

# CHEBOYGAN COUNTY PLANNING COMMISSION

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## CHEBOYGAN COUNTY PLANNING COMMISSION MEETING WEDNESDAY, OCTOBER 2, 2013 AT 7:00 P.M. ROOM 135 – COMMISSIONER'S ROOM - CHEBOYGAN COUNTY BUILDING

**PRESENT:** Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Churchill, Jazdyk  
**ABSENT:** None  
**STAFF:** Scott McNeil  
**GUESTS:** D. August, Jerry Edgerton, Mike Vigneau, Michael C. Vigneau, Sherri Vigneau, Heather Duncan, Daniel Duncan, Bethany Olson, Sharon Gerlach, Richard Klein, Max Boettger, Brad Gerlach, Scott Steensma, Sharon Vente, Russ Vente, C. Maziasz, Margaret O'Malley, Cathy Campbell, Tony Matelski, Russell Crawford, Gary Janisse, Tim Monaghan, Paul McCann, Donna Morgan, Pat Morgan, Barry Vizina, Paul Granger, John F. Brown, Jim Burke, John Moore, Ester W. P. Summers

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. Kavanaugh, seconded by Mr. Bartlett, to approve the agenda as presented. Motion carried unanimously.

### APPROVAL OF MINUTES

The September 18, 2013 Planning Commission minutes were presented. **Motion** by Mr. Churchill, seconded by Mr. Borowicz, to approve the meeting minutes as presented. Motion carried unanimously.

### PUBLIC HEARING AND ACTION ON REQUESTS

**GRISWOLD MOUNTAIN PROPERTIES, LLC** - Requests a Special Use Permit for a Radio Tower/Wireless Communication Facility (Section 17.13.). The property is located at 6444 Griswold Mountain Dr., Tuscarora Township, Section 12, parcel #161-012-300-003-03 and 161-012-300-003-04 and is zoned Agriculture & Forestry Management (M-AF). (This item was tabled at the 09/18/13 Planning Commission meeting.)

Ms. Croft asked if there is any new information on this request. Mr. McNeil referred to an aerial photo and reviewed commercial towers in the area. Mr. McNeil stated two of the towers are owned by AT&T Mobility. Mr. McNeil stated he talked with an AT&T Account Manager who said that they will do collocations that are subject to negotiations and signing of an agreement. Mr. McNeil stated she would not reveal the agreement terms or what type of coverage is available. Mr. McNeil stated a standard fee would be \$1700 a month but that is also subject to negotiations.

Ms. Croft asked for public comments related to the information presented by Mr. McNeil. There were no public comments. Public comment closed.

Board held discussion. Mr. Freese stated there were many comments regarding the Zoning Board of Appeals denying the request for the fire tower and because of this denial it should not be approved by the Planning Commission. Mr. Freese stated the two requests are not related and the criteria used by the Zoning Board of Appeals to deny the fire tower is not the same criteria that the Planning Commission will use to review the special use permit request for the communication tower. Mr. Freese stated it does not appear that the tower will violate any of the FAA regulations for safety purposes. Mr. Freese stated upon inspection he noted red oak, red pine, white pine and popular ranging in height from 75- 85 feet are predominant in the proposed location. Mr. Freese stated at 85 feet this tower will be 25 feet above the top of the trees. Mr. Freese did not see any concerns regarding airplanes flying at this height. Mr. Freese stated comments have been made that this request should be looked at as part of a proposed racetrack. Mr. Freese stated the application before the Planning Commission is for a

communication tower for communication purposes and has absolutely nothing to do with a racetrack as far as the Planning Commission is concerned at this point and time. Mr. Freese stated no information has been presented in regards to a racetrack. Mr. Freese stated someone may be thinking of applying for a racetrack but it has not been formally presented to the Planning Commission. Mr. Freese stated if this tower is approved it would not be used as a justification for the racetrack. Mr. Freese stated based on the site plan, the location of the tower would be located over the crest of the hill and would be out of the line of site of any likely site location for a racetrack located in the gravel pit on the east side of the mountain. Mr. Freese stated the tower is in the wrong location if it will have anything to do with the racetrack (cameras or VIP viewing) in the future. Mr. Freese stated it is possible there are towers in the area that could collocate some of this function, however, none provide the coverage of this proposed tower. Mr. Freese stated this tower can be seen from the other side of Mullett Lake and from the other side of Burt Lake and he is surprised that someone has not already put a tower on Griswold Mountain. Mr. Freese does not have any concerns regarding this request.

