

CHEBOYGAN COUNTY PLANNING COMMISSION

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CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, JUNE 17, 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: Peter Wendling, Lori Stelmaszek, Ryan McGraw, Gil Archambo, David Bona

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. Freese, to approve the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

The May 20, 2020 Planning Commission minutes were presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Freese, to approve the meeting minutes as presented. Motion carried unanimously.

The June 3, 2020 Planning Commission minutes were presented. **Motion** by Mr. Borowicz, seconded by Mr. Kavanaugh, to approve the meeting minutes as presented. Motion carried unanimously.

PUBLIC HEARING AND ACTION ON REQUESTS

Bona Architect/Ann Arbor YMCA - Requests an amendment to a Special Use Permit per section 18.11 of the Zoning Ordinance for reconstruction of a kitchen addition onto an existing dining hall, and reconstruction of a lodge for administrative offices and sleeping quarters for an existing YMCA camp per section 10.3.2. The property is located at 9728 W. Highway M-68, Tuscarora Township, section 16, parcel # 161-016-300-001-00. The property is zoned both Lake and Stream Protection (P-LS) and Agriculture and Forestry Management (M-AF), however the project site is within the P-LS zoning district.

Ms. Merk reviewed the background information contained in the staff report.

Ms. Croft asked for Planning Commission comments. Ms. Lyon asked if there are any changes to the high water mark. Mr. Freese stated the ordinary high water mark on the interior lakes have not changed much but the ordinary high water mark for the Great Lakes are fluctuating higher. Discussion was held. Mr. Freese stated that the ordinary high water mark is delineated by the vegetation change from the shoreline vegetation to the upper elevation vegetation mark. Mr. Freese stated that the high water mark is a mark where the vegetation changes due to the impact of the wave action on the shore. Mr. Freese stated that if the shoreline erodes due to the wave action, the ordinary high water mark will change. Ms. Lyon referred to the public comment that was submitted and stated that she believes that there is a legitimate concern. Mr. Freese stated that the person who wrote the letter was concerned about the building being closer to the water than the existing building. Mr. Freese stated that the proposed building is further away by 10 inches. Mr. Freese stated that he looked at the shoreline during the site inspection and he did not see any erosion.

Mr. Kavanaugh noted that the applicant submitted a complete set of plans.

Mr. Freese stated that he likes the north lodge is being built along the same line as what they had previously. Mr. Freese asked Mr. Bona if the east elevation is designated as the west elevation for the kitchen on drawing 2.0. Mr. Bona stated that is incorrect and the west elevation is actually the east elevation which faces Burt Lake.

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

The Planning Commission reviewed the General Findings and added "The proposed location of the North Lodge is 10 inches further from the ordinary high water mark than the existing North Lodge." as General Finding #15. The Planning Commission reviewed the Finding of Fact Under Section 18.7 and the Specific Findings of Fact Under Section 20.10. **Motion** by Mr. Kavanaugh, seconded by Mr. Freese, to approve the special use permit based on the General Findings, Finding of Fact Under Section 18.7 and the Specific Findings of Fact Under Section 20.10 with the following conditions:

1. Prior to construction, the applicant shall obtain a Soil Erosion and Sedimentation Control Permit.
2. Prior to construction, the applicant shall obtain building permits as applicable from the County's Department of Building Safety.
3. Applicant must meet all applicant requirements of District Health Department #4
4. The applicant shall provide the Planning and Zoning Department the Acceptance of Conditions form to be attached to the special land use amendment approval letter within thirty (30) calendar days from the date of the approval letter. This form shall be signed by the owner(s) of the subject property. The applicable building permit application(s) shall include a site plan in conformance with this special land use amendment that meets all applicable site development standards (such as minimum required setbacks from property boundaries) and appropriate building permit fees, as applicable. Permits must be issued within twelve (12) months from the date of the special land use amendment approval letter (unless an extension request is approved, pursuant to Section 18.12.a., as amended), otherwise the special land use amendment may be deemed void upon thirty (30) days written notification to the applicant.
5. Any changes to the approved special use amendment shall be subject to review by the Planning and Zoning Department and may require approval by the Planning Commission.
6. It is the applicant's responsibility to obtain any additional permits or meet additional conditions, if any, that may be applicable to the land use pursuant to other federal, state, or local laws or regulations.

Motion carried unanimously.

