

PINE GROVE TOWNSHIP SPECIAL BOARD MEETING MINUTES
May 19, 2021 7:00 p.m.

1. Meeting was called to order at 7:00 P.M. by Supervisor Smith.
2. Pledge of Allegiance.
3. **Roll Call:** Present: Meert, Smith, Sell, Hephner Absent: Richardson
Also Present: Attorney Catherine Kaufman
4. **Public Comment: None**
5. **Old Business:**
 1. **Short Term Rental Ordinance** - After a lengthy discussion between the public and the board, it was recommended by Attorney Kaufman that the proposed Short Term Rental Ordinance be revised before adopting, to include an appeal procedure if an annual registration is to be repealed by the township after documented violations. Sell asked Beth Soisson if the board did not adopt this ordinance would they not be able to continue their business. Beth stated that they would, but they lost the sale of their home because this police power ordinance is not in place. *Motion made by Smith to adopt the proposed Short Term Rental Agreement after Attorney Kaufman makes revisions. There was no support. Motion failed.*
 2. **Emergency Services Cost Recovery Ordinance** – Attorney Kaufman stated that she prepared an Emergency Services Cost Recovery Ordinance based on the sample ordinance that she received from the Board. After a lengthy discussion with Attorney Kaufman, the Board, and the Fire Board Chair it was agreed that this was a typical ordinance that many townships have in place. It is the ability for the fire department to bill and collect fees for any emergency services. *Motion made by Sell, supported by Meert, to adopt the Emergency Services Cost Recovery Ordinance. Roll Call: Meert - yes, Smith - yes, Sell - yes, Hephner – yes. All yes. Motion carried.*
6. **New Business:**
 1. **Discuss Recent Actions by Board Members with Attorney Kaufman** – Smith stated that he wanted to discuss some of the recent things that have gone on with Catherine right here. First, Mr. Lehto. Smith stated that he got the impression that it was presented to Catherine that Smith did not allow Mr. Lehto to speak his mind during a regular board meeting, which Smith stated he did, up to the point that Mr. Lehto asked someone from the board to arbitrate his citation for the fence. Smith stated that at that time he told Mr. Lehto that the board could not discuss it as it was pending litigation. Smith stated that a week later he found out that three board members called Catherine and talked to her about it and gave her a story, I don't know what, and came back and dressed him down at a special meeting about how it was handled and I did not appreciate it. Smith stated he handled it that way he thought was appropriate and would do so again. Smith stated we do not talk about open litigation, tickets in an open meeting, it just isn't done. Smith stated he let Mr. Lehto speak his mind, he did, and he was gone. Meert stated that she called Catherine, that there was not three persons that called. Smith stated that he was led to believe that 3 board members had called. Catherine stated that she talked to the clerk because she had heard that a person with possible disabilities was involved. Catherine stated that her main concern was the Federal Fair Housing Act. Catherine stated that she was concerned and has had cases that involved persons with disabilities, where municipalities did not make accommodations for someone with disabilities and have sued the municipalities under the Federal Fair Housing Act. Kaufman stated that she did bring that possibility up to the clerk and she did go ahead and do some investigating. Kaufman stated that when she hears buzzwords, like I heard tonight, that you created a hostile work environment, that means litigation. Catherine stated that when she hears a buzzword such as person states they have a particular medical issue and they need a fence at a

