



CHEBOYGAN COUNTY PLANNING COMMISSION

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CHEBOYGAN COUNTY PLANNING COMMISSION MEETING WEDNESDAY, JANUARY 20, 2016 AT 7:00 P.M. ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

PRESENT: Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon
ABSENT: Churchill, Jazdzyk
STAFF: Scott McNeil, Steve Schnell, Bryan Graham
GUESTS: Eric Boyd, John F. Brown, John Moore, Carl Muscott, Russell Crawford, Cheryl Crawford, Charlie Hague, Tony Matelski

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. Ms. Croft stated that legal counsel has requested to be first on the agenda. **Motion** by Mr. Kavanaugh, seconded by Mr. Freese, to approve the agenda as amended. Motion carried. 7 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon), 0 Nays, 2 Absent (Churchill, Jazdzyk)

APPROVAL OF MINUTES

The January 6, 2016 Planning Commission minutes were presented. Mr. Kavanaugh referred to condition 4 of the motion on page 11 and stated this should include that screening is to meet Section 17.18 of Zoning Ordinance #200. Mr. Kavanaugh referred to condition 5 and stated that written comments are to be submitted. Mr. Kavanaugh referred to condition 2 and requested that Planning and Zoning staff forward a copy of all the material regarding licensing or non-licensing for Heritage Cove Farm. **Motion** by Mr. Kavanaugh, seconded by Mr. Bartlett, to approve the meeting minutes as amended. Motion carried. 7 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon), 0 Nays, 2 Absent (Churchill, Jazdzyk)

NEW BUSINESS

Discussion with attorney Bryan Graham regarding U.S. Supreme Court Decision in Reed vs. Gilbert and impact on the sign ordinance

Mr. Graham referred to the U.S. Supreme Court’s decision in Reed v. Town of Gilbert and stated that when dealing with zoning regulations, it has been his experience that sign regulations are probably the most difficult regulation to write and enforce. Mr. Graham stated that speech (commercial or non-commercial speech) is protected by the first amendment. Mr. Graham stated this is what causes many of the problems that you may see with sign regulations. Mr. Graham stated in the Reed v. Town of Gilbert case, the U.S. Supreme Court was dealing with a very comprehensive sign code by the Town of Gilbert, who had exempted 23 categories of signs, but the case focused on the exemptions for three types of signs: political signs, temporary directional signs, and ideological signs. Mr. Graham stated that ideological signs and political signs are defined as an expression of ideas and temporary directional signs were signs that directed the public to church or another qualifying event. Mr. Graham stated that the U.S. Supreme Court said that the sign code was content-based on its face as it defined the categories of temporary directional signs, political signs and ideological signs on the basis of the message. Mr. Graham stated it was the content of the sign that determined what regulations applied. Mr. Graham stated that the Supreme Court said that not all content-based sign regulations would be unconstitutional, “A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers, such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses, might well survive strict scrutiny.” Mr. Graham stated that when dealing with sign regulations, they are protected by the first amendment. Mr. Graham stated that when dealing with sign regulations, you can’t focus on the content of the sign. Mr. Graham stated you have to concentrate on the physical attributes of the sign (size, building materials, lighting, moving parts, and portability).

Mr. Graham stated that when you are dealing with future sign regulations one of the most critical points is to clearly define the objectives of the sign regulations. Mr. Graham stated that once you define the objectives you then must advance those

