

**MINUTES
PARK TOWNSHIP
PLANNING COMMISSION**

Park Township Hall
52 152nd Street
Holland, MI 49418

Regular Meeting
July 11, 2018
6:30 P.M.

DRAFT COPY

CALL TO ORDER:

Chair Pfof called to order the regular meeting of the Park Township Planning Commission at 6:30 P.M., held in the Township Hall at the Park Township Office.

ATTENDANCE:

Present: Jeff Pfof, Terry DeHaan, Dennis Eade, Rosemary Ervine, Diana Garlinghouse, David Kleinjans, Denise Nestel

Staff: Ed de Vries, Community Development Director, Howard Fink, Township Manager, Gregory Ransford, Staff Planner, Meghann Reynolds, Zoning Administrator, Dan Martin, Legal Counsel

Eade moved, supported by Ervine, to approve the agenda as presented.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

APPROVAL OF MINUTES:

DeHaan moved, supported by Kleinjans, to approve the Regular Meeting Minutes of June 12, 2018 as submitted.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

Pfof welcomed Meghann Reynolds as the new Zoning Administrator for the Township.

BUSINESS ITEMS:

A. Proposed Language for the Macatawa Park Overlay District

Pfost said a Public Hearing will be held on the draft ordinance language and amendments in the Macatawa Park Overlay District. The Planning Commission will deliberate on the draft language this evening and forward the document to the Township Board for its review. He noted this is part of the NHP overlay.

Ransford introduced the item. As background, the Master Plan was adopted with consideration of the intent to review the density and existing use issues in Macatawa Park. This is the final draft which is presented to the public at this meeting. He provided a brief overview of each section.

Section 38-303A, Description and Purpose, is intended to highlight the goals and objectives of the proposed language.

Section 38-304A, Use Regulations, provides additional development standards in the underlying zoning districts allowing for certain dimensional items. He pointed out there are no new PUDs permitted in Macatawa Park. Permitted special uses are subject to certain provisions. There is some language regarding safety, fire access, pedestrian safety, and parking. There is a section for reduction of front, side, and rear yards through averaging, and there is language regarding mitigation of hazards when improvements are near the roadway. An automatic fire extinguishing system may be required by the Fire Chief. There is parking language specific to the amount of square footage of a home. Also, there is a proposal to amend on-site and off-site parking language. Unimproved lots must meet minimum lot area and width. The building footprint is part of the language for clarity.

Section 38-601 language is provided for parking requirements for Macatawa Park.

In the parking language for unimproved lots, Ransford recommended this language be included and that the Planning Commission delete the language for off-site parking. In both parking language sections he recommended reference to Section 38-601 which addresses parking.

PUBLIC HEARING

Pfost opened the Public Hearing 6:44 P.M.

He noted that this hearing is only for the ordinance language.

Nicki Arendshorst, resident of Macatawa Park, said it was her observation that the residents feel that the Township is going to do what it is going to do with this district regardless of their input, which is why there is a lack of participation. She liked the idea of no PUDs. She wants to leave it alone at this point. This may be right, but why be right if it is causing distress. She observed that this debate was not a good topic for wasting scarce resources in the Township.

Dan Mitchell, resident of Macatawa Park, said it was a thoughtfully drafted technical plan. The cottagers should be grateful for this proposal. In Macatawa Park, historically, what has gone

right and what has gone wrong should be considered in solving its problems. The residents have complained about the zoning; if the property had been zoned R4 there would have been no problem. He brought up the Point West development which was controversial because it was zoned commercial. He understood the nonconforming status is a problem and the Township has to appease the State regarding nonconforming properties. Getting a variance is a great process in trying to deal with the nonconforming issue. His final point is to remind the Township to limit additional development in the future. This plan tries to do this in his opinion. However, he said the Planning Commission should dispense with the notion that conforming status is so important. If it doesn't work, step back and look at what has worked for 50-75 years.

