

**MINUTES OF THE REGULAR MEETING OF THE PLANNING COMMISSION HELD
TUESDAY, NOVEMBER 8, 2022 AT 3:00 P.M. IN THE COUNCIL CHAMBERS, CITY
HALL, MACKINAC ISLAND, MICHIGAN**

Chairman Straus called a regular meeting of the Mackinac Island Planning Commission to order at 3:02 p.m.

PRESENT: Michael Straus, Lee Finkel, Anneke Myers, Jim Pettit, Ben Mosley, Trish Martin
ABSENT: Mary Dufina
STAFF: Zoning Administrator, Dennis Dombroski, Attorney, Erin Evashevski (via Zoom)

Motion by Finkel, second to the Motion by Mosley to approve the minutes, as written, of the public hearing on October 11, 2022. All in favor. Motion carries.

Motion by Myers, second to the Motion by Mosley to approve the minutes, as written, of the regular meeting on October 11, 2022. All in favor. Motion carries.

Motion by Mosley, second to the Motion by Finkel, to approve the Agenda, as amended, and place on file. The amendments were to add "Trash – Pettit" and "Grand Hotel Façade" to *Old Business*. All in favor. Motion carries.

Correspondence

None

Staff Report

HDC Meeting Summary

Finkel summarized the November 8, 2022 meeting.

REU Update – Allen Burt

Pereny stated that Burt was unable to attend but reported no changes since the October meeting.

Committee Reports

None

Old Business

ROS22-002-031 GHMI – Jockey Club Amendments

Gene Hopkins stated that a canvas awning was approved. The applicant would like to change it to a wood tongue and groove deck with a decorative canvas cover and a metal roof on top. The metal is to match the existing Jockey Club roof. Hopkins discussed the changes with Neumann. The sides will be open with weather curtains that will be connected to the fire alarm. The fire table on the upper terrace has been removed from the plan. The rail area shown on sheet 9 is changing slightly with different spacing on the grill work. When asked, Hopkins stated there will be exterior lighting on the corners of the main pavilion and twinkle lights in the trees. Myers noted the lighting is not shown on the plan. Motion by Myers, second by Finkel to approve the amendment contingent on information on the weather curtains and submittal of the lighting plan. Roll call vote: Ayes: Straus, Finkel, Martin, Mosley, Myers, Pettit. Nays: None. All in favor. Motion carries.

R122-025-042 Murray Amendments to Site Plan and Exterior

James Murray stated that FEMA had changed the flood plain so the house needed to be moved 5' closer to the street. The structure is still behind the average front setback. Murray stated the other changes highlighted on the plans are cosmetic and in keeping with the island. Dombroski stated a new foundation plan sheet was submitted. An ICF foundation with stucco is proposed. Straus asked if Neumann had done a review, and he had not. Stan Antkoviak suggested the contractor look at a synthetic finish for the foundation by a company called Sto. Myers noted the chimney is changing from brick to siding. Motion by Mosley, second by Finkel to approve the amendment. Roll call vote: Ayes: Straus, Finkel, Martin, Mosley, Myers, Pettit. Nays: None. All in favor. Motion carries.

PUD22-005-003 Mission Point -Door Amendment

Stan Antkoviak stated they are changing the door that was inadvertently approved, to a swing door. Motion by Finkel, second by Martin to approve the amendment. Roll call vote: Ayes: Straus, Finkel, Martin, Mosley, Myers, Pettit. Nays: None. All in favor. Motion carries.

HB22-017-020 Grand Hotel – Storage Building Door Amendment

Tamara Burns stated the door on the storage building is a sliding door on a track. Motion by Myers, second by Mosley to approve the application noting the exception to the Ordinance but it was approved at Stonecliffe and the sliding door is more appropriate for a utility building even though it is not currently allowed by our ordinance. Roll call vote: Ayes: Straus, Finkel, Martin, Mosley, Myers, Pettit. Nays: None. All in favor. Motion carries.

Lighthouse Camera - Evashevski

Evashevski obtained information on the camera that was installed on the lighthouse a year ago. Straus stated the Planning Commission really can't act on it at this point but should place the information on file. Evashevski stated that SHPO approved the camera and the owner is now aware that any changes to the lighthouse need to be presented to the City. Myers found it interesting and wanted it noted that per the letter from Eb Soba, it stated that "Under the provisions of the historic preservation covenant language included in the quitclaim deed that transferred the light out of federal ownership to the EARAE Preservation Group the SHPO reviews and approves changes and alterations to the structure." Myers stated she recalls the concerns with the camera when it was submitted for a location on the island. The concerns were the spot light and the ability of the camera to film 360 degrees. This will be an agenda item for December so that Enbridge can address the above stated concerns. Motion by Finkel, second by Mosley to place the letters on file. All in favor. Motion carries.