UNFINISHED BUSINESS

Orion Renewable Energy Group, LLC - The applicant requests a Special Use Permit for a Level 3 Solar Energy System - Photovoltaic (SES-PV), per Sections 9.3.27 and 10.3.16 of the Zoning Ordinance for construction of a "solar farm"/utility-scale solar energy generating facility in Grant Township. The subject properties are zoned Agriculture and Forestry Management (M-AF) and Lake and Stream Protection (P-LS) and are located approximately 13 miles southeast of the City of Cheboygan, along N. Black River Road, south of Twin Lakes Road and bounded by Ross Road to the south and Page Road to the north, Chamberlin Road to the east and Trudeau Road to the west. The subject properties are in sections 4, 5, 6, 8 and 9 and encompass approximately 1,572 acres on 31 parcels, tax parcel id numbers:

- | | | |
|------------------------|------------------------|------------------------|
| 1. 151-009-200-001-05 | 12. 151-008-300-007-00 | 23. 151-009-400-002-00 |
| 2. 151-006-100-004-00 | 13. 151-008-400-001-00 | 24. 151-009-200-002-00 |
| 3. 151-006-300-001-02 | 14. 151-008-200-001-02 | 25. 151-009-400-001-00 |
| 4. 151-006-100-005-00 | 15. 151-009-300-001-00 | 26. 151-009-200-003-00 |
| 5. 151-006-200-003-00 | 16. 151-009-100-003-00 | 27. 151-004-401-001-00 |
| 6. 151-006-200-005-00 | 17. 151-009-300-004-00 | 28. 151-005-100-001-00 |
| 7. 151-006-400-001-05 | 18. 151-009-400-004-00 | 29. 151-005-300-004-00 |
| 8. 151-008-400-003-00 | 19. 151-009-400-003-00 | 30. 151-005-300-008-00 |
| 9. 151-008-400-004-00 | 20. 151-009-200-001-07 | 31. 151-006-200-002-00 |
| 10. 151-008-100-004-00 | 21. 151-009-300-003-00 | |
| 11. 151-008-300-006-00 | 22. 151-009-100-004-03 | |

Mr. Wendling stated that at the June 3, 2020 meeting there was a public hearing on this matter. Mr. Wendling stated that during the public hearing information was presented by the applicant and public comments and materials were received up to an including the meeting itself. Mr. Wendling stated that during the meeting, there were some members of the public who were logged in and were otherwise unable, due to technical difficulties, to have their input heard during the public hearing. Mr. Wendling stated that the Planning Commission is opening a limited public hearing solely for the purpose of allowing these individuals an opportunity to participate and finish the public hearing if they were logged in on June 3, 2020, either by

telephone or computer, but were unable to participate. Mr. Wendling asked Mr. Turisk if he has the call list from the June 3, 2020 meeting and if it can be matched up to anyone that is present today and who did not have an opportunity to make comments during the public hearing. Mr. Wendling stated that if they did not have an opportunity to make comments during the public hearing, now is the time that they can do so. Mr. Wendling stated that at the end of the public hearing the Planning Commission closed the record and the only additional items on the record are materials that were requested by the Planning Commission, either directly or through staff at the end of the public hearing and thereafter. Mr. Wendling stated that this is a limited form of a public hearing and is only open to those who logged in and were unable to participate on June 3, 2020. Mr. Wendling stated this is different from public comment which is on the Planning Commission's agenda and is separate from this limited public hearing. Mr. Wendling asked Mr. Turisk to look at the list of people who were logged in on June 3, 2020 and compare it to who is currently logged in and asked if they were not able to comment on June 3, 2020 and if they wish to do so now. Mr. Turisk stated that after comparing the list from the June 3, 2020 meeting to the list for this meeting, the only one that he can identify is Gil Archambo.

Mr. Turisk asked Mr. Wendling if this item has to be removed from the table. Mr. Wendling stated yes, because the Planning Commission did table it. Mr. Wendling stated that you want to remove it from the table and then conduct a limited public hearing and then continue with any deliberations or questions on the part of the Planning Commission. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that the item be removed from being tabled. Motion carried unanimously.

Mr. Wendling stated that the Planning Commission can reopen the limited public hearing and Mr. Turisk can ask for comments from those that are logged in now and who were also logged in on June 3, 2020 and were not able to participate. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to reopen the limited public hearing from the June 3, 2020 meeting for Orion Renewable Energy LLC. Motion carried unanimously.

