



CHEBOYGAN COUNTY PLANNING COMMISSION

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CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, JANUARY 16, 2019 AT 7:00 P.M. ROOM 135 - COMMISSIONER'S ROOM - CHEBOYGAN COUNTY BUILDING

PRESENT: Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk
ABSENT: Churchill
STAFF: Mike Turisk
GUESTS: Roberta Matelski, Eric Boyd, Gil Archambo, Carl Muscott, Roger Jacobs, Russell Crawford, Cheryl Crawford, Elyn Kallio, Ed Delana, Calvin Lewis, Gary Lewis, Max Grubinski, Dennis Lafrinere, Maureen Lafrinere, Bill Carver, Dana Carver, Martha Young, Gary Young, Cal Gouine, Ruth Wolf, Dian Praither, Charles Maziasz, Bob Lyon, Donna Keene, Chris Keene, Brad Forester, Colleen Davis, Mike Peltier, Jeff Jocks, John Moore, Marcia Rocheleau, Karen Johnson

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

Ms. Croft explained that due to the number of people attending the meeting the public hearing would have to be held at another venue to accommodate the public. Many audience members offered to step out of the meeting room to allow the meeting to continue. Ms. Croft stated that legal counsel has requested that she inform the public that by leaving the meeting they are waiving their rights to participate in the public hearing. Ms. Croft stated that she will need the names of the people who are leaving the meeting.

An audience member asked if the administrative search warrant will not be heard tonight and if this is true, it may alleviate the number of people attending the meeting. Mr. Graham stated that the administrative search warrant will not be in the solar amendment and he would like to address this issue at this time. Mr. Graham stated that there are a lot of misconceptions. Mr. Graham stated that the police cannot go into a house to search without consent or a search warrant. Mr. Graham stated that the police need a search warrant from the court if they do not receive consent because of the Fourth Amendment. Mr. Graham explained how a search warrant is obtained. Mr. Graham stated that a government employee's right to search/inspect private property is limited, subject to the protections of the Fourth Amendment. Mr. Graham stated that the proposed amendment language puts into the zoning ordinance the recognition of the constitutional rights that everyone is entitled to under the Fourth Amendment. Mr. Graham stated that if the zoning officials want to inspect your property for a potential violation he will need your permission or ask the court for an administrative search warrant. Mr. Graham stated that in such a situation a zoning official would be requesting an administrative search warrant and he is not looking for evidence of a crime. An audience member asked if they will have to search for a specific item. Mr. Graham stated yes. The audience member asked if it is for a broad search of the property. Mr. Graham stated no. The audience member asked what does this have to do with zoning. Mr. Graham stated that there could be a zoning violation such as a garage not meeting the side setback requirement. Mr. Graham stated that the proposed language reflects the current law and protects private property rights. Mr. Maziasz asked why this language is being included in the Zoning Ordinance if it can already be done. Mr. Graham stated that it reminds the governmental official that he has the right to inspect and that it is limited by the Fourth Amendment. An audience member asked if the administrative search warrant is an open ended search warrant or is it specific to an individual case. Mr. Graham stated that it is specific to an individual case and it would have to be reviewed by the court to determine if there is sufficient reason to have a government official conduct the inspection. The audience member asked why does this need to be amended since there is precedence. Mr. Graham stated that the purpose of including this language is to remind the government official that he has the right to inspect and that it is limited by the Fourth Amendment.

Ms. Croft stated that due to capacity issues the Planning Commission will not be able to address the solar power amendment. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to table the public hearing for the solar power amendment. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk), 0 Nays, 1 Absent (Churchill)

Mr. Graham stated that this amendment will not contain the administrative search warrant provision as part of the public hearing. Mr. Graham stated that the administrative search warrant provision can be addressed at a future meeting. Mr.

Graham explained that audience members can stay and comment during the public hearing tonight for the solar amendment. Discussion was held. Ms. Croft stated that audience members that leave the meeting are voluntarily agreeing to not participate in the discussion.