objectives in the least restrictive means possible. Mr. Graham stated that sign regulations must focus on the physical attributes of the sign and not the message of the sign. Mr. Graham stated that if you have to read the sign to determine what regulations apply, then those regulations will likely be considered to be content-based regulations. Mr. Graham stated that the Planning Commission must look at on-premises signs vs. off-premises signs. Mr. Graham provided an example for the Planning Commission. Mr. Graham stated that a sign that reads "Come to ABC Warehouse" is an on-premises sign when located on the ABC Warehouse parcel, but is an off-premises sign when located on the Red Lobster parcel. Mr. Graham stated what is the difference if that sign structure advertises Red Lobster or ABC Warehouse. Mr. Graham stated that a lot of times people draw a distinction between on-premises and off-premises signs because other people do it and it is not directly tied to the objectives of what they want to accomplish. Mr. Graham stated you define a freestanding sign, roof sign, freestanding signs, pole mounted signs, marquee signs or any other physical attribute of the sign itself. Mr. Graham stated then you create regulations such as allowing a number of signs per parcel or street frontage, size, lighting and setback. Mr. Graham stated you create regulations based on the physical attributes/characteristics of the sign as opposed to the message on the sign.

Mr. Graham stated that typically you want to regulate temporary signs such as political signs, garage sale signs, real estate signs, temporary construction signs and grand openings. Mr. Graham stated you can't define a real estate sign by saying it is a sign that advertises real estate as this would be content based. Mr. Graham provided examples of temporary sign definitions:

- Temporary Sign #1: The use of any balloon, banner, or pennant, individually, as a group, or connected to a sign intended to draw attention to a specific event at a specific location. (Grand Openings)
- Temporary Sign #2: Any sign authorized pursuant to a written contract between the owner of the lot on which the sign will be located and any third party and placed on the lot for a specified period of time. (Real Estate Signs and Temporary Construction Signs)
- Temporary Sign #3: Any sign constructed using a wire, metal, wood or other support structure capable of being placed in the ground and removed from the ground by a single individual with relative ease. (Political Signs, Garage Sale Signs, Come to Church Signs)

Mr. Graham referred to Section 17.19 of Zoning Ordinance 200 and reviewed sign definitions. Mr. Graham stated that the definition of governmental sign is probably content-based but may be okay pursuant to what the Supreme Court said regarding street direction, traffic control as there is a compelling governmental interest as you have a responsibility to ensure that people are safe. Mr. Graham stated that the definitions of incidental sign, non-commercial sign, off-premise sign, political sign and real estate sign are defined based on the message.

Mr. Graham stated the best way to deal with sign regulations is to start over and base the regulation on the physical characteristics of the sign. Mr. Graham stated that you can have broad categories of temporary signs and permanent signs. Mr. Graham stated permanent signs may be defined as a wall sign, roof sign, marquee sign and freestanding sign. Mr. Graham stated that you should determine the amount of signs, the size limitation, the setback, the lighting and moving message. Mr. Graham stated this is based on the physical characteristics of the sign.

Mr. Graham suggested that the Planning Commission begin by determining what should be accomplished by the sign regulation. Mr. Graham stated he will work with Mr. McNeil to create a draft amendment.

Mr. Kavanaugh asked if there has been anyone who has updated their sign ordinance. Mr. Graham stated he has not looked at that yet. Mr. Graham stated that municipalities that he represents are at the beginning of the process in updating their sign ordinance. Mr. Graham stated that you may want to look at some of the bigger cities (such as Grand Rapids and Kalamazoo) as they may have already begun the process of updating their sign ordinance. Mr. McNeil stated that a lot of our ordinance is already set up that way. Mr. McNeil stated it is set up based on the type and there are setbacks and numbers of signs that are allowed. Mr. McNeil stated the definition and the purpose should definitely be reviewed and then the Planning Commission can better grasp what other changes need to be made. Discussion was held.

PUBLIC HEARING AND ACTION ON REQUESTS

Air North Communications and Alice Arnett - Requests a Special Use Permit for a wireless communication facility (section 17.13). The property is located at 6773 North M-33, Benton Twp., section 32, parcel #104-032-200-002-20, and is zoned Agriculture and Forestry Management (M-AF).

Mr. McNeil stated this matter was tabled so that the applicant could address collocation questions. Mr. McNeil stated that Mr. Hague has provided collocation information to the Planning Commission members. Mr. McNeil stated that the information

includes a map showing the location of towers in the area and his explanation relative to the issues of collocation on those towers. Mr. McNeil stated that Mr. Hague also provided a handout regarding how wireless works.