Mr. Kavanaugh stated at the last meeting there was a discussion regarding meeting Section 17.13.2b. Mr. Kavanaugh stated the applicant has to show that efforts have been made to screen, collocate or place on an existing structure. Mr. Kavanaugh stated there are no plans to collocate and it will not be on an existing structure. Mr. Kavanaugh stated there is really no way to camouflage a fire tower. Mr. Kavanaugh suggested a tower with an antenna and a height change. Mr. Freese stated at least half of the trees are red pine and white pine and they do not lose their leaves and they will continue to grow. Mr. Freese stated the natural vegetation at the top of Griswold Mountain will screen 80% of the tower. Mr. Freese noted that none of the other towers have screening. Discussion was held.

Mr. Ostwald asked Mr. Freese to explain the request that was reviewed by the Zoning Board of Appeals. Mr. Freese stated the request was for a variance for the fire tower for personal use and there was no justification for granting the variance. Mr. Freese stated the applicant is not requesting a variance now. Mr. Freese stated the applicant is now requesting approval for a communication antenna on the fire tower. Mr. Ostwald asked why the application was submitted by the Planning and Zoning Department to the Zoning Board of Appeals if there was no justification. Mr. Freese stated the Planning & Zoning Department can not deny someone the right to apply for a variance. Mr. Freese stated the Planning & Zoning Department can tell the applicant there is no justification for the request but the applicant still has the right to apply for a variance.

Mr. Borowicz stated if this was an actual fire tower and currently in use there wouldn't be any complaints about the aesthetics. Mr. Freese stated that the variance request was discussed at three Zoning Board of Appeals meetings and there was no one at the meetings objecting to the request. Mr. Freese stated the request was denied based on the fact that there was no justification for the height variance even though there were no objections to the request.

Mr. Jazdyk stated if there is one vendor who wants to put it in a certain location because it improves the area it is a legitimate use based on court cases.

Mr. Freese noted that Indian River Excavation is at the base of the mountain and they are not able to get coverage at their location from other towers in the location.

Mr. Kavanaugh asked the applicant to comment on the possibility of a tower with an antenna and a height change.

Mr. Marzella noted the ordinance states there must be a reasonable effort to collocate or provide screening. Mr. Marzella stated it does not require that you collocate. Mr. Marzella stated this is a lattice type tower that is self-standing and even though the base is wider it is hidden. Mr. Marzella stated the top of this tower is not very visible in comparison to other towers along I-75. Mr. Marzella stated this is a good alternative and provides a good service. Mr. Marzella stated Steve VanWieren is the internet service provider who will broadcast from this tower and is here tonight to talk about collocation. Mr. Marzella stated Mr. VanWieren is an expert as he is a licensed engineer and has been broadcasting for fourteen years. Mr. Marzella stated Mr. VanWieren has access to 80 towers and provides a service that he couldn't provide by hooking up to an \$1800 a month commercial tower.

Mr. VanWieren stated he is registered in Michigan as a professional electrical engineer. Mr. VanWieren stated I2000 began operation in 1994 and in 1999 they added DSL operation and wireless internet. Mr. VanWieren stated currently he owns or leases 80 towers in north east Michigan and south west Michigan. Mr. VanWieren stated he has approximately 1300 wireless customers at this time. Mr. VanWieren stated if this tower is constructed he would expect to put radios on sufficient to provide service in the area. Mr. VanWieren stated 3 frequencies are used, 5.7 – 5.8 gigahertz which are line of site frequencies and requires the person at the other end to see the tower. Mr. VanWieren stated it can reach approximately 12 miles which means it could reach the northern edges of both lakes. Mr. VanWieren stated they also use a frequency of 905-925 megahertz that is a non-line of site frequency. Mr. VanWieren stated this frequency is most suitable for the sides of the lake that are not within the line of site but are within 3-5 miles of the tower. Mr. VanWieren stated they just began to use white space frequencies. Mr. Van Wieran stated they are using the space that was created between the analog and the digital frequencies

