AGENDA

Park Township
Planning Commission Regular Meeting

September 11, 2019
6:30 p.m.

(Please turn off or set to silent mode all cellphones and other electronic devices)

1. Call to Order

2. Approval of Agenda

3. Approval of Minutes: Regular meeting August 14, 2019

4. New Business:
   a. Text Amendments
      i. Section 38-575(a)(5) and (b)(b) – Permitted signs in each zoning district (AG Agricultural and Permanent Open Space District)
      ii. Section 38-575(c)(1) – Permitted signs in each zoning district (C Districts)
      iii. Section 38-367 – Development requirements for PUDs with residential uses
      iv. Section 38-368 – Dedicated open space requirements (PUDs)
      v. Section 38-504 – Outdoor Ponds
      vi. Section 38-505 – Earth change regulations and permits
      vii. Section 38-184(8) – Use regulations
      viii. Section 38-214(6) – Use regulations
      ix. Section TBD – Firewood Sales
      x. Section TBD – Garage Sales

      Anticipated Action: Provide direction to staff to revise and/or schedule for public hearing.

   b. Discussion Items
      i. Swimming pool wall height, structure height
      ii. Reciprocal easements

      Anticipated Action: Provide direction to staff to draft revisions to language related to swimming pool wall height. Seek direction of the Planning Commission regarding the use of reciprocal easements.

5. Old Business:
   a. None
6. Public Comments

7. Announcements
   a. Next meeting date October 9, 2019

8. Adjourn
CALL TO ORDER:

Chair Pfost 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: Dennis Eade, Rosemary Ervine, Diana Garlinghouse, David Kleinjans, Denise Nestel, Jeff Pfost

Absent: Terry DeHaan

Staff: Greg Ransford, Planner, Dan Martin, Legal Counsel, Howard Fink, Township Manager

APPROVAL OF AGENDA:

Motion by Ervine, supported by Garlinghouse, to approve the agenda as submitted.

Voice Vote:

Ayes 6, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Motion by Ervine, supported by Nestel, to approve the July 10, 2019 Regular Meeting Minutes as submitted.

Voice Vote:

Ayes 6, Nays 0. Motion carried.
A. Timberline Woods Tentative Preliminary Plat – 14900 Riley Street, Parcel #70-15-13-100-020

The applicant, ICK Properties LLC, seeks to develop 51 single family residential lots, public streets, storm water detention basin, and related infrastructure as the Preliminary Plat for Timberline Woods.

Ransford introduced the agenda item. He noted the applicant has submitted averaging data based on the lot width supporting the fact he is under the threshold to install sidewalks, i.e., he is not obligated to do so. There is also a consideration of no removal of trees more than 6" in diameter. Ransford had a conversation with the applicant regarding the storm water system as to whether it is regulated by the Zoning Board of Appeals or the Zoning Administrator as an outdoor pond per Section 38-504 of the Zoning Ordinance. If the Planning Commission approved the Preliminary Plat it could be a condition for the Zoning Board of Appeals to determine the requirements for the storm water provision.

Pfost suggested this be considered at the end of the discussion. Usually we defer storm water issues to the Water Resources Commissioner.

Todd Stuive, engineer from Exxel Engineering representing the applicant, described the plat’s location. The property is zoned R3 residential. He displayed a drawing of the plat. To the west and south is the Timberline Acres West plat and to the east is the Pine Creek Estates plat and to the north is the Holiday plat. The roads are public. The layout provides a connecting drive through the south part of the property. He has received a preliminary plan from the County Road Commission for the layout of the street plan.

The tree plan includes a proposal of 118 trees. As noted, sidewalks aren’t required due to the averaging of 100’. He noted the surrounding plats do not have walks. Sewer, water and public utilities are available and, with regard to the storm water plan, water will be directed into a pond located in the northwestern corner of the plat. It will be a wet pond of two acres. This will require approval of the Water Resources Commissioner.

PUBLIC HEARING

Pfost opened the Public Hearing at 6:43 P.M.