James Bruinsma, attorney with McShane and Bowie in Grand Rapids, representing the Van Andels, their land holdings and entities, Point West I and VA Properties. He sent a letter to the Township regarding the proposed zoning ordinance. His clients oppose this amendment and ask that the Planning Commission reject it. He highlighted the concerns of his clients regarding the proposal. The overarching concern is there is a perception that an amendment like this for an overlay district is singling out a different set of rules and standards than for similarly situated property owners. The concern is within the overlay district there are two sets of rules: for the people who are already there and the holders of the unimproved land. His clients are the holders of the vast majority of the unimproved land in this area. They will be held to a different standard than for those that are already existing. He referred to the "magic wand" approach for this overlay district which means that the improved properties will be deemed conforming. That means the zoning rules that are in place today apply to them. However, the rules for his clients are new and different rules. That is at odds with public policy of getting rid of nonconforming uses. It's in violation of the requirement the rules are to be uniform in an overlay district. There is a concern and a manifestation of this overlay district that it sets up two rules. Another concern is the idea is the stated goal of this amendment is to limit density. The existing layout of the clustered development in this community presents challenges. He said there are already rules in place that set density limits so there is no reason to push the density limit further. His position is there should not be any changes or penalty for leaving property unimproved. There is a sense if you don't develop your property you lose your rights. What is in place should stay in place. There should be no penalty. The concern is the fight has been brought to us. We aren't looking for that fight but if we have to have it we will.

A couple of other concerns: Item 4 under 38-303A, regarding the language that says "to protect woodlands, dune areas, and areas adjacent to Lake Macatawa." The concern is there is already a comprehensive and thorough regulatory scheme under the State of Michigan. Under Part 53, 353, of the Natural Resources and Environmental Protection Act, critical dune areas are regulated under the State of Michigan. Construction and development in these areas is dictated by the State. This statute says local government cannot regulate or impose restrictions unless you use the ordinance as set forth in the statute. The Township would have to adopt a critical dune ordinance and step in the shoes of the State of Michigan and issue critical dune permits. You can't just make a vague reference to critical dune areas. You don't define a dune area, you can't say what you can or cannot do, the State of Michigan does. This language will cause mischief and you should get rid of it.

Regarding parking, again, there shouldn't be changeable rules based on different properties. A concern is there is a phrase in the section for unimproved lots, p. 4, VI. It says off-site parking is approved by the Zoning Administrator. Bruinsma said this is a subjective and undefined

standard and this creates different rules for different property owners. This should not happen in any zoning district.

And one last concern, given the history of this amendment, is the view shed issue. There is no basis in Michigan law for view shed protection. This takes valuable property from one property owner and gives it to another. This idea of view shed protection is contrary to State law. The language has been removed and it should not return.

It was his opinion that this is the wrong direction for the Township, opens up issues, and challenges the property rights of his clients.

Pfost closed at the Public Hearing at 7:07 P.M.

Pfost asked Legal Counsel Martin to address the Bruinsma letter and the legal issues involved in his remarks.

Martin said he agrees with some of Bruinsma's points and some he disagrees with. Regarding the purpose statement of the proposed amendment for the Macatawa Park overlay district, the Township has no intent in this ordinance to regulate the dune area. The purpose of the ordinance is to preserve the woodlands and dune area. There is no regulatory effect in it and it is not preemptive to have it in the purpose statement. It can be removed but it is not obligatory to do so.

Regarding the idea of the "magic wand" for making nonconforming structures conforming and treating his clients differently, Martin argued the properties are not the same. Some properties are already improved and have been historically improved over the last 100 years contrary to ordinance. We are seeking to have the nonconforming structures conform to current ordinances if rebuilt or remodeled without having to go through the zoning process. He argued that the Township is not treating similarly situated properties differently, because we don't have similarly situated properties.

