

DRAFT
(March 5, 2025)

**BROOKS TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 17, 2025 @ 7:00 PM
APPROVED**

Members Present: Pat Baker, Mark Pitzer, Ryan Schultz, Karl Frederiksen, Chris Wren, Bob Hance

Members Absent: Phil Knape

Staff Present: Jerry Tuin, Cory Nelson and Cliff Bloom

Moved by Baker, **seconded** by Frederiksen, to appoint Chris Wren as the temporary chairman for this meeting only in the absence of Vice-Chairman, Knape. **Approved by Roll Call Vote - Yea:** Baker, Pitzer, Schultz, Frederiksen, Hance. **Nay:** None

Wren called the regular meeting to order at 7:00 p.m. This meeting was properly posted and a quorum of the Brooks Township Planning Commission was present.

Approval of Agenda: Moved by Pitzer, **seconded** by Schultz, to approve the agenda as with the following change: Item 4A and 9A - correct the term “Chane” to “Change”. **Unanimously Approved**

Approval of Minutes: Moved by Frederiksen, **seconded** by Schultz, to approve the minutes of the Special PC Meeting held January 20, 2025. **Unanimously Approved**

Public Hearing: The Public Hearing was opened at 7:03 p.m. and covered the following items:

- a. Proposed amendments to the Brooks Township Zoning Ordinance including:
 - i. Article IV, Section 4.09, Summary of District Land Uses, Items 8 & 9 – Change former special land uses to permitted uses.
 - ii. Amend Junk and Anti-Blight ordinance (2012-69) to Article IV, “Definitions” Section 2, Subsection items a & b; and Article V, Part D of the Brooks Township Code of Ordinances.
 - iii. Amend Article IV “Classifications of Districts”; Section 4.08, “Summary of District Size and Setback Standards” for the R-2 Medium Density single family Residential District, LD Lakefront District; and amend Article IV, Section 9.07 of the Brooks Township Zoning Ordinance.
 - iv. Amend the ordinance regarding cemeteries; or allowed uses and related matters – Section 1.05, Interpretation; Section 2.09G, and definition of Government Cemetery.

Subsection 2.10, Institutional or public use; Section 3.28, cemeteries; Section 4.09, District Land Use Table: Section 14.12 add new section EE, Cemeteries.

The Public Hearing was turned over to Township Attorney Cliff Bloom for presentation of the proposed zoning amendments. Attorney Bloom noted that he is also acting in place of the Township Planner tonight who was unable to attend tonight's meeting. The following key points were addressed by Attorney Bloom:

- The proposed amendments deal with cemeteries and other issues. Whenever a planning commission or township board is looking at enacting or amending a zoning amendment, various legislative concerns and issues should be considered.
- Green cemeteries are a novel and relatively new phenomenon in the modern era and there are few regulations in Michigan governing cemeteries, let alone “green” and/or “private” or “for profit” cemeteries.
- Private and/or green cemeteries are a new and untested concept for modern times, particularly those which are for profit and will involve shallow burial without a vault. Brooks Township must practice due diligence and carefully evaluate all factors due to the lack of precedent and state regulations for this area.
- With most zoning subjects, municipalities have had 40 to 75 years of experience with almost every given use. Municipalities generally know what will work and what will not. That is not true with regard to green cemeteries and private cemeteries in particular.
- There appears to be very little scientific research or studies regarding the impact of green cemeteries (especially in Michigan) on water tables, wells and adjoining nearby property values.
- Large-scale private cemeteries are virtually unheard of, especially for profit.
- The following are concerns that were considered in drafting the proposed ordinance changes for the most recent ordinance draft dated 2/10/25:
 - i. Sustainability – How long will the private/green cemetery be there? How will maintenance be handled and who will take over if it fails? Will human remains and cremains need to be moved and at what expense 30-100 years down the line?
 - ii. Potential adverse impact and consequences. – Environmental, traffic, ground water and impacts on adjoining and nearby properties must be considered.
 - iii. Accessibility - Regulation of access to the site, the type of roads and the potential need for paving and upkeep, addressing needs for traffic and parking within the cemetery.

- iv. Precedent – Will it set an adverse precedent?
 - v. Track record of any applicant – Past experience with managing a cemetery, financial wherewithal to sustain the cemetery over time or set up some mechanism for sustainability for 30 – 100 years from now.
 - vi. Property values - Impact on adjacent and surrounding property values.
 - vii. Need - Is there a demonstrated need for a new cemetery? In the past, there was virtually no demand for a cemetery in the Township. None exist. The Township has evaluated the capacity of adjoining and nearby townships and cities to determine need and capacity.
 - viii. Public Service demands - Will a cemetery proposal place unreasonable demands on public services? A new or novel idea with no significant county or state regulations might fall on the municipality to have additional safeguards.
 - ix. Responsibility in the event of a cemetery failure – Per MCL-128.31 (and all other related sections), if a cemetery fails, there is an action by the Circuit Court which generally makes the local municipality financially responsible for taking over. This could involve physical and financial maintenance, and possibly moving human remains to other cemeteries. Funding for such expenses would likely need to come from a township’s general fund or by a millage.
- There has been some criticism of this ordinance proposal based on the idea that it would be over regulated or too restrictive. However, Attorney Bloom noted that the Zoning Ordinance addresses many uses in detail that do not have the potential long-term impact as a cemetery would have. That includes sand and gravel operations, golf courses, shooting ranges, churches and recreational facilities; all are only allowed in certain areas of the Township and some require special land use approval.
 - There are six (6) different proposed amendments in general and they involve interpretation, the definition of institutional public use, a new definition of cemetery, amendment to the use table, cemetery regulations, and cemetery locations.
 - In general, under this proposal, it would allow new or expanded cemeteries within the R1, Low Density residential zoning district (rural/residential) and the Commercial and Industrial zoning districts with special land use approval by the Planning Commission. The proposal was drafted so proposed amendments are not exclusionary. The R1 zoning district covers approximately half of the Township by area and includes numerous 40 acre (or larger) parcels which are located away from any wellhead protected area, lake, river, stream etc.