Lynn Killian lives on Silver Fir Drive in the neighboring plat. Her home backs up to this property. She asked where the drain field will be located.

Stuive replied the County drain remains intact on the Timberline West property to the west. The pond will be located on the other side of the drain behind the east court of planned homes. The tree line won’t be removed.

Pfost closed the Public Hearing at 6:46 P.M.

Garlinghouse asked if the reserve area will remain intact.

Stuive said they don’t intend to remove any trees in that area.
Kleinjans had questions about trees, the terrain, and the sidewalks. Should we choose a number for the size of marked trees on the property? Regarding the terrain, there is a hilly section in the rear of the property. His concern was about how much leveling will be done. He would like to see natural terrain preserved. Can we control this? Is there something in the Township subdivision ordinance that covers this?

Pfost asked Martin to comment on this.

Martin said the plat will create new lots that must comply with the Zoning Ordinance – platting and zoning are separate regulations and procedures. With regard to terrain he doesn’t know what is required in the subdivision ordinance or to effectuate the lot creation shown in the plat, but that it could require an earth change permit under the zoning ordinance. They have to show existing trees with a trunk of at least 6” in diameter pursuant to the subdivision ordinance.

With regard to terrain, Ransford quoted from the Public Sites and Open Spaces, under Natural Features section of the ordinance:

“Existing natural features which add value to residential development and enhance the attractiveness of the community such as trees, water courses, historic spots and similar irreplaceable assets, shall be preserved as far as possible in the design of the public space.”

Martin concurred that the Planning Commission could consider this.

Stuive said the homes have to be built above the water level and there will be dune areas. Grading will be done near the road and front of the property. There will be some level of drainage for backyard areas. Two things have to be done in the engineering of the plat: you have to have a buildable lot and there has to be grading with water control for drainage.

Kleinjans asked about the existing driveway that goes to the northwest part of the property. To the east it is relatively flat, but west of that it is hilly. There is a cul-de-sac in the northwest area. Is that higher and will there be grading there?

Stuive said there would not be.

Garlinghouse asked why the developer doesn’t want sidewalks.

Martin said the ordinance authorizes requiring sidewalks, even though they are not mandatory based on the averaging. Even though the Township has not required sidewalks in the adjoining subdivisions in the past but it doesn’t mean you can’t require it going forward. The community has grown and the circumstances have changed. You could have a rational basis now to require them.

Kleinjans said he drove through Silver Fir and observed there should be sidewalks in his opinion. People were walking on the street which is a safety problem.

Kleinjans asked about the number of trees requirement:

Martin said the ordinance requires identification of trees larger than 6” in diameter regardless of whether the trees are in the building envelope or not. It doesn’t require preservation of any
trees. He noted this is not a PUD, it is a plat. In this case there is no tree preservation ordinance. Regarding pond creation and earth change, he explained that pond creation will require a zoning permit. When bringing more than 2500 cubic yards onto the property requires an earth change zoning permit. The zoning ordinance allows some movement of soil on a property to be exempt from the earth change permit requirement, but even there, it is not to create a significant change in the natural topography. The Zoning Administrator and the Zoning Board of Appeals are currently authorized in the Zoning Ordinance to consider both pond creation and earth changes. In issuing a pond permit they will also look at the earth change to see whether it is exempt from a separate permit. The pond creation will definitely require a permit. In the future, if the Township wanted to change the process, ponds could become an item requiring Planning Commission special use approval.

Stuive understood the ordinance requires the Planning Commission to determine 6" tree and over in diameter for identification.

Martin noted that the Zoning Administrator or the Zoning Board of Appeals can determine if the pond creation significantly changes the natural topography or has an adverse or destructive impact on the environment or a natural resource.

Pfost asked the Planning Commission if we see the value for identifying trees. Do we have the authority to identify trees greater than 6".

Martin concurred the Township does. The ordinance says 6" and greater.