particular height because of it, it might not be that clearly stated, but in some fashion, that triggers my legal analysis, I have to advise this board that it may possibly become a legal action. Catherine stated that she doesn't know Tim Smith that well but she works with him through Comstock township, as she is their attorney as well, and stated that the board certainly can trust him to do a good job. The board as a whole, has to decide how they want him to do enforcement, either strictly complaint basis or drive through the township by a different section every week, or whatever, it is a policy decision that the board needs to make so that the OEO can do his job. Kaufman apologized if she overstepped her duties as legal advisor but felt that the board should be aware of the potential consequences due to the Federal Fair Housing Act. Hephner stated that Attorney Kaufman had nothing to apologize for, that Pine Grove has hired her to make them aware of the pitfalls that they may or may not get into in the event they do not have all the information. Hephner stated that it is clear that 3 board members did not call her, happy that was cleared up. Hephner stated that she was present at that meeting and Mr. Lehto is not here tonight and she did not want to violate his privacy, but at that meeting, Mr. Lehto was simply trying to present the board with some information and really, if we had given him the opportunity to just give what he wanted to give the board, none of this would have happened, but the mere fact of the matter was that he was shut down, as well as the entire board by Mr. Smith and the board was directed not to speak to Mr. Lehto that night. Hephner stated that she had no desire to speak to him about his litigation, my interest was in letting the man say what he needed to say, what he wanted the board to know and I will make no secret about the fact that the next day I drove by his fence. I reached out to him and apologized to him that he was not allowed to speak at the meeting. Hephner stated that she apologized on behalf of herself, no one else. Hephner stated that she is a trustee and her job as a trustee as she sees it, is to represent the citizens of Pine Grove Township, whatever that may be, looking at the entire picture. Hephner stated that she felt very remiss and embarrassed that she and she alone, did not give him an opportunity to speak, or at least step in when he was totally shut down. Hephner stated that she had no interest in discussing his litigation, her interest was in what he wanted to tell the board. Hephner stated that she managed to do that and again because of privacy laws, she was not going to go into that here, but as every board member and our zoning enforcement officer knows, this particular situation came to resolution absent a court hearing. Hephner stated that she believes if things were handled differently that night, and speaking only for herself, if she had stepped in and said, "give him a chance to finish his sentence", because it was not about litigation. Hephner stated that she believes if that particular citizen had been allowed to speak his mind that night, none of this would have happened, it could have been handled in a totally different way. Hephner stated that she for one, will not be silenced when she thinks someone who is a Pine Grove township citizen, that is my job as a trustee, is to make sure they are heard, and that didn't happen that night, no matter whether it was litigation or whatever it was, that man had an opportunity to say what he wanted to say just like everyone else in this room does. I did apologize to him; it came to a resolution without a hearing. I think it was in everyone's best interest the way it was resolved, up to and including the fact Tim, that he no longer has an 8-foot fence, which was down when I went out the next afternoon and he has put up a 6-foot fence and then is in compliance and not one time did I speak to the attorney, and the only other person here that did was Shelly, and it was only at my request when I said this is the information that he wanted to give us, could you please clarify with the attorney to see if this puts this township in any jeopardy. You came back with that information which was extremely helpful. Don Smith stated that he would reiterate, the man was given his time to speak, and he spoke, he did not go over his 2 minutes. He was done talking about what he wanted to talk about and then he asked for someone here to arbitrate his ticket, that's exactly what he asked for and that's when I told him that we could not do it and would not do it. Hephner stated that it did not take a

rocket scientist to figure out that he had something else he wanted to say to us. Smith stated that he did not say it, he asked for one particular thing. Hephner stated that he tried, he made an attempt to speak about what he wanted to say. Hephner stated that was when Smith and Hephner digressed into that Smith knew more than anybody else did because he was a parole officer for 30 years and therefore that gave him more information, more legal knowledge, more expertise in this particular situation. Hephner stated that she has 30 years in law enforcement and many more years of being kind, compassionate and considerate of other people who have needs and who are falling down in front of us and that's why I reached out to him the next day, he needed assistance and he needed someone at that particular point to just listen to him and frankly that wasn't done for him. As a trustee, as a person and as a citizen of Pine Grove Township, even if I don't agree with them, I will listen to them and give them an opportunity to say what they need to say and that's exactly what I did the next day. Smith stated that that was when you should have talked to him about it. Hephner stated that night, he just wanted to hand us a piece of paper. That's when it should have happened. Hephner stated she should have turned to him and said I will take your document and information and present it to the board but frankly I was stunned and overwhelmed. Hephner stated that there is nothing to hide here, I will not let that happen again, people will be treated with respect, they will not be shut down, and they will be given an opportunity to speak and you want to talk about 2 minutes Don, I am well over 2 minutes right now, but there have been many other times depending upon who it is on this board that are allowed to go well over their two minutes so don't try and tell me that you shut him down because he was over his two minutes. Smith stated that he did not shut him down after two minutes. Hephner stated that you just said he had two minutes, he was done talking. Smith stated Donna you are twisting my words again, I told him we would not discuss his citation and arbitration. Hephner stated that the man was clearly upset, he needed someone to talk to him, I did that the next day, the situation was resolved. Hephner stated that at the following meeting, she explained to Mr. Smith, this is who I am, this is what I do, everyone needs to be treated with respect. And that's what I am going to do. Attorney Kaufman stated that in regards to the Open Meeting Act, the act requires public comment at any open public meeting with a time limit. If someone wants to go into the details of their litigation, no it is not appropriate, advise them to talk to you after the meeting and you will forward their information, but you must let them speak unless they are creating a breach, unless they are threatening someone, unless they are dangerous, you must let them speak. Kaufman stated that she understands both sides of this. In the long run, use your discretion on what's going to be best in that situation. People think that maybe if they come to the board, the board can do something for them. If a citation has been written, the board cannot do anything for them that night other than be a sounding board and take their paperwork.