Motion by Mr. Kavanaugh, seconded by Mr. Borowicz, to withdraw the motion to table the public hearing for the solar power amendment. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk), 0 Nays, 1 Absent (Churchill)

APPROVAL OF AGENDA

The meeting agenda was presented. **Motion** by Mr. Borowicz, seconded by Mr. Bartlett, to approve the agenda as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk), 0 Nays, 1 Absent (Churchill)

APPROVAL OF MINUTES

The November 7, 2018 Planning Commission minutes were presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to approve the meeting minutes as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk), 0 Nays, 1 Absent (Churchill)

The December 19, 2018 Planning Commission minutes were presented. **Motion** by Mr. Borowicz, seconded by Mr. Kavanaugh, to approve the meeting minutes as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk), 0 Nays, 1 Absent (Churchill)

The January 2, 2019 Planning Commission minutes were presented. **Motion** by Mr. Jazdzyk, seconded by Mr. Borowicz, to approve the meeting minutes as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk), 0 Nays, 1 Absent (Churchill)

PUBLIC HEARING AND ACTION ON REQUESTS

Ruth Wolf - Requests a rezoning from Agriculture and Forestry Management (M-AF) to Residential Development (D-RS). The subject property is located in Tuscarora Township, addressed as 4359 Wilson Rd., Section 25, Parcel #161-025-200-050-04.

Mr. Turisk reviewed the background information contained in the staff report covering the application. Mr. Turisk explained that the Zoning Board of Appeals tabled a request for variance. Mr. Turisk explained that the Zoning Board of Appeals suggested the applicant request that the property be rezoned to Residential Development. Mr. Turisk stated that the Residential Development zoning district has less stringent site development standards (minimum lot size and minimum lot width).

Ms. Croft asked for public comments. Mr. Muscott stated he attended the Zoning Board of Appeals meeting where Ms. Wolf's request was reviewed and he agreed with Mr. Freese that this parcel should be rezoned. Mr. Muscott stated that Mr. Freese suggested the ½ acre lots in this area also be included in the rezoning. Mr. Muscott stated his concern that these lots were not included in the rezoning request. Mr. Muscott stated that the Residential Development zoning district is not less restrictive as there are more restrictions. Mr. Muscott stated that the Residential District does allow for smaller lots.

Ms. Keene stated she believes this parcel should remain Agriculture and Forestry Management.

Public comment closed.

Motion by Mr. Freese, seconded by Mr. Kavanaugh, to approve the rezoning request based on the General Findings and the 10 Rezoning Factors and to forward to the Cheboygan County Board of Commissioners with a recommendation for approval. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Jazdzyk), 0 Nays, 1 Absent (Churchill)

Cheboygan County Planning Commission - The proposed ordinance amends the Cheboygan County Zoning Ordinance No. 200 to permit solar energy systems as land uses within the county.

Mr. Turisk stated this proposed amendment regards solar energy ranging from small scale residential to utility scale solar farms. Mr. Turisk stated that this effort has been ongoing for several months. Mr. Turisk explained that the amendment includes definitions that identify Level I, II, and III Solar Energy Systems and respective permit review processes and application and development requirements. Mr. Turisk explained that the amendment distinguishes between Level 1, Level 2 and Level 3 Solar Energy Systems and identifies specific information and the degree of detail required for application

submittals. Mr. Turisk explained that the amendment requires a decommissioning plan and adequate reclamation for Level 3 facilities.

Mr. Kavanaugh stated that this is not the first draft of the solar amendment as the Planning Commission has been working on this for months. Mr. Kavanaugh stated that this is the final draft after receiving comments from solar representatives and the public.

Ms. Croft asked for public comments.

Mr. Muscott thanked Mr. Freese for his work on the solar amendment. Mr. Muscott stated that in the Planning Commission packet there are comments from Orion Renewable Energy requesting changes to the amendment. Mr. Muscott referred to paragraph B on page 7 and questioned if a special use permit should be required as this may be intrusive for a parcel that is only 0.765 acres. Mr. Muscott stated that a Level 1 system may not be allowed or may be modified by the Michigan Building Code.

Mr. Boyd stated his concerns regarding the required berms for Level 3 systems being below road grade.

Mr. Jocks stated that he is an attorney from Traverse City and is speaking on behalf of Orion Renewable Energy. Mr. Jocks thanked the Planning Commission for their work on this amendment and for understanding the public needs. Mr. Jocks stated that he believes that delaying the meeting in November was appropriate. Mr. Jocks reviewed suggested changes to the proposed amendment from Peter Moritzburke's letter dated November 19, 20188 (see attachment A).