Martin said the subdivision ordinance requires this. The zoning ordinance doesn’t require this information to be provided in creation of a pond. The earth change requirement says “it should not cause a significant change in the topography or have an adverse or destructive impact on the natural resources.” It might be advantageous to have this information as a matter of record for future consideration by the Zoning Board of Appeals to determine whether the earth change requires a separate permit. You can limit it to a certain portion of the property.

Nestel asked about the Zoning Board of Appeals approval process.

Martin said the zoning ordinance states that any outdoor pond cannot be constructed without authorization either by the Zoning Administrator or the Zoning Board of Appeals. (This is subject to Section 504) When the Township drafted the zoning ordinance ponds required approval from the Zoning Administrator of Zoning Board of Appeals. The storm water retention pond has to be specifically approved. As you approve the preliminary plat it will be subject to Sec. 504 from the zoning ordinance before it can be created.

Nestel asked if the Drain Commissioner can determine this.

Ransford said the language also refers to storm water retention or detention. It makes it clear those are considered ponds.

Martin explained this is a zoning requirement. Ultimately it will be subject to Section 504 and the approval of the Drain Commissioner, however, the developer has to comply with the
Township zoning requirements. With respect to the pond we can have the Drain Commissioner approve it before we impose the requirements. If the Zoning Board of Appeals were to deny it, the applicant could argue it is a regulatory taking if the property cannot be used as zoned and allow for a reasonable return on the legitimate investment backed expectations of the developer.

Stuive asked if approval has to be made by the Planning Commission. They will get approval for the pond based on what the Township wants. All the approvals should be conferred before the Final Preliminary Plat approval.

Ransford suggested the amended language would likely be approved before the applicant returns for final preliminary plat review and approval. As a result, the Planning Commission will see the final preliminary plat by default, because of the storm water that is regulated by the Zoning Ordinance. Ultimately this will go to the Township Board for approval.

Kleinjans reinforced the idea to get away from bulldozing the earth to flat land – we should keep the topography interesting.

Kleinjans also suggested 18-24” diameter for the trees as a guideline.

Eade said, with regard to Zoning Board of Appeals consideration, they will want to look at what is there in terms of trees. Any tree over 18” would be important to preserve.

Ervine said there should be a clear understanding of what is to remain on the property for future reference.

Garlinghouse asked about the cul-de-sac.

Stuive said cul-de-sacs aren’t popular for development design anymore with the Road Commission because of traffic and snow removal problems. There will be only one cul-de-sac planned for this plat.

Pfost asked for a straw poll on the trees from the Planning Commission members. Everyone was in consensus regarding the diameter size of 18” for the trees for the northwest corner.

Martin said the Planning Commission can require sidewalks as an improvement even though they are not automatically mandated by the subdivision ordinance due to the lot averaging. Sidewalks are maintained by the Township, not the Road Commission. For public safety sidewalks can be required. If the sidewalk is not put in at the beginning of the development, and if homeowners want them later, then a petition for a special assessment may be made and the cost will be paid by the homeowner at that time; if you require them now, then the cost gets added in the sale of the lots or homes.

Eade commented, from his perspective as a property owner, it is important for the appearance of the property to have a better setback without the sidewalk. He doesn’t see this development as having the density to present a problem without sidewalks. If the residents want them they can petition the Township and a special assessment would be assessed to the homeowners.
Martin added the residents can initiate a petition to bring the special assessment for sidewalks to the Township Board at a later date if the property owners want them.

Kleinjans suggested to Stuive there should be clarification of a couple of minor points in the wording of the proposal. These edits were duly noted (pages 2, 4, 5 and 7).

Ransford said he wanted to be certain there should be no conflict with the applicant’s suggested restrictions in our ordinances. He also noted that the Preliminary Plat report should be forwarded to the Township Board for approval so this should be noted in the motion.

Eade moved, supported by Nestel, to recommend approval of the Tentative Preliminary Plat and forward to the Township Board with the following conditions: 1) trees in excess of 18" in diameter will be identified in the northwest portion of the property designated for the retention pond; 2) sidewalks will not be required.

