



# CHEBOYGAN COUNTY PLANNING COMMISSION

870 SOUTH MAIN ST., ROOM 103 ▪ PO BOX 70 ▪ CHEBOYGAN, MI 49721  
PHONE: (231)627-8489 ▪ TDD: (800)649-3777

## CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, JULY 1, 2020 AT 7:00 P.M. ROOM 135 - COMMISSIONER'S ROOM - CHEBOYGAN COUNTY BUILDING

- PRESENT:** Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson, Delana
- ABSENT:** None
- STAFF:** Mike Turisk, Jen Merk
- GUESTS:** Ann Couture, Craig Tews, Roger Houghton, Stephanie Marsh, Mike McCarty, Russ Crawford, Cheryl Crawford, Janice Morrow, Jennifer Atkins, John Moore, Chuck Beckwith, Erling Johnson,

The meeting was called to order by Chairperson Croft at 7:00pm.

### PLEDGE OF ALLEGIANCE

Chairperson Croft led the Pledge of Allegiance.

### APPROVAL OF AGENDA

The meeting agenda was presented. **Motion** by Mr. Borowicz, seconded by Mr. Kavanaugh, to approve the agenda as presented. Motion carried unanimously.

### APPROVAL OF MINUTES

The June 10, 2020 Planning Commission minutes were presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to approve the meeting minutes as presented. Motion carried unanimously.

### PUBLIC HEARING AND ACTION ON REQUESTS

**Amendment #157** - An Ordinance that would amend Section 18.12 (Expiration of Special Use), Section 20.16 (Expiration of Site Plan Review) and Section 21.4 (Expiration of a Zoning Permit) of Cheboygan County Zoning Ordinance No. 200 to allow expanded authority for the Zoning Administrator to grant administrative extensions of approved permits.

Mr. Turisk stated the proposed amendment would amend section 18.12, section 20.16 and section 21.4 of the Zoning Ordinance. Mr. Turisk stated that the proposed amendment allows for expanded authority for the Zoning Administrator to grant administrative extensions of approved permits. Mr. Turisk stated that the Planning Commission currently has sole authority to grant extensions of approved site plan reviews and special use permits. Mr. Turisk stated that the proposed amendment would allow the Zoning Administrator to grant an administrative one year extension of an approved site plan review or a special use permit. Mr. Turisk stated that it also allows for an additional extension beyond that one year, however, the authority for that additional extension would be held by the Planning Commission. Mr. Turisk stated that there are two conditions that would need to be demonstrated to grant the administrative approval. Mr. Turisk stated that the first condition requires the property owner or the applicant to present reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the property owner. Mr. Turisk stated that the second condition is if there has not been a significant change to any regulation applicable to the development then the Zoning Administrator would be able to approve the one year administrative extension. Mr. Turisk stated that proposed Amendments #157 and #158 has been reviewed by legal counsel.

Mr. Turisk stated that Amendment #157 also proposes an extension of approved zoning permits. Mr. Turisk stated that currently, zoning permits are valid for six months from the date of approval and that is not in harmony with the Department of Buildings Safety building permits which are valid for one year. Mr. Turisk stated that it makes perfect sense to align the expirations of the permits because of the problems and confusion it causes for applicants. Mr. Turisk stated the Zoning Administrator would be required to receive a written request for the permit extension.