Ms. Carver stated she understands the rules for corporations, but questioned why there are rules for private property.

Ms. Davis asked if there is a particular location where this will take place. Mr. Freese stated that this is a regulation for the county and not a specific location.

Public comment closed.

The Planning Commission agreed to make the following changes after reviewing Orion Renewable Energy Group's suggested changes (see attachment A):

- Section 2.2, Electrical Energy Storage System – Use suggested text
- Section 2.2, Generation Station Step-Up Transformer Facility – delete “138KV, 230V or 345KV”
- Section 17.30.2 – Use suggested text
- Section 17.30.3-4A – Use suggested text
- Section 17.30.3-4B – Use suggested text
- Section 17.30.3-4E – Use suggested text
- Section 17.30.3-4G – Change to “At the time of zoning permit application submittal detailed engineering drawings shall be provided to include standard drawings of the structural components of the solar farm and any electrical storage system in support of the Level 3 SES-PV System, demonstrate compliance with the approval standards of this ordinance. Drawings and engineering calculations shall be certified by a registered engineer licensed to practice in the State of Michigan.
- Section 17.30.3-4H(i) – Use suggested text
- Section 17.30.3-4H(ii) – Use suggested text
- Section 17.30.3-4I – Use suggested text
- Section 17.30.3-4J – Use suggested text
- Section 17.30.4-1 – Add “within 15 business days”
- Section 17.30.6.C-B(iii, v and vi) – Add “Existing vegetation may be allowed to remain wherever it is present.”
- Section 17.30.6.C-D – Add “Existing vegetation may be allowed to remain wherever it is present.”
- Section 17.30.6.C-E – Use suggested text

Discussion was held regarding setbacks being measured from the edge of the right of way or from the center of the road. Mr. Graham stated that all references to “building permit” are to be changed to “zoning permit”.

Discussion was held regarding berms for Level 3 systems being below road grade. The Planning Commission agreed to include “The screening across from dwellings will have to be 8ft. above road grade.”

Mr. Borowicz referred to 17.30.6.C-D(i) and suggested revising this section, "Evergreen coniferous trees and or berms or a combination of the two shall be the only acceptable methods of screening....". Discussion was held.

An audience member stated he is in favor of this because you should be able to do what you want with private property but he does not want to see something similar to what happened in North Carolina. The audience member stated it cost \$5 million to put the wind farm in and when it didn't work out it cost the neighbor \$10 million to remove it. The audience member doesn't want to be required to cover any costs to remove it.

Discussion was held regarding this amendment being on the next Planning Commission agenda.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

STAFF REPORT

Mr. Turisk stated that Jennifer Merk has been hired as the Planner. Mr. Turisk stated that she will be attending the February 6, 2019 Planning Commission meeting.

PLANNING COMMISSION COMMENTS

No comments.

PUBLIC COMMENTS

Mr. Muscott stated that some counties in Michigan, such as Antrim County, do not have zoning. Mr. Muscott stated that some zoning is administered at the township and village levels. Mr. Muscott stated that they may still have a master plan and hold 4 meetings a year, but there are no zoning restrictions at the county level. Mr. Muscott stated that Antrim County has lost some big employers, but they have lost less population than Cheboygan County. Mr. Muscott believes that property values are negatively impacted by zoning restrictions.

An audience member thanked the Planning Commission for their input on the amendment such as adding in evergreens. She stated that anytime the Planning Commission can make verbiage more understandable, it appears that they are hiding less.

Mr. Boyd asked if setbacks will be measured from the edge of the right of way or from the center of the road. Mr. Borowicz stated that the Planning Commission will address this at the next meeting as they are waiting on an interpretation.

Mr. Carver asked if the microphones and speakers could be used so the audience members in the back of the room can hear the discussion.

Mr. Keene stated his concerns regarding the degeneration of berms over time. Mr. Freese stated that the cross section of the berm along with the planting design is in the regulation. Mr. Kavanaugh stated that maintenance of the berm is also required.

Mr. Jocks thanked the Planning Commission for their work on the amendment.

ADJOURN

Motion by Mr. Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 8:41pm.



Charles Freese
Planning Commission Secretary