**Roll Call Vote:**

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

Ayes 5, Nays 1 (Nestel). Motion approved.

Pfost asked Martin to explain the pond change process:

Martin clarified the County Water Resources Commissioner approves the detention/retention pond for storm water management purposes. Under the current zoning ordinance provisions, the Zoning Administrator or the Zoning Board of Appeals has the review and approval authority for the pond for zoning purposes. The Planning Commission can initiate the process to amend the zoning ordinance (Section 504) to either make it a special use that comes before the Planning Commission, to remove the requirement that detention/retention ponds require zoning approval, or however the Planning Commission wants, and the proposed zoning ordinance amendment ultimately would go to the Township Board for its review and approval. The pond approval process can be changed or leave it as is. We could add it unless required by the Water Resources Commissioner.

Ransford said there is a threshold between the Zoning Administrator and the Zoning Board of Appeals.

Pfost advised that the staff determine the proper process. He does not want to invite conflict between the Water Resources Commissioner and the Township.

Ransford advised the Zoning Board of Appeals usually doesn’t rule on this. He recommended this be removed from the purview of the Zoning Board of Appeals.

Eade noted the Zoning Board of Appeals would not be comfortable with this process, especially with ruling on depth, location, and other dimensions of a pond.

Kleinjans moved, supported by Ervine, to direct staff to create more than one option on how to rule on pond creation.
**Voice Vote:**

Ayes 6, Nays 0. Motion approved.

**B. Cityside Apartments, 3616 Butternut Drive, Parcel #70-15-12-300-010**

The applicants seek to develop a six unit residential apartment building with parking, storm water retention, and related infrastructure.

The review of the property was before the Planning Commission in February 2019 for a conditional rezoning request to R-5 which was recommended for adoption. This was then adopted by the Township Board.

The Site Plan Review application is from Dan Treffers and Steve Grassmid who want to construct a six (6) unit residential apartment building located at the northwest corner of Butternut Drive and 148th Avenue, parcel number 70-15-12-300-010, which is located within the R-5 Low Density Multifamily Residence District (R-5).

While the property was conditionally rezoned to the R-5 Zoning District, the application incorrectly identifies the R-3 Zoning District.

One point for the Planning Commission’s review is the proposed alternative access for trash removal which will utilize a three point turn on the property. Approval for the dumpster should be clear. Screening is also advised.

The reciprocal agreement to the northwest is a consideration.

Also screening is recommended along the parking lot.

The application is pending the Water Resources Commissioner’s final approval. Regarding the storm water system, correspondence from the Water Resources Commissioner states he is comfortable with the preliminary design and doesn’t anticipate any problem. Is it deep enough to meet Township ordinance requirements.

Howard Fink joined meeting at this point at 8:04 P.M.

Bill Sikkel, attorney for the applicant, presented the project. The plan is ready for Planning Commission review. The package was shared with members of the Planning Commission. He briefly described the proposed project. There will be a single entrance. Each rental unit is two floors. There are 12 on-site parking spaces and one space inside each unit – 18 spaces.

The dumpster is at the end of the parking lot. The alternative design proposes a turnaround to address the concern regarding backing out onto Butternut Drive for servicing the dumpster.

There is concern regarding an easement to the north of the property. Is the property owner willing to compensate his client? There is no resolution to date.
There is space for snow removal, allowing for the elevation difference. A landscape buffer is to the north.

The drawing shows the detention pond. To be clear, it is a small detention pond which will be dry most of the year. The pond has been approved by the Water Resources Commissioner. It is located at the Butternut intersection.

Ed Zuyghuizen described the plan for the pond. He said the Water Resources Commissioner requires detention area for back to back 100 year floods. You have to have 50% holding water with a retention pond; this pond is designed to be dry with back to back rains.

Martin explained it’s an interpretive situation. There won’t be standing water in this pond’s engineering. It’s called a dry pond as it is designed. Otherwise, if it were a retention pond with standing water it would require Zoning Board of Appeals approval. Consensus was reached that the stormwater area will be generally dry and therefore is not a pond.