Ms. Croft asked for Planning Commission comments. Ms. Johnson stated that at the previous meeting the Planning Commission discussed adding language about not extending the permit if any violations have occurred. Ms. Johnson stated that is not included in the proposed amendment. Mr. Turisk stated that language can be crafted this evening as it is a simple addition. Mr. Freese asked if Ms. Johnson is talking about a violation that the property owner may have had on the parcel which is not related to the uses relating to the special use permit or site plan in question, and if it is only an extension of the zoning permit, then there would not have been a violation from that standpoint. Mr. Freese stated that the reason for applying for an extension for a special use permit or site plan review could be due to a violation that was there in the first place. Ms. Johnson stated that if the applicant is coming in because of enforcement issues and they're in violation it should not be extended again. Ms. Johnson stated if they have not made any attempt to remedy the situation they should not be granted an extension. Ms. Johnson stated that if they are working on it, that is a different story. Ms. Johnson stated that if there are blatant violations because of what was proposed and they take a different track, they assume it's given them more freedoms than what the special use permit actually states. Ms. Johnson stated these are violations. Ms. Johnson stated that if there are other things that they do than what was proposed for the special use permit those would be violations potentially. Mr. Delana asked Mr. Johnson if she is saying specifically violations of conditions to a previous permit that an applicant is asking to have extended. Ms. Johnson noted that it is a violation if an applicant requests an extension for a special use permit and they are utilizing it for another use that is not approved. Mr. Turisk stated that under the circumstances that Ms. Johnson proposed, there would be a stay on the activity that's identified as being in violation until we get a voluntary compliance. Mr. Turisk stated that we do not want to treat anybody differently. Mr. Turisk stated that if they're voluntarily working through the process, and they've demonstrated that there's been some difficulty in following through on the approved site plan review or special use permit, then there should be consideration as to why we treat them differently if they are working towards compliance. Ms. Johnson stated that working towards compliance and violating a special use permit are two different things. Ms. Johnson stated that we have existing situations in Cheboygan County where a special use permit has expired and people are still doing what they're not supposed to be doing and Cheboygan County has chosen not to enforce that. Mr. Turisk stated that he would disagree with Ms. Johnson and stated that the Zoning Enforcement Officer Michael Peltier has done an admirable job. Ms. Johnson stated that she agrees that the Zoning Enforcement Officer has done an admirable job, but Cheboygan County is where the stopping is, and she does not want to see other people go through that same situation. Ms. Johnson stated that when a special use permit is approved, the applicant has an allotted amount of time in order to meet the conditions and you would not expect that there would be violations during that first year time frame if they are working towards meeting all the conditions. Ms. Johnson stated there should not be any violations on the site. Mr. Turisk stated that we should be careful of combining one violation with another violation related to a site plan review. Mr. Turisk stated that we have to keep those distinct. Ms. Johnson stated that we may need legal counsel's advice as to how to word this properly. Mr. Kavanaugh stated that language should be included in the proposed amendment to reinforce the conditions and the requirements. Mr. Kavanaugh stated it is disturbing to see an applicant obtain approval for a special use permit and have violations before they ever meet the standards. Mr. Borowicz stated that it seems that we're a little off the course here as we're talking about a special use permit where the applicant has not begun substantial construction on the project. Mr. Borowicz stated that if the applicant is making progress on the project they do not have to apply for an extension. Ms. Johnson stated that if they are operating the business without the approval of the special use permit it creates a violation. Mr. Borowicz stated that is not related to the extension of a special use permit. Mr. Borowicz stated that is simply a violation. Mr. Turisk stated that if there is an established violation you would not be able to get a permit unless you meet compliance with a permit application and the same holds. Ms. Croft stated the same should hold true for an extension. Mr. Freese stated that the Planning Commission can not come up with a language to get that intent into the regulation and legal counsel will have to help draft the language. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, to forward the proposed amendment to legal counsel. Motion carried unanimously.

**Amendment #158** - An Ordinance imposing a moratorium authorizing temporary relief from and authorizing temporary land uses under the Cheboygan County Zoning Ordinance No. 200 in response to the COVID-19 pandemic.

Mr. Turisk stated Amendment #158 is legally a moratorium ordinance. Mr. Turisk stated that is an effort to provide some measure of regulatory relief, particularly to business owners. Mr. Turisk stated that on June 10, 2020 the Planning Commission discussed retail uses, the use of dedicated off street parking for an approved use to be used in part for outdoor seating areas so that patrons can honor minimum social visits and guidelines. Mr. Turisk stated that the Planning Commission discussed temporary signage and mobile food units. Mr. Turisk stated that the Planning Commission talked about allowing mobile food units to operate only on properties that have permitted established brick and mortar restaurants.

Mr. Freese referred to Section 2.A.3a and not that it should be 32 square feet instead of 33 square feet. Mr. Freese referred to Section 2.A.4.a and requested using the use that is listed in the Zoning Ordinance which is "bar and restaurant, carry out restaurant drive in restaurants and fast food restaurant" instead of "brick and mortar restaurant".

Ms. Croft asked for public comments. There were no public comments. Public comment closed.