between channels 14 – 51 and this is in three locations in Michigan. Mr. VanWieren stated there are less than 50 of these sites in operation across the United States because it is so new. Mr. VanWieren explained this is an ideal site for this new technology. Mr. VanWieren stated one of the restrictions per FCC regulations is that the antenna can not be higher than 100 feet. Mr. VanWieren stated the best location would be on top of a hill. Mr. Van Wieran stated this is the newest method for delivering internet service in wooded areas. Mr. VanWieren stated he is aware of many towers in the Cheboygan area that are available for rent for approximately \$1750 per month. Mr. VanWieren explained that it would take 40 customers to just pay for the monthly rental fee and this is not economical. Mr. VanWieren stated he can not do business in the Cheboygan area based on these numbers.

Mr. Marzella stated that by balancing Mr. VanWieren's reasons as to why collocation is not practical with the low visibility of the tower you will see that the conditions are satisfied. Mr. Marzella stated Mr. Fullford will address the visibility of the tower.

Mr. Fullford presented a prospective showing 2 images of what will be seen at a distance of 2 miles and at 1 mile based on the size of the structure on the top of the tower. Mr. Fullford stated the structure will not be visible from Chippewa Beach Road. Mr. Fullford presented a map showing the distances from the tower. Mr. Fullford stated Red Pine Point is 4 miles away from the proposed location. Mr. Fullford stated that Mr. Bowman on Resort Road is 3 ½ miles away from the proposed location. Mr. Fullford stated the tower will not be seen from these locations. Mr. Fullford stated the nearest point to any visible road is over ¼ mile and there is no residence closer than 1,000ft. that will be able to see this tower.

Mr. Marzella stated all broadcast towers emit some amount of radiation. Mr. Marzella stated the radiation varies on a number of factors but is based primarily on the strength of the signal. Mr. Marzella stated Mr. VanWieren will comment on whether or not radiation is a concern for this tower. Mr. VanWieren stated all of the radios that he proposed are unlicensed in the case of white space. Mr. VanWieren stated they have a registration but it is not technically a license. Mr. VanWieren stated all unlicensed frequencies are limited to 36db which is 4 watts. Mr. VanWieren stated his radio equipment broadcasts at 26db which is .3 watts. Mr. VanWieren stated cell phones are .3 watts. Mr. VanWieren stated radiation from the proposed radios is extremely low when 1-3 miles away. Mr. VanWieren stated a typical cell tower will be anywhere from 75 – 200 watts.

Mr. Jazdyk noted there are a lot of different towers but none of them have a 10ft. x 10ft. house. Mr. Jazdyk questioned the purpose of the house. Mr. Marzella explained this is an antique fire tower. Mr. Marzella stated some of the lattice towers in this area do have a lot of items on them such as disks and shields. Mr. Marzella stated the 6ft. x 6ft. structure does not contribute to the broadcasting but it is part of the antique fire tower and is less unsightly and causes less of a negative impact on the view than other towers. Mr. Marzella stated there might be better towers or skinnier towers but this one is not bad compared to the other and the proposed location causes a limited impact on the view.

Mr. Kavanaugh asked what negative impact would there be if the tower was maintained at 85ft. and the rest of the tower was just the antenna. Mr. VanWieren stated he does need the tower to be above the trees. Mr. Marzella stated the antennas are approximately 5ft. long which must be located a distance above the trees. Mr. Kavanaugh asked if there is a negative impact if platform was lowered to 85 feet and the antenna was exposed at 110 feet. Mr. Marzella stated the tower is designed with the box on the top. Ms. Lyon stated that an engineer would have to change the structure to do what Mr. Kavanaugh is suggesting. Mr. Freese stated his concerns about the structure being weakened. Mr. Jazdyk stated this could be done. Mr. Borowicz stated the information supplied by legal counsel states that the 9<sup>th</sup> Circuit Court of Appeals holds that simple aesthetics can not be the single reason for denying a permit. Mr. Borowicz believes this discussion is unnecessary at this point.