Mr. Turisk stated that after comparing the list from the June 3, 2020 meeting to the list for tonight's meeting, the only one that he identified is Gil Archambo. Mr. Turisk stated that due to technical difficulties, Mr. Archambo was unable to provide public comments. Mr. Archambo stated that his questions were answered by Mr. Kavanaugh and Mr. Freese. Mr. Archambo stated that he believed the bond was to be renewed in five year increments. Mr. Archambo stated that after talking to Mr. Freese that is not correct and he is comfortable with the way that it is now as long as the bond is good for the entire length of the solar project itself, which is 25 years.

Mr. Turisk stated that by looking over the list from the June 3, 2020 meeting, he does not see anyone else matching up to the list of people attending the meeting this evening. Ms. Croft questioned if other members of the public were like Mr. Archambo and tried to make comments and could not. Ms. Croft stated that the Planning Commission would not have any idea unless they identified themselves. Ms. Stelmaszek stated that she would like to speak. Mr. Turisk stated that Ms. Stelmaszek's name is on the list from the June 3, 2020 meeting. Ms. Croft stated that she knows that Ms. Stelmaszek did not speak at the meeting. Mr. Wendling stated that if someone is calling in tonight and they also called in on June 3, 2020 but did not speak you can ask them if they had an opportunity to speak or not. Mr. Wendling stated that if their answer is no they will be given an opportunity to speak now. Ms. Croft asked Ms. Stelmaszek if she had an opportunity to speak on June 3, 2020. Ms. Stelmaszek stated that she was not aware of the option of pressing star six to unmute the phone. Ms. Croft asked Ms. Stelmaszek if she wanted to speak tonight. Ms. Stelmaszek stated yes. Ms. Stelmaszek stated that at the last meeting there were concerns regarding the current location of the substation. Ms. Stelmaszek stated that she would like to offer an alternate location. Ms. Stelmaszek suggested parcels #151-009-400-002-00 and #151-009-400-001-00 which are on the corner of Hanson Road and Chamberlain Road. Ms. Stelmaszek stated that this is a more secluded location and it is not in close proximity to a home. Ms. Stelmaszek stated that it does follow along the power line corridor and there are existing trees and woods to the east and to the west there are barns and trees. Ms. Stelmaszek stated that this is a less traveled area and it is more out of sight. Ms. Stelmaszek stated that she would rather look at solar panels than a substation. Ms. Stelmaszek stated there would be less noise or disturbance to the homeowners. Ms. Stelmaszek stated that this will be a huge eyesore in the field by Owens road. Ms. Stelmaszek stated this would be a more secluded hidden location for the substation. Ms. Stelmaszek stated that she believes this would be a savings for Orion as they would not to have to plant so many trees to reduce the noise level. Ms. Stelmaszek stated that Owens Road would be more suited to solar panels as it is more wide open. Ms. Croft stated that this information will be passed on to Orion so they can check the location.

Ms. Croft asked if there is anyone else that attended the June 3, 2020 meeting that could not speak. Ms. Croft stated that she did not hear any additional responses from the public that they were not able to speak on June 3, 2020. Ms. Croft stated that if it is appropriate she would like to close the public hearing. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, to close the public hearing. Motion carried unanimously.

Mr. Wendling stated that the Planning Commission can ask additional questions about any of the materials that were received, as requested from Orion at the June 3, 2020 meeting. Ms. Croft stated that the Planning Commission members have not received the requested items. Mr. Wendling stated that the findings of fact are in draft form. Ms. Croft asked Mr. Wendling when he believes the findings of fact will be completed. Mr. Wendling stated he will be working on them with staff and they should be ready within a week to 10 days. Mr. Freese stated that the Planning Commission still does not have the package from Orion addressing the questions that were already posed. Mr. Freese stated that the draft findings of fact will need to include the Planning Commission's input from the answers to those questions.

Mr. Turisk agreed with Mr. Freese and stated that we do need to look at the amended materials to craft the findings of fact. Mr. Turisk stated that when speaking with Amanda Hoffman from Orion, she indicated that they have been mailed packages to the Planning Commission members. Mr. Turisk stated that staff received a package today. Mr. Turisk stated that staff is waiting for the Planning Commission to receive their packets prior to posting the information online for the public. Ms. Croft stated that the Planning Commission needs the final amended information from Orion before they can proceed.

