

Westfield Township Board of Trustees

SPECIAL MEETING

**To consider and take action in the Kratzer Lawsuit
December 27, 2013 @ 7:00 PM**

Trustee Harris called the meeting to order with roll call Trustees present; Harris, Likley, Oiler.

Trustee Harris opened the meeting with the following prepared statement:

As published, this meeting is being conducted in accordance with Ohio Revised Code Section 505.07 to consider and take action on a proposed, court-approved settlement of the court action styled, State of Ohio ex.rel. Timothy L. Kratzer et al. v. Westfield Township, et al., Medina County Court of Common Pleas, Case No. 13 CIV 0971.

The proposed settlement involves the zoning and use of real property involved in the court action, and the terms of the proposed resolution of the action are set forth in the written agreement. Consistent with the Revised Code, at this time, the Board will permit members of the public to express any objections to the proposed court-approved settlement.

Attorney Jim Mathews from Baker, Dublikar, Beck, Wiley & Mathews Law Firm, representing OTARMA and Westfield Township, spoke on the proposed settlement.

Mr. Mathews provided the following information:

- The extent of his involvement in the Kratzer property, approximately 5 months.
- An explanation of the proposed settlement agreement and how the board has reached this point. There are two cases pending in Medina Common Pleas Court: one, an administrative appeal from the BZA decision, the second, a legal claim made by the plaintiff. Because these cases are still pending, the statements made by Mr. Mathews are not to be taken out of context or taken as an admission on behalf of the township.
- A history of the two cases leading up to the proposed settlement. To summarize, the administrative appeal case asks the court to review the BZA proceedings and determine from the testimony offered if there was a preponderance and substantial evidence to support the BZA decision. The court would then consider whether the order entered by the BZA was unconstitutional, illegal, capricious, or on some other basis unreasonable.
 - Regarding the lawsuit filed by the Kratzers, the claims of the lawsuit are: a Declaratory Judgment by the Kratzers claiming that the current zoning of their property is unconstitutional and a Mandamus Claim with a “taking”

Westfield Township Board of Trustees

theory alleging that there is no practical reason for the use of their property to be limited by the zoning resolution.

- The Declaratory Judgment claims that the court must decide whether the current classification in the zoning resolution substantially advances some legitimate governmental interest, and the remedy would remand back to the Trustees to rezone their property in a constitutional way.
- The Mandamus claim provides that, if the Kratzers are found to have been unlawfully deprived of the right to use their property in a way which amounts to a “taking” of their property without compensation by a governmental entity, the remedy would compel the township to begin an appropriation case to determine what damages, if any, the township would be liable to pay for the alleged “taking.”

Mr. Mathews then explained the strengths and weaknesses of each case from the plaintiffs’ and the defendants’ views. Then he explained the rationale, reasoning, and basis for the proposed agreement, along with the risks of the cases. He then provided a summary of the proposed agreement, including the overlay designation of the property and the payment of \$15,000.00. Mr. Mathews then identified the limits of the OTARMA insurance policy coverage to cover this case. That limit is \$50,000.00, which covers the cost of defending the case, including a retention cost to the township. The policy does not cover costs exceeding those limits. Mr. Mathews then referenced ORC 505.07 as to the proceedings of the meeting and the necessary steps.

Trustee Harris then opened to the floor for comments of disapproval of the proposed agreement. The following is list of those who spoke in opposition:

Mr. Tom Bombard, Mr. Dwain Kramer, Mr. Bill Thombs, Mr. Mike Schimdt, Attorney Melisa Marino, Mr. Joe Doty, Mr. Joel Sech, Mr. Gene Sulzner, Mr. Rory O’Neil, Mrs. Silchuk, Mr. Silchuk, Mrs. Carolyn Sims, Mr. Keith Simmerer, Mr. John Miller.
(Prepared statements offered will be attached to the record.)

With no other comments from the floor, Trustee Harris closed public comments.

Open board discussion:

Trustee Likley made a motion to rescind the proposed settlement agreement; the motion died for a lack of a second.

Trustee Harris stated that he could not consciously allow the township to be put in jeopardy of this case going to court and possibly bankrupt our township. The proposed project would take 8 to 10 years to develop and potentially provide much needed tax revenue. This settlement was actively worked out with three Trustees and all done legally, if one Trustee wishes to not go along with the settlement that is his choice.

Trustee Oiler thanked the residents present and those that he spoken to about this case, and explained that he believed this settlement was economically beneficial to the

Westfield Township Board of Trustees

township. That keeping the township's best interest in mind, he had no other choice but to vote yes regarding this settlement.

Trustees Harris then read Resolution 2013-23 into the record and made a motion for the adoption of the same. Motion was seconded by Trustee Oiler.

Roll Call;

Likley: No

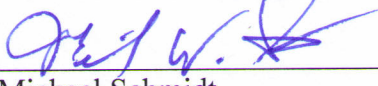
Oiler: Yes

Harris: Yes

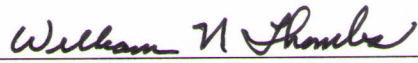
With no further business to come before the Board, Trustee Harris made a motion to adjourn, seconded by Trustee Oiler.

Roll Call, unanimous.

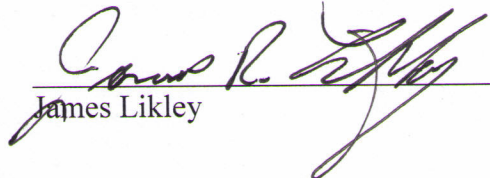
Date approved Feb. 17, 2014



Michael Schmidt



William Thombs



James Likley