Mr. Ostwald stated he is from Hebron Township and noted that there are 7 towers in the township that are within ¾ of a mile from each other. Mr. Ostwald stated one of the towers is on top of a hill by I-75. Mr. Ostwald stated he has not had one complaint about any of the towers. Mr. Ostwald stated he does not see where there is a problem with the proposed tower. Mr. Ostwald agreed with Mr. Borowicz that the tower can not be denied based on aesthetics.

**Motion** by Mr. Freese, seconded by Mr. Kavanaugh, to grant the topography waiver request. Motion carried unanimously.

The Planning Commission reviewed and approved the General Findings. The Planning Commission reviewed and approved the Finding of Fact Under Section 18.7 and the Specific Findings of Fact Under Section 20.10. **Motion** by Mr. Freese, seconded by Mr. Borowicz, to approve the special use permit based on the General Findings, Finding of Fact Under Section 17.13.1, Finding of Fact Under Section 17.13.2b, Finding of Fact Under Section 18.7 and the Specific Findings of Fact Under Section 20.10 with the following conditions:

1. Meet Department of Building Safety requirements
2. 6ft. fence with locked gate

3. Communication use only
4. Approval from FAA and FCC

Motion carried unanimously.

**PAUL MCCANN/LAKES CENTER, INC.** - Requests a Special Use Permit Amendment for a Contractor's Yard (Section 6.3.3). The property is located at 8627 N. Straits Hwy., Inverness Township, Section 24, parcel #091-024-200-006-00 and is zoned Commercial Development (D-CM). (This item was tabled at the 09/18/13 Planning Commission meeting.)

Mr. Kavanaugh stated he owns property within 300ft. of this parcel and recused himself from reviewing this special use permit amendment application as it would be a conflict of interest.

Mr. McNeil stated that the Planning Commission approved the following uses by either site plan review or special use permit: retail, boat storage and warehousing. Mr. McNeil stated this special use permit amendment request is for an additional use for a contractor's yard. Mr. McNeil stated the applicant has indicated an area to be designated for the contractor's yard to the south east of the corner of the building that is used for warehousing. Mr. McNeil stated parking is sufficient but the Planning Commission must make an adequate parking determination relative to this use.

Mr. McCann stated he called the fire marshal when the tank was installed because the product stored in the tank is water based and is not flammable. Mr. Freese asked if it is toxic. Mr. McCann stated no and that he had the fire marshal inspect. Mr. Churchill asked what is the product. **An audience member** stated emulsified coal tar and it is not toxic. Mr. Freese asked if the tank will stay in the same location. **An audience member** stated yes. Discussion was held regarding the location of the well.

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

Mr. Borowicz stated this is a relatively minor adjustment to a commercial use.

**Motion** by Mr. Freese, seconded by Mr. Borowicz, to grant the topography waiver request. Motion carried unanimously.

The Planning Commission reviewed and approved the General Findings. The Planning Commission reviewed and approved the Finding of Fact Under Section 18.7 and the Specific Findings of Fact Under Section 20.10. **Motion** by Mr. Borowicz, seconded by Mr. Ostwald, to approve the special use permit amendment based on the General Findings, Finding of Fact Under Section 18.7 and the Specific Findings of Fact Under Section 20.10. Motion carried unanimously.

**BARRY VIZINA/ROCKWELL WHITENER** - Requests a Site Plan Review for Auto Sales (Section 6.2.2). The property is located at 3792 S. Straits Hwy, Tuscarora Township, Section 24, parcel #161-024-400-230-00 and is zoned Commercial Development (D-CM).

Mr. McNeil stated the current use is real estate office and hair salon. Mr. McNeil stated the auto sales will be in the portion of the building that was formerly a donut shop. Mr. McNeil stated the proposed use and the real estate office will use the entrance from South Straits Highway. Mr. McNeil stated the salon has associated parking off of South Avenue. Mr. McNeil stated parking will be adequate. Mr. McNeil stated there are also dwelling rental units which are indicated on the site plan and are accessed from South Street. Mr. McNeil stated the detailed site shows the proposed outdoor sales area and associated parking.