Mr. Kavanaugh asked if Mr. Hague believes that they could collocate on tower 4 and if it would be cost prohibitive. Mr. Hague stated yes. Mr. Freese asked how many customers are serviced from this location. Mr. Hague stated 140 – 160 customers are serviced from this location. Ms. Lyon asked if the pole will be 70ft. tall with the antenna. Mr. Hague stated yes the pole will be 70ft. with the antenna on top but he is trying to find a pole that is reasonably priced. Mr. Hague stated this may turn out to be a 50ft. pole. Ms. Lyon asked what is the diameter of a pole that size. Mr. Hague stated the diameter will be 24 inches for a 70ft. pole. Ms. Lyon asked if spot checks are done after a number of years. Mr. Hague stated no, but it can be done. Discussion was held. Mr. Hague stated that this can be incorporated into the guidelines. Mr. Freese asked what is charged per month for the internet service that is being provided. Mr. Hague stated there are plans that are \$44.95 and plans that are \$54.95. Mr. Freese noted that the use of tower #4 would be \$6.00 per month per customer. Mr. Hague stated that this is additional to the expenses that they already have to maintain for the rest of the network. Mr. Ostwald asked where is the sensitive equipment located. Mr. Hague explained that it is located at the top of the pole. Discussion was held. Mr. Kavanaugh asked what is the cost currently compared to the \$900.00 to rent space on tower #4. Mr. Hague stated they are currently doing a trade for services but they are discussing \$200.00 per month with the homeowner. The Planning Commission discussed a previous request for a tower near Topinabee with a cost of approximately \$2,000.00 per month.

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

Mr. Kavanaugh asked if there will be an annual inspection. Mr. Hague stated they do more frequent inspections as they get called out for various reasons. Mr. Hague explained the gear is on a steel structure such as a tripod and they have to make sure it is in good condition. Mr. Hague stated the inspection is not a scheduled inspection as they are at these locations frequently. Mr. Hague stated he can schedule an annual inspection. Mr. Hague referred to the pictures that he provided to the Planning Commission and noted that this 50ft. telephone pole will fit right into the landscape with the other telephone poles in the area.

The Planning Commission reviewed the General Findings and added "Collocation would be cost prohibitive based on the \$900 collocation fee to the nearest acceptable tower which is 4 ½ times the present cost." as General Finding 4. The Planning Commission approved the General Findings. The Planning Commission reviewed and approved the Findings of Fact under Section 17.13.2.b of the Zoning Ordinance, Findings of fact under Section 18.7 of the Zoning Ordinance and Specific Findings of Fact under Section 20.10 of the Zoning Ordinance. Mr. Hague asked how often telephone companies have to inspect their poles. Mr. Brown stated that when buying a utility pole the manufacturer provides a life expectancy of the pole. Mr. Brown stated if the manufacturer provides a 30-year life expectancy, the utility company will inspect at 30 years and start a 5-year rotation of testing. Mr. Brown explained that a hole has to be bored into the pole to test it. Mr. Brown explained that by boring a hole every year it will weaken the pole. Mr. Ostwald asked if a new pole will be installed. Mr. Hague stated yes. **Motion** by Mr. Kavanaugh, seconded by Mr. Bartlett, to approve the special use permit based on the General Findings, Findings of Fact under Section 17.13.2.b of the Zoning Ordinance, Findings of Fact under Section 18.7 of the Zoning Ordinance and Specific Findings Of Fact under Section 20.10 of the Zoning Ordinance subject to an annual safety inspection and structural integrity inspection based on the life expectancy of the pole. Motion carried. 7 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon), 0 Nays, 2 Absent (Churchill, Jazdyk)