- The proposed ordinance amendments are not targeted against any particular property owner or party. It is not uncommon for planning commissions and township boards throughout the state to find deficiencies or unclear notions in zoning ordinances requiring the need for updating, change or clarification.
- Attorney Bloom clarified that the lawsuit recently decided by the Newaygo County Circuit Court (by Lake County visiting Judge Glancy), held that the current Brooks Township prohibition of all cemeteries was unconstitutional. This was a relatively narrow decision based on a constitutional provision in the Michigan Constitution. With respect, these proposed amendments, by all reasonable implications, are not a cemetery ban and would allow cemeteries under quite a few different circumstances on many properties. While Brooks Township respects Judge David Glancy's opinion, the decision is under appeal and an appeal could be pending for another year or longer.

The Court implied that reasonable cemetery regulations are allowed. Per a quote in the court order denying reconsideration of December 18, 2024, "The Brooks Township Ordinances at issue do not put into place reasonable restrictions on new cemeteries to address public health and safety, urban planning issues, community welfare, economic or commercial regulations, land conservation and preservation. The ordinance is an outright ban on all cemeteries, without justification." Based on this, the Court seemed to implicitly recognize that although it believed that a total prohibition was unconstitutional, ordinances with reasonable regulations could be valid.

- In summary, the proposed regulations contained in this ordinance proposal addresses protection of surface and ground waters in Brooks Township, have reasonable and prudent setbacks, contain a minimum 40 acre requirement which provides reasonable protection to area property owners as well as buffering the cemetery itself. (40 acres is about ¼ of a mile and helps with setbacks, buffering and water isolation areas; larger acreage minimizes potential adverse negative impacts on adjoining property owners and there are many 40 acre parcels or larger within the R1 zoning district). Requiring the cemetery to be located on a paved versus gravel road is based on easy access and traffic safety. Although many public roads in Brooks Township are paved and safe, some gravel roads are substandard which could present problems in winter for large groups attending a burial ceremony at the cemetery. The Township believes that the R1 zoning district is appropriate for cemeteries as it is the lowest density residential zoning district in the Township, would help minimize conflict with existing and future residential dwellings and hopefully minimize conflict among other users in the R1 zone. Based on the court decision, there now are no regulations in place for cemeteries in Brooks Township (other than licensing issues), so some of the proposed amendments are written to address cemetery zoning issues.
- There seems to be a misconception about the role of the health department in approving cemeteries (whether it be a government, church, green or private cemetery). There is a state statute (with several different standards) that requires the health department to

review and approve a plat for cemeteries. Based on a Township Freedom of Information request of health department documents, only a cursory review and perk test was done for the plat; however, it appears that a comprehensive review was not completed, as a formal application was still pending.

- The Township only has one chance to get this right. If a private cemetery is developed and things go wrong, it would be a huge problem.
 - For Brooks Township and other municipalities, cemeteries are a big undertaking.
 - Cemeteries and burials involve many emotions.
 - The requirement for long-term sustainability and stability is essential.
 - There is little regulation at the state or county level.
 - It could be a recipe for disaster if a cemetery is not set up, sustained and maintained appropriately.

Public Comment: The following comments were received during the public hearing supporting the proposed ordinance amendments:

- Ed Fedell, the current Newaygo Mayor, strongly opposes a green cemetery being located closer than the one mile within the wellhead protection area of an existing Newaygo well. He is concerned about contamination from current medical science in human remains (cancer and other potentially hazardous medications) and potential adverse effects on the water system from a green burial site.
- Jennifer Rainey thanked the Planning Commission and Township Board for their proactive efforts in addressing cemetery issues and defending their concerns. She is also concerned about potential contamination of the City well which is across the street and in close view of her property.
- There were no comments against the proposed zoning amendments.

[The Public hearing was closed at 7:26 PM]

Correspondence: None

Reserved Time: None

Unfinished Business - None

New Business:

- a. 2024 Planning Commission Annual Report – **Moved** by Pitzer, **seconded** by Frederiksen to approve the Planning Commission Annual Report as written. **Unanimously Approved**

- b. The proposed amendments to the Brooks Township Zoning Ordinance including:
 - i. Article IV, Section 4.09, Summary of District Land Uses, Items 8 & 9 – Change former special land uses to permitted uses.

 - ii. Amend Junk and Anti-Blight ordinance (2012-69) to Article IV, “Definitions” Section 2, Subsection items a & b; and Article V, Part D of the Brooks Township Code of Ordinances.

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Moved by Hance, **seconded** by Frederiksen, to support and recommend approval to the Township Board of all proposed zoning amendments as written and noted above. Roll call vote - **Unanimously Approved**

Staff Report:

- The Zoning Report was submitted for the period through the end of December 2024.

Public Comment: Concern was raised about trash receptacles left at the curbside for long periods of time. The streets would look cleaner if receptacles were moved until the next trash pick-up.

Planning Commission Member Comments – Pitzer noted that he was happy to see R1 included in the recent ordinance language.

Adjournment: **Moved** by Frederiksen, **seconded** by Pitzer, to adjourn and end the meeting at 7:35 PM. **Unanimously Approved**

Respectfully Submitted,

Pat Baker
Planning Commission Secretary

Dianna Schaafsma
Recording Secretary