Mr. Kavanaugh asked if there will be any maintenance or washing of vehicles. Mr. Vizina stated no. Discussion was held regarding the location of the well.

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

Mr. Kavanaugh stated this is a good location for a car dealership. Mr. Kavanaugh stated the only concern would be inoperable vehicles being stored on the site.

**Motion** by Mr. Freese, seconded by Mr. Kavanaugh, to grant the topography waiver request. Motion carried unanimously.

The Planning Commission reviewed and approved the General Findings. The Planning Commission reviewed and approved the Specific Findings of Fact Under Section 20.10. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, to approve the site plan

based on the General Findings the Specific Findings of Fact Under Section 20.10 with the following stipulations:

1. Maximum of 15 vehicles
2. No inoperable vehicles
3. No washing or maintenance of vehicles

Motion carried unanimously.

**An Ordinance to amend the Cheboygan County Zoning Ordinance #200 to allow uses for tents, travel trailers, campers, recreational vehicles and undersized mobile homes outside of campgrounds and to allow outdoor storage of travel trailers, campers and recreational vehicles outdoors.**

Mr. McNeil stated he changed Section 17.7.1g to address the use as a temporary dwelling. Mr. McNeil stated an additional section was added that a temporary dwelling must be removed or stored or used consistent with the ordinance.

Mr. McNeil stated there were concerns that this may be in conflict with state law relative to use of campers. Mr. McNeil provided copies of the statute to the Planning Commission members. Mr. McNeil stated there is no conflict. Mr. McNeil stated the definition from the statute is close to the proposed definition. Mr. McNeil stated that he added language that would not allow storage of a camper on a vacant waterfront lot.

Mr. Ostwald asked what is the reason for setbacks. Mr. McNeil stated that setbacks help as a buffer for noise and is consistent with setbacks for structures. Discussion was held.

Ms. Croft asked Mr. McNeil if there should be another public hearing. Mr. McNeil stated yes. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to schedule a public hearing for 11/06/13. Motion carried unanimously.

**An Ordinance to amend the Cheboygan County Zoning Ordinance #200 to provide definitions, regulations and standards for signs.**

Mr. McNeil stated this is brought to the Planning Commission as a concern from the Zoning Board of Appeals relative to signage on larger commercial buildings. Mr. McNeil stated the Zoning Board of Appeals believes that the ordinance does not address signage for larger commercial buildings. Mr. McNeil stated section 6 of the proposed amendment provides standards for wall signage based on the area of a wall up to a maximum of 300sf. Mr. McNeil stated currently the ordinance provides for 2 walls signs up to 40sf each. Mr. McNeil stated there is proposed language in the purpose statement that addresses content neutrality and commercial content issues. Mr. McNeil stated the definition of off premise sign was updated and there is a new definition for window sign. Mr. McNeil stated the ordinance did not provide for window signs which would make all of the window signs in the county non-conforming to the ordinance. Mr. McNeil stated that this ordinance will legitimize the window signs. Mr. McNeil stated window signage will not require a permit unless it is lighted. Mr. McNeil stated political signs and temporary signs (no more than 8sf in area and 4ft. high) do not require a permit. Mr. McNeil stated legal counsel has reviewed this proposed amendment.

Mr. Kavanaugh asked how the Support Griswold Mountain signage would be classified. Mr. McNeil stated this would be temporary signage. Mr. Kavanaugh asked what the time limit would be on these signs. Mr. McNeil stated 30 days.

Ms. Croft asked for public comments. Mr. Brown asked if portable signs are addressed in this amendment. Mr. McNeil stated portable signs are addressed in the existing ordinance. Discussion was held. Public comment closed.

**Motion** by Mr. Freese, seconded by Mr. Churchill, to forward to the Cheboygan County Board of Commissioners with a recommendation for approval. Motion carried unanimously.

**UNFINISHED BUSINESS**

**Master Plan Determine Date For Public Hearing**

Ms. Croft stated that Mr. Schnell has suggested 12/18/13 as a date for the public hearing. **Motion** by Mr. Kavanaugh, seconded by Mr. Freese, to schedule the public hearing for the Master Plan on 12/18/13. Motion carried unanimously.