Mr. Turisk stated that staff will need a reasonable measure of time to compile the changes or the amendments that were made that came out of the June 3, 2020 public hearing. Mr. Turisk stated that Mr. Wendling suggested allowing for a minimum of 12 to 14 days. Ms. Croft stated that 14 days would put it at the July 1, 2020 meeting. Ms. Croft noted that this agenda is full. Mr. Wendling stated that he also discussed June 30, 2020 with Mr. Turisk. Mr. Kavanaugh stated that the Planning Commission will need to review Orion's amendments and they will need enough time to see if the questions that were asked were properly answered. Mr. Kavanaugh stated that the findings of fact will need to be prepared. Mr. Kavanaugh stated that it is not the Planning Commission's fault that they didn't receive them for this meeting. Mr. Kavanaugh stated that the Planning Commission wants to make sure they have enough time to have everything in order. Mr. Kavanaugh stated that he is not sure that June 30, 2020 will allow for enough time. Mr. Freese suggested holding a special meeting after this date. Mr. Turisk asked Mr. Wendling if the applicant would incur the special meeting fee if they request a special meeting. Mr. Wendling stated yes, pursuant to your policy, if an applicant requests a special meeting, it does add costs and they have to cover the cost of the meeting. Discussion was held. Mr. Wendling stated that staff can work with the applicant and the Planning Commission to determine a date in the next three to four weeks. Mr. Freese asked if this request should be tabled to a specific date and time. Discussion was held. **Motion** by Mr. Kavanaugh, seconded by Mr. Freese, to table the request until July 15, 2020 to allow the Planning Commission an opportunity to review the forthcoming information and for the findings of fact to be constructed. Motion carried unanimously.

NEW BUSINESS

Mr. Turisk stated that he looking at holding a meeting in a physical space, with social distancing guidelines in mind. Mr. Turisk stated that it is quite possible for the July 15, 2020 meeting the Planning Commission could be holding the meeting in a single physical setting. Mr. Turisk stated that staff is trying to coordinate a meeting location so as to ensure enough space for social distancing to accommodate those who wish to attend.

STAFF REPORT

Mr. Turisk stated that there will be two Zoning Ordinance Amendments and a conditional rezoning application on July 1, 2020 agenda.

PLANNING COMMISSION COMMENTS

Ms. Johnson stated that staff should review the findings of fact that were presented in the past. Ms. Johnson stated that staff should use that format. Ms. Johnson stated that the findings of facts that were presented tonight, do not list both sides. Ms. Johnson stated that the findings of fact list should be presented from both sides, not just one. Mr. Kavanaugh stated that this has been brought up in at a few past meetings. Mr. Kavanaugh stated that staff may think noise isn't a problem, but a neighbor may feel that it is a problem. Mr. Kavanaugh stated that there should be a pro and a con on just about every finding of fact. Mr. Kavanaugh stated that this should start again on all applications.

Mr. Turisk stated that staff did recognize the Planning Commission's collective wish to go back to the old format, but due to the nature of this request, staff didn't see a lot of opposing factors. Mr. Turisk noted that there are opposing findings in regards to site drainage. Mr. Turisk stated that staff will continue to do so moving forward, but some applications will generate more factors (for and against) than others. Mr. Turisk stated that the YMCA application was a comparatively benign application and it didn't generate a tremendous list of opposing factors.

Ms. Merk asked the Planning Commission what they are looking for in the findings of fact. Discussion was held. Mr. Turisk stated that staff has reviewed past findings of fact and there has been some discussion about reworking the structure of the findings to make them more user friendly and more readily understood.

Mr. Freese stated that he has run into this now for a long time, both from a Zoning Board of Appeals standpoint and from a Planning Commission standpoint. Mr. Freese stated that it can be very difficult to find something in opposition to each factor. Mr. Freese stated that you can come up with some tenuous thought such as in the case of sound regarding the YMCA application. Mr. Freese stated that the number of kids and staff will prove to produce a lot of noise. Mr. Freese stated that there is a lot of activity, which could be presented as one of the factors against but a factor in favor of it would be the site is over 1000 feet from the nearest neighbor and therefore the noise generated by that congregation of people is not going to be detrimental to the use and enjoyment of the adjoining properties. Mr. Turisk stated the YMCA application is comparatively benign and it is a little difficult to come up with a strong list of factors against. Mr. Turisk referred to 20.10.C regarding site drainage and stated the existing drainage flows will not be disturbed and the drain flows will not be impacted.