Smith stated that he can see that the continued consensus of the other board members here is not to work him in any way shape or form, that's apparent over the last 6 months. Smith stated to Attorney Kaufman that from now on when any board member contacts her, he would like to request an email on it. I want to know what going on here and there are things that are going on that I am not privy to and I think I should be. Catherine stated that that was fine, that she could copy everyone on the board. Smith stated that that would be fine.

7. **Public Discussion:** Beth Soisson stated that if there were any further question why the Short-Term Rental ordinance is necessary that she was more than happy to speak to anyone on the board. I know that you did not hear about this before, I apologize if this is the first time you heard, or did not have enough information, just know that I am more than happy to help you understand why we really do need the Short-Term Rental Ordinance. John Soisson stated that this is just not us, there are 75 to

100 more people hanging out there just because you people cannot get along. Beth Soisson stated that they obviously walked into something tonight and that's ok, but if the board wants to reassess, please reach out. I can share a lot more that I don't want to share right now on public record, but there is a lot more that goes into why it is important, not to just us. John Soisson stated that he would like to ask the question as there was no discussion. Soisson stated that Don provided the motion and at that point in time, everyone just sat there. No one discussed it, so you all have your opinions why you wouldn't seconded it and I would like the three of you to tell me why you wouldn't want to adopt something that benefits the township. I think it should be known to everyone in the township why you wouldn't want this. You might have perfectly good reason but for the life of me I can't think of any negatives so please help me to understand. It seems like we got caught up in the middle of a fight and we lost because the fight didn't go the way you wanted. I feel uncomfortable feeling like that is the way things are going, so feel free to respond.

Jim Kehoe stated that the Fire Dept. did receive a reimbursement check for approx. \$7,500.00 after about 9 months. The Fire Dept. will now have to decide how to use the money. Kehoe stated his recommendation will be to keep it in Capital Improvements, but that the final decision will be up to the Fire Board.

Tim Smith stated that he was feeling very conflicted. I am just going to think out loud for a minute if that's ok. As an employee of the township, there are several things with the ordinances that he does not feel supported on. Smith stated that there are two incidents where board members have gone around him or over him on things he is working on. Smith stated that he has made recommendations for ordinances, to amend things that are not working out, such as burning in the front yard, which is a police power ordinance, backed by the deputy clerk in an email everyone received and no board support to get this change, no board support to come up with new ones. Sell asked which meeting it was voted on and Smith stated that it was not voted on, like many other things, there was no follow through. Hephner stated that that was in a Zoom meeting that you brought up burning in the front yard and I said isn't that the responsibility of the planning commission and was told it was a board responsibility. It should have then been put on the agenda for the next meeting. Smith stated that it is making his job very difficult, the infighting of this board is making his job very difficult, and stated whether you like each other or not, I could care less, I don't care what anyone's feelings are, but it seems like things are not going for what is best for this township, which I am also a tax payer of, so I'm conflicted on that was well. Sell asked if Smith wishes were for all board members to be of the same opinion. Smith stated absolutely not, if you have an opinion, voice your opinion. If you have a problem, voice your opinion. Smith stated that no one on this board is completely innocent of what is going on with this board. Airing dirty laundry during a board meeting that could have simply been an email exchange of, I thought that was inappropriate, what can we do to fix it. Sell asked if Smith was referring to a situation, that her and he should have a side conversation. Sell stated that she talked to Attorney Kaufman in January and was advised not to say anything about it in the meeting. Sell stated that it was about Selective Enforcement. Attorney Kaufman stated that selective enforcement is about the idea that we don't mutually enforce our zoning or other ordinances. Anyone who had enforcement against them can come back and bring back the defense that you are not mutually or fairly enforcing the ordinance. The idea of selective enforcement is a problem. You as a board, need to decide how you want to do your enforcement and then tell your enforcement officer. Pine Grove has a history of not enforcing over the past 20 years and once you start enforcement, residents are going to become angry, they have been allowed to for so long and now someone is coming along telling them that they can't do that anymore. The first place they are going to go is to an elected official and say why is this happening. So as a board, you need to be on the same page of what you want your enforcement to be. Have a policy and then let the OEO do his job. If the OEO writes a citation and the person comes to court and more investigation is done and we have more facts, there are several things we can do. The Citation can be dismissed, enter into an agreement, or agree on a compliance order. There are several things that can happen after the citation is written to gain compliance. Kaufman stated that what she is seeing/hearing is that the board is not

on the same page of what you want the enforcement to be. Kaufman stated that she has not been historically very involved with the Planning Commission, that they work with Planning Consultant Rebecca Harvey, the new zoning ordinance was recently revised and adopted and it might be a lot more than what Pine Grove needs, however, it was adopted. The issues will be found by the OEO and Bear Priest, the Zoning Administrator. Bear has already had several Zoning Board of Appeals issues. The board needs to communicate better, on what do we want for enforcement and how are we directing him to do it.