Mr. Turisk stated that Tuscarora Township Supervisor, Mike Ridley, supports this amendment.

**Motion** by Mr. Freese, seconded by Mr. Kavanaugh, to forward Amendment #158 with the two amendments to the Cheboygan County Board of Commissioners with a recommendation for approval. Motion carried unanimously.

**Amendment #159 (DGOGCheboyganmi040120, LLC/Holifield/Sova)** – A request for conditional rezoning under the Michigan Zoning Enabling Act, MCL 125.3405 (P.A. 110 of 2006). The subject properties are currently zoned Agriculture and Forestry Management (M-AF) and Lake and Stream Protection (P-LS). The applicant requests a conditional rezoning/zoning amendment for Commercial Development (D-CM) zoning for entirely one property (Parcel ID 104-035-200-025-02) and a portion of an adjacent property (Parcel ID 104-035-200-028-00). If approved the land use would be limited to the following: Retail sales establishment, General, per section 6.2.17 of Zoning Ordinance #200. Retail sales establishment, General is not an allowed land use in the M-AF or P-LS zoning districts. However, should the conditional rezoning application be approved the land use would be allowed with approval of a site plan review application by the Planning Commission under Article 20 of Cheboygan County Zoning Ordinance #200. The subject properties are located at 6647 and 6725 N. Black River Rd. in Benton Township, parcel ID nos. 104-035-200-025-02 and 104-035-200-028-00 in Section 35.

Mr. Turisk reviewed the background information contained in the staff report (Exhibit 13).

Mr. Freese stated that he does not look at the Rural Commercial Nodes the same way that Mr. Turisk is looking at them. Mr. Freese stated that the reason the Planning Commission came up with those designations and the locations was because they were potential sites for development other than the Agriculture and Forestry Management uses that are now allowed. Mr. Freese stated that townships and incorporated cities can they have their own zoning. Mr. Freese stated that the only reason Cheboygan County has the zoning authority is because the townships have elected not to have their own zoning. Mr. Freese stated that the Planning and Zoning Enabling Act recognizes the fact that the decisions for development are authorized at the city and township level. Mr. Freese stated that when the Planning Commission had discussions with each of the townships when updating the Master Plan, we tried to identify areas that the townships might be interested in developing for uses other than Lake and Stream Protection uses and Agriculture and Forestry Management uses. Mr. Freese stated that there was no restriction on the size of that Rural Commercial Node. Mr. Freese stated that if Cheboygan County is to continue to grow, there would be a basis and reason for expanding some of these Rural Commercial Nodes. Mr. Freese stated that unfortunately, the way things have gone in the last six months, he does not really see Cheboygan County growing. Mr. Freese stated that it is the Planning Commission's responsibility to look at the desires of the township. Mr. Freese stated that the Planning Commission should look to see if the township desires to have some of these Rural Commercial Nodes expanded and used for the purpose that was established. Mr. Freese stated that these areas were identified originally because there had been previously, or there were now, existing stores or commercial establishments in these locations. Mr. Freese stated that there were a lot of towns in Cheboygan County that nobody recognizes anymore such as Rondo, Wildwood, Freedom, Hackwood, Manning and LeGrand. Mr. Freese stated that now we have Afton, Tower, Indian River, Cheboygan, Aloha and Mackinaw City. Mr. Freese stated that Alverno and Topinabee have the potential to grow. Mr. Freese stated that the Planning Commission should keep an open mind on opening up the Rural Commercial Nodes to commercial uses. Mr. Freese stated that he is not saying that this one should be expanded at this point, but it is probably one of the best locations that could grow. Mr. Freese stated that the Alverno Fire Department serves a much greater area than just Benton Township. Mr. Freese stated that the Benton Township Hall and the recreational facilities have expanded. Mr. Freese stated that the old firehouse has been relocated to a much bigger fire hall. Mr. Freese stated that Alverno one of the few places that has really grown. Mr. Freese stated that when the public weighs in on this application tonight the Planning Commission will get some consensus whether they want to grow their area or not. Mr. Freese stated that the Planning Commission should probably lean toward what the public wants for their area.