Trash - Pettit

Pettit stated that the service company seems to have a routine with picking up the City garbage, but it is not in line with the 10 and 4 pickup times. Pettit is hoping everyone could find a way to get the two to match. Pettit also stated that the City employees are pulling the orange bags out of the cans and setting them on the street. He stated they may be doing it to help, but he thinks the contract includes the garbage guys emptying the cans. Pettit stated the orange bags sitting on the street for extended times looks bad. When asked why the bags were bright orange, Myers explained it was to prevent other people from stealing the City bags. Straus suggested a brown bag that isn't so obvious. Myers stated she would present the topic at the Building and Grounds Committee meeting.

Grand Hotel Façade Project Guarantee Update - Evashevski

Straus stated that he, Dombroski and Evashevski have met multiple times, and have not yet been able to reach an agreement. Therefore, the building permit can still not be issued. Lakas stated that he understood that his lawyer was working with Evashevski and that an agreement was basically done, pending approval from their lenders. Evashevski stated that no, the conversations with the Grand Hotel attorney have been over an agreement that was sent over some time ago that was not approved. Since then an Undertaking Agreement was submitted to Evashevski that would bind all successors in the property. This too was not agreed to. Evashevski informed the attorney that the agreement was not agreed to by the City. In an attempt to add more teeth to the agreement, Evashevski suggested the Grand add a provision that in the event the City needs to enforce the agreement, the owner of the property would pay all costs and attorneys' fees of the City up to the amount of \$3,000,000.00. This is the agreement that Evashevski presented to the Planning Commission as an option. Dombroski, Straus and Evashevski were tasked with coming to an agreement with KSL, and they were not able to do this. In part, because what was presented was not one of the named options under our Ordinance to be a guarantee. Evashevski has had lengthy discussions with the Grand Hotel attorney and this is not anything that was ever understood by the attorney to have been agreed to by the City. The draft agreement was something that was presented and if the Planning Commission felt comfortable with, they could present to the Grand Hotel's lender. Evashevski, Dombroski and Straus are not comfortable to agreeing to the Undertaking Agreement in the form that it is in. But Evashevski wanted to at least present it to the Commission. Lakas stated he understood it as they had worked out an agreement that she was going to present to the Planning Commission and that Evashevski was recommending that it covers the intent and desire of the Planning Commission. Evashevski stated that was never the understanding. Lakas questioned if they were even close to an agreement. Evashevski stated that she offered to work with the attorney and is presenting the offer and if the Planning Commission wishes to agree to it, they can. Lakas was under the impression that Evashevski had agreed to the Undertaking Agreement. Evashevski stated she could not agree to