Tim Smith asked Attorney Kaufman if the public participation at the end of the meeting is not for any board comments back. Kaufman stated general not, but the board may comment back if its helpful, but generally it is not a give and take or back and forth conversation.

Joe Smit stated that the issue that Attorney Kaufman brings up is fantastic and agrees that the board needs to get on the same page. Smit stated that he has heard outside the board meetings that the board members do not agree with each other, not because it's right or wrong, but because they don't like each other, that the board just wants to make it a pissing match, and its uncomfortable for most people seated in this meeting and at other meetings, that it is extremely frustrating. Smit stated that when you don't get on the same page, just because your mad at another person, or don't like another person, or frustrated how they conduct themselves at a meeting, whether its right or wrong, it doesn't matter. Smit stated he is going through the same exact thing right now, it seems like it's a lot less about what the right thing to do is, what we voted for, saying that you're a trustee and that you support the people, we voted for certain things that the board won't even talk about right now. It seems very centric on one person wants and the other people don't want.

Sell stated to Tim Smith, that she only did what she was legally advised to do. Sell stated that she thinks OEO is doing a great job, but was legal advised to do something because the township was at risk. Sell stated that she has her own opinion, all board members have their own opinions, that she does not like being told that she is teaming up or ganging up against someone when it is not the truth. Sell stated that she has her own opinions for her own reasons and does not want to be accused. Sell stated that she does not know what the other board members opinions are, if they are going to support or not. It has nothing to do with liking or not liking.

Meert stated that she has an opinion on this ordinance that the board voted on tonight, that she has been the clerk for 14 years and has never had any complaints from any lake property owners, never had any phone calls stating this neighbor is bothering this neighbor, and now we have one person in the township that wants us to change all the rules for everyone. Meert stated that she does not think it's necessary. Meert stated that maybe it's going to become a problem, but right now she does not see it as problem and by forcing all these rules on people, it will become a problem. Meert stated that that is her opinion and that's why she voted no.

Beth Soisson stated that she invites the board to read the zoning ordinance because there is a zoning rule...Meert stated that maybe the board should look at the zoning ordinance if that is where the problem is. Don Smith stated that he has seen what they are quoting that says they cannot do an AirBNB or short term rental, and it's kind of a convoluted thing. Don Smith stated that the ordinance defines a family unit is someone that lives together for more than 30 days and that is what they are taking as anyone living together for less than 30 days is short term. Kaufman stated that maybe after the meeting the board could show her the zoning ordinance, as it is a very tricky area of the law because of the interplay between definitions of family, dwelling unit and introducing the idea of temporary and temporary nature of structure. Kaufman stated that the ZO definition of family is right for the law. But if you show me what you're talking about she will look at it further. Kaufman stated that she did look in the ordinance and found a definition of boarding house - a dwelling in which lodging is furnished to guests, with or without meals, for compensation, which is what an AirBNB is. Boarding houses are only allowed in certain zone districts in the ordinance. Kaufman stated that if the

board was to take that definition and determine that a boarding house is a commercial activity and only be allowed in commercial districts. Kaufman stated that there are some problems in the Zoning Ordinance if the board were going to move to the Police Power Ordinance. Kaufman stated that the Zoning Ordinance can be amended. Tim Smith asked if it wouldn't be way easier to adopt the Police Power Ordinance than changing the zoning ordinance. Kaufman stated that if someone wanted to challenge the police power ordinance, there is enough right now that would give cause for argument. Kaufman stated that even though amending the ZO takes more time, it would be best if ZO was amended first before adopting a Police Power Ordinance on Short Term Rentals.

Don Smith stated that when he came into the position of Supervisor 6 months ago, he knew everyone on the board at this time and some of the past board members, had some kind of foregone conclusion that he had an agenda, a one agenda only, in becoming Supervisor and could be nothing further from the truth. Smith stated that he became the Supervisor so that the township had an active Supervisor in this township and not an absentee one that we've dealt with for umpteen years and that is the sole agenda. Don Smith stated that he has watched the board with people before, and when this issue had first come up last August targeting these people and their AirBNB and it sat there and did absolutely nothing since then. Smith stated that in January he pulled up other ordinances and passed along to the other members of the board and just feels like he was stonewalled the whole way. D Smith stated that the lack of action by the board in the past has just astounding him especially when there was money spent on surveys to do this and that and other things, and sits there and does nothing, might as well have wadded the money up and thrown it out in the parking lot.

Motion made by Smith, supported by Meert, to adjourn. All yes, motion carried.

Adjournment: 8:51 p.m.

Respectfully submitted,
Michelle Meert, Pine Grove Twp. Clerk