UNFINISHED BUSINESS

Discussion regarding PUD Ordinance Amendment

Mr. McNeil stated the Planning Commission discussed language for amendments that would be approved by staff and other amendments that could not be approved by staff would have to be reviewed by the Planning Commission through the same process as it would take to approve an original planned unit development. Mr. McNeil explained that he interjected language from the special use permit section of the Zoning Ordinance for this proposed amendment. Mr. McNeil stated the same changes with the same standards that would allow a change to a special use permit could also allow an administrative amendment to a planned unit development. Mr. Freese referred to section 19.5.2.a and suggested changing the last sentence of the paragraph to "Examples of minor changes include but are not limited to the following:" Mr. McNeil stated the request will come back to the Planning Commission for review if the applicant's minor change is not on the list. Mr. Freese suggested changing section 19.5.2.a to "Minor changes are defined as the following:" Mr. McNeil stated this amendment has not been reviewed by legal counsel. The Planning Commission requested that the amendment be sent to legal counsel for review.

NEW BUSINESS

Annual Meeting Election of Officers and Verification of Regular Meeting Schedule

Mr. McNeil stated there shouldn't be any changes in the regular meeting schedule as there are no conflicts with any holidays.

Motion by Mr. Kavanaugh, seconded by Mr. Bartlett, to maintain the existing officers. Motion carried. 7 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon), 0 Nays, 2 Absent (Churchill, Jazdzyk)

Motion by Mr. Borowicz, seconded by Mr. Kavanaugh, to maintain the existing meeting schedule for 2016. Motion carried. 7 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon), 0 Nays, 2 Absent (Churchill, Jazdzyk)

2017 Capital Improvement Program Timeline

Mr. McNeil stated the Capital Improvement Program timeline reflects the same process and areas of decision making. Mr. McNeil referred to the first paragraph on the Capital Improvement Program timeline and noted that it would be good for the Planning Commission to review the narrative portion of the document and the criteria for decision making. Ms. Croft stated she did not see a problem with this additional review and noted that it may help. **Motion** by Mr. Kavanaugh, seconded by Mr. Freese, to accept the 2017 Capital Improvement Program proposed timeline. Motion carried. 7 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon), 0 Nays, 2 Absent (Churchill, Jazdzyk)

STAFF REPORT

Mr. McNeil stated that staff has been working on reviewing the uses in the ordinance as this was identified as a priority by the Planning Commission. Mr. McNeil stated he hopes to bring this to the Planning Commission soon. Discussion was held.

Mr. Schnell stated that he recently found out that Cheboygan County was awarded more funding for the housing program. Mr. Schnell stated that he hopes to have another 8 projects completed with this 2 year round of grant funding. Mr. Schnell stated that for the most part these people will come from the existing waiting list but he is always adding people to the waiting list.

Mr. Schnell provided an update to the Planning Commission on a court case.

PLANNING COMMISSION COMMENTS

Ms. Croft read an e-mail from Steve Churchill. (See Attachment A)

Ms. Lyon stated she has considered if she would rather see people live in a car or a dwelling that is less than 720sf. Ms. Lyon stated if someone can afford something smaller it should be acceptable. Ms. Lyon stated there should be regulations for these smaller dwellings. Mr. Ostwald noted that building smaller dwellings is a trend now. Discussion was held. The Planning Commission agreed that this is a topic that they would like to discuss in the future.