Mr. Kavanaugh stated that he was involved in the future land use plan and the Planning Commission looked at these nodes and most of the structures already existed. Mr. Kavanaugh stated that the Planning Commission expected the nodes at crossroads like it is now with Collins Grocery, the Fire Department and the Benton Township Hall. Mr. Kavanaugh stated that at that point no one, including Benton Township, had an interest in extending it a mile because there are beautiful homes in this area. Mr. Kavanaugh stated that no Planning Commission members involved expected to stretch the Rural Commercial Node a mile in each direction. Mr. Kavanaugh stated that the Planning Commission should take a good look at this proposed change and see if that's the kind of expansion that everybody expected. Mr. Kavanaugh stated that this is not allowed in the Future Land Use Plan. Mr. Kavanaugh stated that this is spot zoning in his opinion. Mr. Kavanaugh stated that the Planning Commission should receive comments from the audience and see what they think.

Ms. Croft asked for public comments.

Ms. Couture noted that directly across the street from the parcels that are proposed to be rezoned is an excavating company. Ms. Couture stated that there is a gravel pit in this area that is used commercially and a small business repair shop that is within a half mile. Ms. Couture stated that within two miles there is also a bar/restaurant. Ms. Couture stated that this is not just a small commercial thing as there are other commercial businesses that are being run in that area. Mr. Borowicz stated that the corner of Black River Road and Twin Lakes Road has been identified as another Rural Commercial Node. Mr. Kavanaugh stated that some uses are allowed in Agriculture and Forestry Management which have been approved for a special use permit. Mr. Kavanaugh stated that the other uses are probably home occupations which are allowed in all zoning districts. Mr. Kavanaugh stated that he would have rather seen this rezoning request adjacent to the node instead of 1000-2000 feet down the road.

Mr. Tews stated that this is a nice little community. Mr. Tews stated his concerns about a national chain, if the store does not show a profit, shutting down the store. Mr. Tews stated that there will be an empty commercial building on the property.

Ms. Atkins stated that she is a resident of Benton Township and is also a local pediatrician in the Indian River area. Ms. Atkins stated she is concerned with the location given that there is a bend in the road and a downhill slope. Ms. Atkins stated her concern is about the safety of the families and kids in the area from a large commercial business with a parking lot and lighting and inconsistencies of that type of business with those local ones that were mentioned in the Rural Commercial Nodes. Ms. Atkins stated that this is definitely out of place. Ms. Atkins stated her concerns regarding the safety of the hill and noted that it can get tricky in the winter.

Ms. Marsh stated that she is probably the property owner who will be most affected by this as she her dwelling is on an adjacent parcel. Ms. Marsh stated that when the drilling was done for the perk test for the potential business her house shook the whole day. Ms. Marsh stated she will be affected day in and day out if this is approved. Ms. Marsh stated that she has a son and a daughter on the spectrum and her son paced and cried and she can not have that for her son. Ms. Marsh stated that they would have to do something. Ms. Marsh stated that there are days when she can barely get out of the driveway and she does not ever back out of the driveway because of the curve, the hill and the 45 mile per hour speed limit. Ms. Marsh stated her concerns about not being able to get out of her driveway. Ms. Marsh stated that this has already affected her home and it has not even started.

Ms. Morrow stated that she lives on the hill of Alverno and the traffic is terrible. Ms. Morrow stated her concerns that there will be more accidents. Ms. Morrow stated that the cars in the area drive 75-80 miles per hour.

Mr. Johnson stated he lives around the corner. Mr. Johnson stated there is a problem with speeders. Mr. Johnson stated that this is a poor location for the proposed rezoning.

Ms. Croft closed public comment.

Mr. Bartlett stated that the old fire station, which is vacant, is located in the Rural Commercial Node.

Mr. Turisk noted that the applicant's representative, Mike McCarthy, is attending the meeting this evening.

Discussion was held regarding the location for the proposed rezoning. Mr. Delana asked why this property was chosen and targeted. Mr. McCarthy stated that other sites were looked at and eliminated due to topography, wetlands, or reluctance of the property owners to sell. Mr. Turisk stated that if the conditional rezoning is approved, the applicant will need to submit a site plan review application. Mr. Turisk stated that the Planning Commission would then have an opportunity to review basic development features. Mr. Turisk stated that the Planning Commission is focusing on the rezoning application tonight.