We are not granting a variance to these properties, rather the proposal is seeking what the State would ask you to do. What the Court looks at through the Zoning Board of Appeals process when granting a variance, is for practical difficulty or unnecessary hardship, is the problem unique to the area, or is it common to the area. We have amended our ordinance for our standard to say is it common in the zoning district. When you compare properties in Macatawa Park which have been improved they are varying – they are the typical subdivision lot. When you compare properties in Macatawa Park to their neighbors they are not – they are all on substandard lots. This overlay addresses this situation. The State seeks to eliminate nonconforming properties over time. We like the history of Macatawa Park, we want to preserve it, and we do have concern over health, safety and welfare issues. We want to limit development to what is currently permitted. We don't want to take away development rights of vacant properties. We want them to be able to build tomorrow what they can build today. As a matter of law, they don't have a vested right. We could legally downzone but he didn't see the necessity. We aren't seeking to take away development rights. The properties continue to be constructed at R4 density. We aren't limiting density as in no development at all. We want to build going forward at the same density.

We are not imposing different use restrictions. They are still single family purposes. We propose different dimension restrictions and regulations based on the fact they can be built in conformance with the ordinance. There are unimproved lots that can be built in conformance with the ordinance.

Martin agreed with Bruinsma about the language in the parking provisions regarding onsite parking. Any time you have discretionary approval you should have objective standards to guide their discretion. He recommended to not allow it at all. You can allow on-site parking so long as it is in the Macatawa Park district. And you can allow off-site parking. He suggested the wording “to the satisfaction of the Zoning Administrator” could be removed.

The use is single family dwelling. It’s a non-use dimensional matter. This is defensible.

Martin added that the view shed issue is the same as the dune issue – we aren’t regulating the view shed so it is moot.

Nestel moved, supported by Eade, to forward the language for the Macatawa Park Overlay District to the Township Board for approval. It is recommended to remove language regarding the Zoning Administrator and strike off-site parking for unimproved lots as referenced in 38-601.

Martin clarified the motion. The first part references Subsection 38-304A (3)a,vi modifying Article 7 of this ordinance to Section 38-601 of the ordinance, deleting language “to the satisfaction of the Zoning Administrator.”

The second part references 38-601 regarding off-site parking with a change to (3) b,vii changing improved lot to unimproved lot. In (3) b, vii, change Article 7 of this ordinance and delete the next sentence on page 4 which reads “Alternatively, off-site parking or a combination of on-site parking and off-site parking, may be provided to the satisfaction of the Zoning Administrator.”

Kleinjans said with regard to unimproved lots he didn’t think the Planning Commission isn’t changing anything. We are still allowing front yard averaging.

Fink said on unimproved lots the averaging is not in effect.

Martin said even now we would require on-site parking. We aren’t restricting development beyond what is currently restricted. We allow for the front yard averaging but the unimproved lot won’t be developed beyond the density of the improved lots. It will be in-fill zoning.

Fink said the parking language is more where the former language allowed less. He also noted that the parking is now a higher level standard.

Ransford concurred.

Martin said within this area the lots are in compliance.

Garlinghouse observed we will be more in compliance, and now our goal with the overlay is that we grant compliance rather than residents having to go to the Zoning Board of Appeals for variance requests. In her opinion, this will make it easier for the residents.

Roll Call Vote:

Kleinjans, aye; DeHaan, aye; Nestel, aye; Pfost, aye; Ervine, aye; Eade, aye, Garlinghouse, aye.

Ayes 7, Nays 0. Motion carried.

B. Draft of Amendment to the Master Plan – South Side Subarea, Macatawa Park

Pfost said this will require a different regulatory process.

Ransford introduced the item. The Master Plan is specific about the need to recognize that each NHP area is unique. The language intends to be specific and supports the overlay. It suggests the density remains the same. It recommends the draft of an overlay.

The proposed language gives an introduction to Macatawa Park, its character, the effort and concerns of the public regarding fire safety, etc. This language encompasses all these concerns and the density. We propose to add a paragraph to recommend the overlay district for Macatawa Park.

Pfost asked if we will move forward with the rest of NHP areas.