PUBLIC COMMENTS

Mr. Muscott stated there are two categories of homes and they are small homes and tiny homes. Mr. Muscott stated he lives in a home that is 1040sf and is too large for one person. Mr. Muscott stated he has owned a home that was 525sf that accommodated two bedrooms, bath, living room and kitchen. Mr. Muscott noted that it was a livable house and 720sf is not needed. Mr. Muscott stated the Planning Commission and the Zoning Board of Appeals had issues with the parking design for the Otsego Memorial Hospital clinic in Indian River. Mr. Muscott stated that there have been busy days and recently set a record for the number of inpatients. Mr. Muscott noted that today the employee parking lot looked full. Mr. Muscott stated there was one handicap parking space and one regular parking space that were empty. Mr. Muscott stated there were 22 vehicles in this parking lot. Mr. Muscott stated it was a good decision to not reduce the number of parking spaces as requested by the applicant. Mr. Muscott stated in regards to the Capital Improvement Program, he hopes that Mullett Township does not submit the parking lot again. Mr. Muscott explained that the trust fund grant application did not go through for this project. Mr. Muscott stated in regards to definitions, he reviewed the Emmet County Zoning Ordinance and it has a lot of the same shortcomings as the definitions in the Cheboygan County Zoning Ordinance. Mr. Muscott suggested that everyone should look at the Emmet County Zoning Ordinance on-line as all of the tables are within each district and it is interactive. Mr. Muscott read the definition of residential human care and treatment facility from the Emmet County Zoning Ordinance, "A facility (not within a private residence) providing:

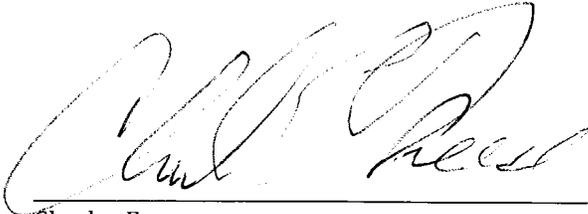
- A. Emergency shelter and services for battered individuals and their children in a residential structure.
- B. Shelter and services for individuals receiving care, counseling, crisis support and similar activities including court-directed services.
- C. Emergency shelter for individuals who are homeless.
- D. Services, programs and shelter for residents who are undergoing alcohol or substance abuse rehabilitation.

Mr. Muscott stated that these facilities are restricted to parcels that are 5 acres or larger even though they could be allowed in residential areas. Mr. Muscott stated Emmet County has a Recreational Residential District rather than Lake and Stream Protection which is designed to accommodate cottages and seasonal home developments. Mr. Muscott read from the Emmet County Zoning Ordinance "The Recreational Residential District is designed to accommodate cottage and seasonal home

developments. It is intended that the seasonal home areas be reasonably homogeneous by discouraging the mixing of recreation home areas with commercial resorts, business services and community services." Mr. Muscott stated that Emmet County allows by permission shelters for battered women and state-licensed residential facilities (adult foster care of 6 or less adults). Mr. Muscott stated the Recreational Residential District allows for more protection.

ADJOURN

Motion by Mr. Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 8:14pm.

A handwritten signature in cursive script, appearing to read 'Charles Freese', written over a horizontal line.

Charles Freese
Planning Commission Secretary

Deborah Tomlinson

From: pmattson@freeway.net
Sent: Tuesday, January 26, 2016 11:35 AM
To: Deborah Tomlinson
Subject: [Fwd: 2016 wants]
Attachments: untitled-[2]

Follow Up Flag: Follow up
Flag Status: Completed

----- Original Message -----

Subject: 2016 wants
From: "Steve Churchill" <stevechurchill54@yahoo.com>
Date: Wed, January 20, 2016 2:47 pm
To: "pmattson@freeway.net" <pmattson@freeway.net>

Patty,

I hope I'm not too late for my request. I'm hoping you read this before tonight's meeting. There are a couple of things I hope to accomplish this year. Given the turmoil that the Heritage Cove Farm created, I would like for us to revisit all of our Definitions within the Zoning Ordinance. I believe that if we had eliminated most of the ambiguity then we might have had a little smother time with this. I know the Chuck talked about this and that the PC had started doing this in the past, I feel it time to start the process again. With me planning on being gone for a while, I sure would like to see the PC adapt a new policy that would allow members to participate via electronic means. i.e. Netmeeting, Skype, etc. I talked to Steve about this and he told me that the by-laws don't provide for something like this. Well, I think it's time we look into this. I'm sure that Legal would have to get involved as well, but I don't think there would be a problem. The MTA gave a favorable opinion allowing my wife to participate with township board meetings. Which she did on and off for a year before she ultimately had to resign.

Thanks for listening.

Steve

Sent from my iPad