Nestel asked about the easement.

Pfost asked why do we want a reciprocal easement. What is the Township’s interest in such an easement?

Ransford said the Township is requiring the applicant to set up an easement. An agreement would allow access when future development occurs. The property around this property is planned for high density residential in the Master Plan. The reasoning is the lesser number of curb cuts on to Butternut you increase public safety. Nothing has to be done at the present time other than establish the easement and related document for the subject property.

Sikkel said his applicant would be required to give up some property as a condition of the easement. His client should be compensated for giving up this portion of property. There is an exit planned now so another access point on this small piece of property is not advised.

Martin said he agrees with Ransford regarding the use of reciprocal easements generally. However, he agrees with Sikkel in this particular case. Given the small size of the property and its particular location, not having a reciprocal easement to the adjoining property owner doesn’t appear to interfere with public safety. In this instance, a reciprocal easement isn’t advised, as it might actually bring more traffic toward the intersection.

Pfost said this creates a problem for both landowners.

Ervine asked what the size of each unit will be and what are the price points for the rentals.

Sikkel said each unit will be 1100 square feet. Rental will be approximately $1000 for the two bedroom units and $1500 for the three bedroom units.

Kleinjans asked the purpose of the barn on the property.
Dan Treffers, partner for the project, said the barn will be for storage of boats. It is 1000 square feet and is not currently a rental unit.

Kleinjans asked about the lighting.

Treffers said they will be soffit lights and will shine downward.

Ervine asked if there is a pull-in for a school bus.

Sikkel said it is not designed as part of the plan.

Treffers said a school bus would not go in there. This is a small area so the small curb cut is sufficient. There is no room for an acceleration and deceleration lane.

Ransford said the plan meets all requirements.

Sikkel noted the revision date is 8/13/19 for the garbage truck and dumpster reconfiguration on the new drawing.

Chairperson Pfost asked the Planning Commission for consensus to allow one member of the public to speak, since the audience is minimal and because the application is not subject to a public hearing. The Planning Commission agreed.

Suzanne DeVries Zimmerman spoke regarding the reciprocal easement issue. She is the property owner to the east and owns the strip of land in question. It is not the line to the north. She said the map was incorrect. Her mother owns the piece of property in question. She noted there has been one incursion on her property. She asked how the applicant will mark the property line. She wants no trees to be cut down on her property. The property on 148th was determined by quit claim on April 30, 1998. The two properties to the north are less than an acre. There are single family homes on these properties.

Nestel moved, supported by Ervine, to approve the proposed plan with the new date of 8/13/19 on Sheet C1 to be incorporated in the site plan.

Kleinjans asked if the applicant should mark the property on the east as the neighbor requested.

Pfost asked how do we want to do this.

Ransford asked Legal Counsel if this is a Township enforcement matter or a civil matter.

Martin said this would be a trespass issue, which is generally considered a civil matter. If the Planning Commission made it a condition of the site plan approval and they don't do it, it would be a violation of the site plan approval, thereby requiring Township enforcement of the condition it imposed. The Township could get caught up in the middle of a private property dispute. This would result in a stop work order. Given that the Township Manager is at the meeting, it may be appropriate to ask him whether he wants the Township to be involved in such a potential dispute.
Fink said he would rather not have the Township involved. He has spoken with Ms. Zimmerman about this matter. This is between two private property owners. He is concerned about the strip of land. The quit claim deeds are not relevant. The Township looked at the issue of flagging. It was the contractor's mistake and the Township called and apologized.

Garlinghouse asked if an amendment was indicated.

Martin advised voting on the motion first.

Kleinjans asked about the requirements regarding the pond. All agreed it is a dry pond.

Pfost said the unresolved issue in the site plan standards is resolved with the relocation of dumpster. The motion should reflect just the reference to the change for the alternative location.