Ransford said once the Township Board reviews the Macatawa Park language it will return to the Planning Commission for a public hearing. Prior to this there will be an approximately 45 day period for surrounding municipality, utility company, and anyone who registered with the township to receive the Notice to Plan, to provide comment.

Nestel moved, supported by Eade, to advance the amendment language for the Master Plan to the Township Board for their approval.

DeHaan asked for clarification: will each NHP area be considered separately rather than as an entire package.

Martin said the way the Planning Enabling Act is drafted, if the Township Board doesn't approve the Master Plan additions they will ask the Planning Commission to make the corrections. The Township Board said they could send it back with any concerns.

Fink asked how long the Township Board needs to approve these documents.

Martin said the Planning Commission is in control. There is no specified time given in the Planning Enabling Act.

Kleinjans asked if the Township Board can decide to consider all of the overlays at one time.

Martin said it could.

Nestel asked if the Township has given notice regarding the Master Plan.

de Vries confirmed the Township has notified surrounding communities and utility companies of the intent to plan.

Ransford confirmed notice of intent to plan to all the neighboring municipalities.

Kleinjans asked about the reference to the Black Sheep Restaurant, formerly the Parkway Restaurant. Can we reference the parcel number or street address instead of the name of the business? This business name could change again.

Martin said it could be referenced as a directional corner.

Kleinjans suggested eliminating the name of the restaurant that is formerly the Parkway restaurant.

Nestel moved, supported by Eade, to add the amendment to the motion.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

C. Final Plat Submission, Timberline West Acres West #6

de Vries provided background information on this item. Exxel Engineering on behalf of ICK Properties LLC submitted an application for Final Plat Approval for Timberline West #6. The Planning Commission is to make a recommendation to the Township Board to approve, or not approve the final plat.

The Planning Commission and Township Board gave prior approvals for the Preliminary Plat and Final Preliminary Plat. A public hearing was held during that time.

This is the final stage for approval of this plat.

The only clarification to be made with the developer is the reference to the depth of lots adjacent to the lake. These seem to have lesser dimensions than what were referenced on the original plat approval. This can be clarified by the applicant.

Todd Stuive of Exxel Engineering explained that there was a measurement that goes to the traverse line, which then extends to the water's edge. You need to add a 13' dimension. The State requires this in labelling the lots. There was a minor fluctuation of the water line.

Eade moved, supported by DeHaan, to forward the Final Plat Submission to the Township Board for approval.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

D. Timeline for the Next Steps for Remaining NHP Areas

de Vries said he was asked to develop a timeline for the remaining NHP areas.

He was optimistic in the estimate and mentioned in his Staff Memo that there will be factors that will affect the timeline.

In his opinion, the remainder of the NHP areas will not take as long as Macatawa Park. Some of the smaller NHP areas along Lakeshore Drive can probably be handled at the same time.

de Vries said he was confident that Ransford and Fink can assist with facilitating this process.

De Haan asked if the time of year with the residents is a problem when scheduling occurs for discussions with the Township staff.

de Vries said as we proceed we can see about this. Most of the areas north have approximately 50% year- round residents.

Pfost said staff is to be commended for appeasing the residents and allaying any concerns. He thinks West Michigan Park will realize our intent to preserve the important components in this area.

DeHaan asked if the Township should address this in order to inform the residents.

Fink said he will ensure that it will be a similar process to identify concerns. He will look at identification of stakeholders, conduct interviews, perform an analysis, hold a public meeting, and then look at strategies, then present the plan to the Planning Commission. The process should not be so long as the Macatawa Park area required. There are not the complexities in other areas as there were in Macatawa Park.

PUBLIC COMMENT

Pfost opened Public Comment at 8:10 P.M

There was no comment.

Pfost closed Public Comment at 8:10 P.M.

ANNOUNCEMENTS

The next meeting is August 8, 2018.

De Vries said there will be one site plan application for the August meeting.

ADJOURNMENT

Ervine moved, supported by Nestel, to adjourn the meeting at 8:12 P.M.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
July 13, 2018

APPROVED:

DRAFT