a letter will be sent by first class mail. The next step will be a registered letter from the attorney. A notice will be issued if there is no response to the attorney's letter.

Jenkins spoke with 12 townships in the last week regarding Civil Infractions. Six of the townships contacted use civil infractions to enforce their ordinances. All indicated that the process of civil infractions has improved the property owner's response to violation notices. The townships contacted indicate that they write between two and five tickets a year. An Oath of office will be given to each member of the enforcement team. With civil infractions, a resident has no recourse against the township; they must either pay their fine or object through the court system.

At the present time the Planning Commission is working with Region 2 to update the present zoning book, bringing it into compliance with the Zoning Enabling Act. There is resident concern that the civil infractions hearing is happening when the zoning ordinances are in the process of revision. Several are questioning why the board is trying to pass the civil infractions ordinance before the zoning ordinance is updated. The township board has been discussing the possibility of changing to municipal civil infractions for over a year. No board vote will occur until the recommendations are back from Region 2 and the Lenawee County Planning Commission. Nancy Nichols introduced herself and stated that the planning commission has

been working on the zoning ordinances, so the restrictions are reasonable with a solid working document to protect the health, safety and welfare of the residents, but not infringe on resident's rights. Many townships that have municipal civil infractions are large, charter townships. Nichols asked the public to bring comments and concerns to the Planning Commission. There were concerns raised in regards to a comment made by a township official that would allow the taking of property if fines are not paid. Property owners were advised that the ordinances can be read online at <http://www.twp.rollin.mi.us>. The six townships contacted that are using civil infractions are Adrian Township, Madison Township, Raisin Township, Rome Township, Franklin Township, and Woodstock Township. This hearing is to hear comments regarding changing the zoning ordinances only to civil infractions. The governing ordinances may be changed to municipal civil infractions without a public hearing. The board would have to vote on the governing ordinances and publish them after they are passed.

Residents expressed concern that every day is considered a new infraction and can be ticketed as such thereby allowing fines to multiply quickly. Zoning ordinances cannot be enforced retrospectively; therefore civil infractions may not be used on violations that were in existence prior to change in enforcement procedure. The governing ordinances can and will be enforced retroactively. If a non conforming fence exists at the time of adoption it cannot be sited as a violation. If it is taken down by any means, it will not be allowed to be restored.

Schaedler explained line by line the flyer that was handed out. Questions were heard regarding the constitutionality of passing civil infractions, and if the board is trying to push something through before we have all the information we need. Schaedler advised that the United States Supreme Court stated that where issues impact the health, safety and welfare of a community, the local government has the authority to regulate them. The township presently does not have a lot of violations. The zoning officer investigated approximately 70 complaints and the overwhelming majority stated they were not aware of the need for a building permit or zoning compliance prior to starting work. There are a few who will not answer the zoning officer or are unwilling to set up a plan to come into compliance. Ollis Burch, past chairman of the planning commission advised the public that the township has both zoning ordinances and building ordinances, but the civil infractions ordinance is not really not an ordinance, it a governing procedure.

Residents asked if the board was elected to serve the township residents or their own agendas. Another comment stated the proposed ordinance created an unfair burden on the residents by assessing fines for violations.

Tim Miller, zoning officer stated why he feels we need municipal civil infractions. This will help compel compliance. It is an effective, fair way to enforce the existing ordinances.

Comments in opposition of using civil infractions to enforcement the zoning ordinances were: Bob Kaye would like more time to study the proposed changes and he might be in favor of the change if the zoning officer is a responsible person who does not abuse authority by picking on certain residents. Steve questions what will happen when the board changes. Johnson would like more time and another hearing before voting. Kellk is against the proposed changes stating that it infringes on the people's rights. Andy Kelly believes the ordinances should be cleaned up before the adoption of municipal civil infractions. Goodson questions if this issue may be put on a ballot to allow the residents to vote. Yes, but it would require a petition from the residents. David Miller opposes because he feels it is a violation of the constitution. Tim Elting is against using civil infractions on outdated ordinances. The following expressed opposition for reasons already stated: Eicher; A. Christensen; Kyle Elting; Jim Fernamburg; D. Christensen; F. Dickerson;

Frederick; Gilhouse; B. Naylor; Olis Burch; Herb Reed; Tom Knotek; V. Adams; Cindy Johnson; Bradstreet; Irma David; Amy Gilhouse; Susan Dawson; Jim Naylor; Sara Christenson; Patty Clark; Rocky Winters; Karen Biggs; and Dave Itle.

Comments in favor: Cheryl Petersen is concerned that the ads misrepresenting the concept were possibly produced by those who are supposed to write and enforce the ordinances. Walter Lanway prefers civil infractions if the details can be worked out and the policy is followed. Karen Jasmund states she understands that many of the zoning ordinances are contradictory and need correction, she is in favor of changing the enforcement to civil infractions. Lynn Wilson states her neighborhood is an example of how miserable it can be when we have no way to enforce ordinances. Kathy Miller states the township is merely changing the method of enforcement. Walt Miller would be in favor on two conditions: One, if the ordinances are brought up to date so they are enforceable, and two, the zoning officer would not be prejudicial when enforcing the ordinances. Others in favor: Sid Adams; and Arlen Miller.

Jenkins closed the public comment period of the hearing. Letters in opposition and in favor of the civil infractions process were not read but will be attached to the file. Board comments were heard. Wilson feels civil infractions is probably the best way to go in the long run, but there is a lot of work to be done first. McGrath stated there was a lot of misinformation prior to the hearing and hopefully enough information has been given to allow for a good decision. Willett agrees with Wilson that the ordinances need work, but as a board we need to enforce the ordinances. Gust stated she is charged with representing the resident's wishes while serving as an elected official. Jenkins thanked the residents for their cooperation at the hearing, and stated that a lack of equality in ordinance enforcement was brought up to him when he ran for office. The board is trying to bring uniformity and ease of enforcement to the regulations that are already in place. Attorney Schaedler was thanked for his assistance at the hearing.

Sharon M. Gust
Rollin Township Clerk