The Planning Commission reviewed the General Findings:

1. The Planning Commission finds the applicant proposes rezoning of certain real property in the applications from Agriculture and Forestry Management (M-AF) and Lake and Stream Protection (P-LS) to Commercial Development (D-CM). (See Exhibits 3 and 13)
2. The Planning Commission finds the applications are made by DGOGCheboyganmi040120, LLC. (See Exhibit 3 and 13)

3. The Planning Commission finds the parcels to the north are zoned Agriculture and Forestry Management (M-AF). Furthermore, the parcels to the east are zoned and Lake and Stream Protection (P-LS) and Agriculture and Forestry Management (M-AF), the parcels to the south are zoned Lake and Stream Protection (P-LS), and the parcels to the west are zoned Agriculture and Forestry Management (M-AF) and Lake and Stream Protection (P-LS). (see Exhibit 5)
4. The Cheboygan County Master Plan and Future Land Use Map designate the area in which the subject properties are located as Forest/Agricultural and Lake, River and Stream Protection. (See Exhibits 2 and 13)
5. The Planning Commission finds that the subject properties are located approximately 2,000 linear feet south of the *Alverno Commercial Node* at the intersection of North Black River Road and Orchard Beach Road. (See Exhibits 2, 4 and 13)

The Planning Commission reviewed the Rezoning Factors:

**1. Is the proposed conditional rezoning reasonably consistent with surrounding uses?**

- A. The Planning Commission finds that the surrounding land uses are in the M-AF and P-LS zoning districts, with residential land use predominate and therefore, the proposed conditional rezoning is not reasonably consistent with surrounding land uses. (See Exhibits 1, 2, 4, 6, 7, 8 and 13)
- B. The Planning Commission finds that based upon the information provided in the staff report that indicates that the property is designated Forest/Agricultural and Lake, River and Stream Protection by the Cheboygan County Master Plan and Future Land Use Map. See Exhibits 2 and 13)

**Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, that the standard has not been met. Motion carried unanimously.

**2. Will there be an adverse physical impact on surrounding properties?**

- A. The Planning Commission finds that there is evidence that the proposed conditional rezoning in and of itself would result in adverse physical impact on surrounding properties, as the activities which could occur would physically disturb the properties surrounding the land proposed for the rezoning. (See Exhibits 1, 2, 4, 6, 7, 8 and 13)

**Motion** by Mr. Kavanaugh, seconded by Ms. Johnson, that the standard has not been met. Motion carried. 8 Ayes (Kavanaugh, Johnson, Croft, Borowicz, Freese, Ostwald, Bartlett, Lyon) 1 Nay (Delana), 0 Absent

**3. Will there be an adverse effect on property values in the adjacent area?**

- A. None identified.

**Motion** by Mr. Freese, seconded by Mr. Borowicz, that the standard has been met. Motion carried unanimously.

**4. Have there been changes in land use or other conditions in the immediate area or in the community in general that justifies rezoning?**

- A. The Planning Commission finds that minimal changes have occurred in the vicinity of the subject properties and that much of the area remains largely residential (as opposed to accommodating commercial uses). (See Exhibits 4 and 13)

**Motion** by Mr. Kavanaugh, seconded by Ms. Johnson, that the standard has not been met. Motion carried. 8 Ayes (Kavanaugh, Johnson, Croft, Borowicz, Delana, Ostwald, Bartlett, Lyon) 1 Nay (Freese), 0 Absent

**5. Will rezoning create a deterrent to the improvement or development of adjacent property in accordance with**

**existing regulations?**

A. The Planning Commission finds that given surrounding properties (that are not subject to the conditional rezoning applications), no evidence exists that the conditional rezoning would deter the improvement or development of adjacent properties in accordance with existing regulations, much less future land use plans, per the County's Master Plan and Future Land Use Map. See Exhibits 1, 7 and 8.