that on her own. She further stated she did not appreciate words being put in her mouth in this manner. Evashevski invited Jordan, the Grand's attorney, to join the call. Evashevski stated she and Jordan worked to come up with further language to what was originally sent. Straus took a step back and summarized the path that has led us where we are. Straus stated that Lakas had offered the bond. Lakas stated he did not offer the bond and that their loans documents do not allow them to obtain another bond. They have a completion guarantee in place with Wells Fargo. Straus stated that he understands what was agreed to at the June meeting. Since learning that is not possible they have been looking for ways around that. Unfortunately, they have not felt comfortable coming up with something that met the initial intent. At this point we can wait and see if something else can be negotiated, look at the Undertaking Agreement including fees and see if the Planning Commission is willing to accept that as an alternative, or break the entire project down in to two-year projects. Myers clarified the Undertaking Agreement with Evashevski. Myers further stated that since the Undertaking Agreement is not listed in the ordinance section as an approved type of a guarantee, the Planning Commission would have to approve it. Myers stated the reason they wanted the guarantee is because the project spans longer than our normal approvals. The concern is that the project is completed by the current or subsequent owners. Myers believes section 1 covers that concern. Evashevski stated that the agreement essentially binds the owner, successors and assigns and does have the caveat of other than the mortgagee. Myers stated another concern is putting the City on the hook for a lot of money spent on multi-year legal battles. Lakas wanted to make sure that the Planning Commission knows that they have completion guarantees in their loan documents that will require them to complete the project. Finkel pointed out that is unenforceable by the City. Lakas stated the lender's interests are in line with the Cities interests in that they do not want to have anything not completed that would be detrimental to the long-term value and earning potential of the asset. Finkel stated he was not sure that he agrees. Lakas asked Finkel why he disagrees. Finkel stated we may have parallel interests, but they are not identical. KSL has a number of properties. In the unlikely event they were put in the position where triage was necessary, Finkle does not believe we would be the priority. Lakas stated that the bank has leverage and opportunity to come to KSL for the dollars to complete the project; that is part of the completion guarantee. Finkel stated that is relying on someone else to defend the City's interest, and he would rather the city defend their own interest. Jurcak asked, if the Grand Hotel does not do the work this year because we cannot come to agreement, and the company decides not to do it at all, does this serve the best interest of Mackinac Island? He added the Grand Hotel has not shown one time that they cannot perform. Myers stated that the Planning Commission is not trying to be antagonistic, and that Jurcak's tone is antagonistic towards the commissioner. Myers stated the entire commission have an interest in the project being done so we are just trying to agree on the guarantee. Myers stated she thinks they are close and asked Jurcak to allow the Commission to continue their conversation. Myers confirmed that Dombroski's main concern is the time it would take to get the project completed if the City had to go through the court process to get it done. Myers asked Evashevski if there was a way to address that concern. Evashevski stated that with the attorney's fees and court costs being added to the agreement, \$3,000,000.00 is a lot of money and a reasonable owner would not want to prolong or create more court costs. Pettit asked for clarification on the agreement. Evashevski stated the agreement will run with the property until the project is complete. The Memorandum of Undertaking Agreement is recorded and would show up in a title search. The specific agreement won't show up, but the Memorandum of the agreement will. Pettit asked if the presented agreement had been looked over by the Grand's lawyer. Evashevski stated that it had, but their lender has not reviewed it. Lakas stated he understood that their lawyer has been in contact with the lender through this whole process. It will take time to approve it but Lakas does not foresee any issues arising with approving the agreement. Evashevski stated again that she did not have any type of agreement among the three individuals, only that she would present it to the Planning commission. Myers stated that for the most part this gives us what we were looking for. She understands Dombroski's concern, but that may have happened anyway and at least we have the \$3,000,000.00 guarantee. Myers stated in her opinion this agreement will work. The problem with the lender came to light later on. Straus stated he agrees with what she stated but he does feel some frustration on his part since it has been months and now Mr. Jurcak is saying it has to be done now and it is frustrating from his perspective because he, Dombroski and Evashevski have been available and trying to work on this so the project can move forward. Dombroski stated the consideration of breaking up the project in to two-year projects could work. Myers stated that she believed they presented it as one project so they could have the flexibility to complete the work as weather allows so believes it is in the best interest of the City to do it as one project. Dombroski stated he agreed, but if they cannot provide a guarantee than to him, he has not heard a reason they could not do it that way. Jordan McCarthy, the Grands attorney, stated that in regards to the letter of credit concept, any form of credit enhancement the hotel owner provides, in any regard, the City stands second in line to Wells Fargo, which has a loan on all of the hotel owners' assets. She further said that while KSL has many assets, the hotel is owned by a single purpose entity;

its sole asset is the hotel. If there is any concern about the completion of project, again the lender will make sure that occurs. Straus thanked McCarthy for that information but questioned why it took 5 months for that information to come out. Mosley commented that his concern is that as a board we will cause our constituents to be dishonest and say a project will only take 2 years and accept a slap on the hand when it takes longer, or they will simply not do any improvements. Mosley believes this should be an easier process. Mosley is OK with the presented agreement. Motion by Myers, second by Pettit to accept the Undertaking Agreement from GHMI as a guarantee to satisfy the June site plan approval contingency and that the Memorandum of Undertaking Agreement be recorded. Roll call vote:

Straus – Aye. He was not happy with how the process went, and no other good options, but the project is important.

Finkel – Aye. Agrees with Straus and wonders if in the beginning of this meeting the statement from Lakas that he and our council had arrived at an agreement, is a preview of the future.

Martin – Aye.

Pettit – Aye.

Mosley – Aye.

Myers – Aye.

Nays: None

All in favor. Motion carries.

Lakas asked Finkel to expand on his comment during the vote. Finkel stated that he had stated an agreement had been reached with Evashevski, but no agreement was ever made.

New Business

R322-013-083 MICT Truscott Street Fence

Dombroski stated that an agreement between Chambers and Benser was reached years ago to accommodate a paddock expansion. MICT would now like to move the fence back to their property. Motion by Mosley, second by Finkel to approve the application. Roll call vote: Ayes: Straus, Finkel, Martin, Mosley, Myers. Nays: None. Pettit abstained. All in favor. Motion carries.

2023 Meeting Dates

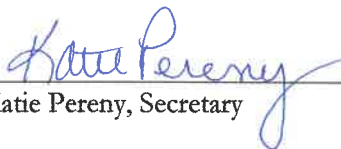
Motion by Myers, second by Martin to approve the 2023 meeting dates, as presented. All in favor. Motion carries.

PUBLIC COMMENT

With no further business there was a Motion by Martin, second by Mosley to adjourn the meeting. All in favor. Motion carries. The meeting was adjourned at 5:04 PM.



Michael Straus, Chairman



Katie Pereny, Secretary