Mr. Wendling stated that the Planning Commission should remember that a special use permit must be granted if all the standards have been met. Mr. Wendling stated that with a variance it is very difficult to meet the standards so it is a little more lenient because the use is actually allowed as long as the applicant meets the conditions set forth in the Zoning Ordinance. Mr. Wendling stated that often you may not have many factors, or any at all, that are contrary to the standards contained for special use. Mr. Wendling stated that sometimes you have more of a vigorous opposition, such as expert testimony, internal experts or the county engineer that comes up with concerns and then those will be raised as potential negative findings. Mr. Wendling stated that the general rule is if a standard has been met for special use, the permit must be granted.

Ms. Johnson stated that she brought this concern up because it appears as if the Zoning Department is making the decision on whether the standard has or has not been met when it is presented this way. Ms. Johnson stated the Zoning Department should not make this decision. Ms. Johnson stated that the Planning Commission should be able to say whether or not the finding has been met. Ms. Johnson stated that the Planning Commission should have both options available. Ms. Johnson stated that the Zoning Department is presenting it to the Planning Commission as if they have already made the decision. Ms. Johnson stated that the Zoning Department is not giving the Planning Commission the opportunity to make the decisions themselves. Ms. Johnson stated that she understands that the Planning Commission has the opportunity to interject and add things, but she feels that this is being persuasive. Discussion was held. Mr. Wendling stated that this is more of a preparation duty for staff than necessarily the final decision, which of course is made by the Planning Commission.

Ms. Lyon stated that when she reads what is presented, she feels that staff is telling the Planning Commission the facts that are in the project and that she has to compare that with what she sees and what she has read to see if she believes it will meet the standard. Ms. Lyon stated that staff is presenting facts to help her make a decision on whether or not the standard has been met. Ms. Lyon stated that she doesn't think staff is telling her what she has to decide.

Mr. Kavanaugh stated that it is really important to look at all of these. Mr. Kavanaugh stated that regarding site drainage, just because no one is able to provide any evidence to the Zoning Department does not mean that there can't be a problem with drainage. Mr. Kavanaugh explained that it is important to look at both sides. Mr. Kavanaugh stated that he agrees with Ms. Johnson.

Mr. Freese stated that he interjects facts that he doesn't feel are in consonance with what has been presented. Mr. Freese stated that it is up to the members of the Planning Commission to do their own analyzing of the facts that are presented. Mr. Freese stated that if the factors that are supporting the decision are not adequate it's up to the Planning Commission to say something and put that into the consideration. Mr. Freese stated that he does this all the time for the Planning Commission and Zoning Board of Appeals and he considers it part of his homework in looking at the project. Mr. Freese stated that staff is not omnipotent. Mr. Freese stated that staff is probably more of an expert than most of the Planning Commission and they know the regulation better than most of the Planning Commission. Mr. Freese stated that staff can't anticipate every single thing that could be a factor. Mr. Freese stated that if there is something that the Planning Commission believes it wrong, it is their job to speak up.

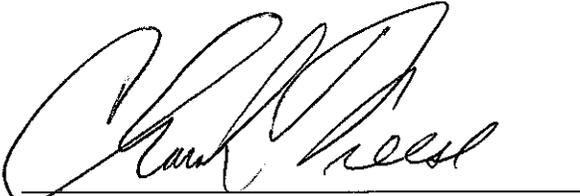
Mr. Turisk agreed with Mr. Freese and stated that staff can't envision every scenario and he believes that the Planning Commission can fill in the gaps. Mr. Turisk stated that staff does not make recommendations to the Planning Commission. Mr. Turisk stated that in many communities the planning staff does render recommendations to the Planning Commission. Mr. Turisk stated that staff has stopped short of even making a recommendation to the Planning Commission so that suggests that the authority is in the Planning Commission's hands to identify findings and appropriate conditions as deemed appropriate. Mr. Turisk stated that one could argue that staff is steering the Planning Commission and it may seem that way, but that isn't the intent.

PUBLIC COMMENTS

Mr. McGraw, Vice President of Development for Orion Renewable Energy Group, stated that he would like to address two topics. Mr. McGraw apologized that they were not able to get all the new materials and responses to the Planning Commission in hard copy more quickly. Mr. McGraw stated that regarding moving the substation, they unfortunately can't move the substation and the reason being is that they have signed an agreement with the transmission owner and that agreement dictates the location of the substation. Mr. McGraw stated it would not be possible to change that agreement.

ADJOURN

Motion by Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 8:23pm.

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

Charles Freese
Planning Commission Secretary