**Motion** by Mr. Freese, seconded by Mr. Delana, that the standard has been met. Motion carried unanimously.

**6. Will rezoning grant a special privilege to an individual property owner when contrasted with other property owners in the area or the general public (i.e. will rezoning result in spot zoning?)**

A. The Planning Commission finds that conditionally rezoning the property as proposed does create a special privilege or result in spot zoning because of the homogeneous residential/"rural residential" character of the area and the lack of commercial zoning or a mix of zoning. (See Exhibits 2, 4 and 13)

**Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, that the standard has not been met. Motion carried unanimously.

**7. Are there substantial reasons why the property cannot be used in accordance with its present zoning classifications?**

A. The Planning Commission finds that the subject properties can be used for all purposes listed under their current zoning classifications. (See Exhibits 1, 7 and 8)

**Motion** by Mr. Freese, seconded by Mr. Delana, that the standard has not been met. Motion carried unanimously.

**8. Is the rezoning in conflict with the planned use for the property as reflected in the Master Plan?**

A. None identified.

**Motion** by Mr. Kavanaugh, seconded by Ms. Johnson, that the standard has not been met. 8 Ayes (Kavanaugh, Johnson, Croft, Borowicz, Delana, Ostwald, Bartlett, Lyon) 1 Nay (Freese), 0 Absent

**9. Is the site served by adequate public facilities or is the applicant able to provide them?**

A. The Planning Commission finds that the subject properties are or will be served by adequate public and private facilities by the applicant considering the type of use that may be permitted on the property.

**Motion** by Mr. Borowicz, seconded by Mr. Kavanaugh, that the standard has been met. Motion carried unanimously.

**10. Are there sites nearby already properly zoned that can be used for the intended purposes?**

A. None identified.

**Motion** by Mr. Freese, seconded by Mr. Borowicz, that the standard has been met. 8 Ayes (Freese, Johnson, Croft, Borowicz, Delana, Ostwald, Bartlett, Lyon) 1 Nay (Kavanaugh), 0 Absent

**Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to recommend denial of the conditional rezoning application to the Cheboygan County Board of Commissioners based on the General Findings and Rezoning Factors 1,2,4,6,7 and 8 which have not been met. Motion carried unanimously.

Mr. Turisk stated that the Planning Commission's recommendation will be forwarded to the Cheboygan County Board of Commissioners and may be reviewed at their second meeting of the month which is July 28, 2020. Discussion was held

regarding the property owner's within 300ft. of the subject property not receiving notification of the Cheboygan County Board of Commissioners meeting as it is not technically a public hearing. Ms. Johnson stated that the property owner's within 300ft. should look at the Cheboygan County Board of Commissioner's website as the agenda is posted one week before the meeting.

**UNFINISHED BUSINESS**

Ms. Johnson asked if it is possible to get a list of pending ordinances that the Planning Commission is working on. Ms. Johnson stated that there are a few that the Planning Commission has not revisited in a while. Mr. Turisk stated that the Planning Commission will be addressing Amendment #155 soon. Mr. Turisk stated that the Cheboygan County Board of Commissioners adopted Amendment #154 recently. Mr. Turisk stated that the Planning Commission will be revisiting Amendment #156 regarding signage. Mr. Borowicz noted that the Planning Commission should also discuss planned unit developments. Discussion was held. Mr. Turisk stated that he will update the Planning Commission regarding amendments during future meetings. Mr. Delana suggested creating a list of amendments for the Planning Commission to review.

**NEW BUSINESS**

No comments.

**STAFF REPORT**

Mr. Turisk reminded the Planning Commission members and audience to participate in the Census 2020.

**PLANNING COMMISSION COMMENTS**

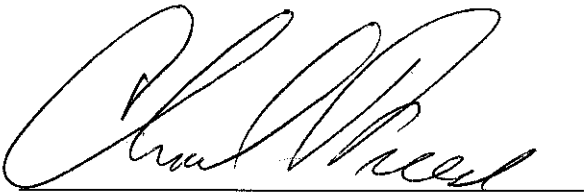
Mr. Kavanaugh stated that he would have looked at the conditional rezoning request differently if the parcels were contiguous or adjacent instead of a half mile away from the node. Mr. Kavanaugh believes if the proposed conditional rezoning was adjacent to the node it would not have a negative impact on neighbors. Mr. Delana agreed with Mr. Kavanaugh and stated a half mile is not reasonable. Discussion was held.

**PUBLIC COMMENTS**

No comments.

**ADJOURN**

**Motion** by Mr. Borowicz to adjourn. Motion carried. Meeting was adjourned at 8:38pm.



Charles Freese  
Planning Commission Secretary