**Consideration of Zoning Ordinance Amendment of section 17.18.1 regarding fences.**

Mr. McNeil stated the proposed amendment was reviewed by legal counsel. Mr. McNeil stated legal counsel suggested changing the language from a situation in place as opposed to a situation that is proposed to be placed. Mr. McNeil stated it

does not change the standards and it is ready for a public hearing. **Motion** by Mr. Kavanaugh, seconded by Mr. Freese, to schedule a public hearing on 11/06/13. Motion carried unanimously.

**Discussion Regarding Boat Wells And Waterfront Setback (Zoning Board Of Appeals Recommendation)**

Mr. Freese stated 3 requests in the past 2 ½ years were reviewed by the Zoning Board of Appeals where someone has applied for a variance for a porch that is closer than 40ft. to the water line as presently defined by the regulation. Mr. Freese stated the variance has been requested because there is a boat well. Mr. Freese stated in each case the variance has been granted. Mr. Freese stated a precedent has been set by the Zoning Board of Appeals by saying that the water line would be considered as the continuation of the general shoreline and then across the mouth of the slip to the shoreline on the other side. Mr. Freese stated the 40ft. setback would be measured from this line. Mr. Freese suggested that the regulation be changed to allow this change in the definition of the point from which the distance to the shoreline is measured.

Ms. Croft stated she has no problem with this request. Mr. Borowicz stated it appears to be a reasonable solution. Mr. Kavanaugh stated it would be a reasonable solution if it is a reasonable boat well. Mr. Kavanaugh suggested restricting this to only existing boat wells. Discussion was held. Mr. McNeil asked if this would allow building right up to the boat well. Mr. McNeil stated his concerns regarding water quality objectives. Mr. McNeil stated decks without railings are allowed up to 25ft. Discussion was held. Mr. McNeil stated he will research the average of recent variances.

**NEW BUSINESS**

Mr. Kavanaugh asked that Mr. McNeil talk to legal counsel regarding a procedure for when a Planning Commission member recuses himself. Mr. Kavanaugh stated that he should be able to comment on the request even though he is a Planning Commission member. Mr. Kavanaugh stated he does not have any problem with not being able to vote on the request but he should be able to make comment since he owns property within 300ft. of the subject property. Discussion was held.

**STAFF REPORT**

Mr. McNeil stated the Community Development Department staff will be undertaking a housing program and administering a housing rehabilitation funds. Mr. McNeil stated there will be a notice for a request for a release of funds in the newspaper which is part of the environmental review procedure. Mr. McNeil stated there could be a release of funds in 30 days. Mr. McNeil stated if this happens there may be a lot of activity and this will take time away from his duties with the Planning Commission. Mr. McNeil stated he wanted the Planning Commission to be aware of these changes and he will keep them updated.

**PLANNING COMMISSION COMMENTS**

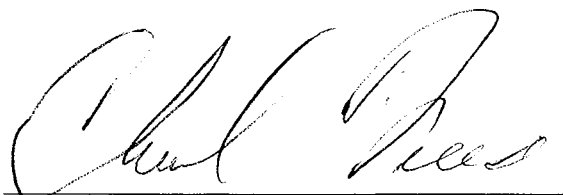
Mr. Freese noted that by the Boat Doctor on Straits Highway there was a large auction recently. Mr. Freese stated the traffic congestion was horrendous. Mr. Freese questioned if auctions can be held at this location and what are the restrictions on parking for an auction. Mr. McNeil stated that without further research they are not regulated. Mr. Kavanaugh questioned if an auction should be regulated. Mr. Borowicz stated an auction should not be regulated but an auction site should be regulated. Mr. Ostwald stated he was at the auction and he did not see any problems with traffic or parking. Mr. Kavanaugh stated auctions and garage sales should not be regulated. Ms. Croft stated the auction was not for that building. Mr. Kavanaugh stated that is something the Planning Commission may want to look at but auctions in general should not be regulated. Discussion was held.

**PUBLIC COMMENTS**

No comments.

**ADJOURN**

**Motion** by Mr. Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 8:30pm.



Charles Freese  
Planning Commission Secretary