Ransford advised not reviewing the standards individually given the motion and a collective consensus could be provided that the standards are met.

Nestel suggested adding the condition that if any changes occur to the site as a result of final approval by the Water Resources Commissioner, the site plan must return to staff to determine whether the changes are significant enough to warrant further review by the Planning Commission. Ervine agreed with the motion modification.

**Roll Call Vote:**

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

Ayes 6, Nays 0. Motion approved.

Chair Pfost suggested a five minute recess at 9:00 P.M.

The meeting reconvened at 9:05 P.M.

**C. Ottawa Beach NHP**

**1. Draft of Ottawa Beach Overlay District, Division 6B**

Ransford introduced the item. He and Fink worked together on the Master Plan language for the Ottawa Beach Overlay District following an extensive planning process, which recently concluded with a community focus group held on May 13, 2019 with the residents and property owners of the Historic Ottawa Beach neighborhood and surrounding area. The draft of recommended language to establish an overlay district within the Zoning Ordinance will provide provisions specific to this unique area. Ottawa Beach is one (1) of six (6) Neighborhood Heritage Preservation areas identified by the Park Township Master Plan (PTMP). There are some similarities between this language and the language the Planning Commission recently adopted for Macatawa Park.

Included in the Staff Memo was also a draft of recommended revisions to the North Beach portion of the Park Township Master Plan.
As a result of the focus group feedback, the following were identified for inclusion in an ordinance amendment and Master Plan amendment, where appropriate:

- Hold the line on commercial uses
- Down zone vacant commercial properties to a residential district
- Prohibited retail sales from home occupations
- Provide amnesty for non-conforming structures so they may be rebuilt
- Provide for reduced setbacks
- Protect character height
- Regulate recreational fires
- Strengthen the Master Plan language to protect the property in public trust

This list represents input from the residents.

Ervine asked Ransford and Fink for their reaction based on what they heard from the residents.

Fink said most of the residents participated in the discussion. He shared a document from the zoning ordinance. The residents were happy with the language. The public lands are protected. There was a concern about home occupation. The four or five property owners who have the potential to have their properties commercially downzoned will be contacted by the Township for further discussion and recommendations.

The height issue for homes in the ordinance, Sec. 38-483 D. a, has to be clarified with Emma Posillico, Zoning Administrator. Fink would like to talk with the residents and he will invite Posillico to attend the Planning Commission meeting in September to address the height issue. The current ordinance height limit is 20’. A house was previously built at 35’ which was a serious concern among the residents.

Ransford noted with regard to the fire safety language, separation distances are covered in the language for safety reasons.

Fink noted he and Ransford removed language in the fire code requiring sprinkling installation for residential use. They wanted to alleviate any undue consternation among the residents.

Fink confirmed the draft language is online. A Public Hearing will be held. Every recommendation is what the residents requested.

Garlinghouse appreciated the focus on fire safety on behalf of this neighborhood.

Pfost thanked Staff for their effort in preparing the recommended draft of the new language for the Ottawa Beach neighborhood.

Kleinjans asked what Park 12 parcels are.

Fink said they are parcels that are held in public trust.

Martin explained, for example, the beach along Lake Michigan is in the public trust, meaning that the public may walk along the beach up to the high water mark, and may access the Lake – the private property owner doesn’t own the bottoms lands, the way that they would on Lake Macatawa. In this situation, there are certain properties that are held in the public trust that are
the Park 12 parcels. They won’t be privately owned or developed and the public will have access to these properties, yet the private property owners in the surrounding area may have more rights so to speak than the public generally to these areas – it’s a bit complicated.

Fink pointed out the language in the Master Plan regarding open space and park property. The intent is to protect this property in the Township.

Kleinjans had a problem with the difference in front yard dimensions on these lots and asked for clarification. His concern is in regard to Macatawa Park especially. He also asked clarification regarding agriculture and permanent open space.

Martin addressed the permanent open space question. If it is private property that is required to be in a permanent open space, i.e. when people use it for agricultural purposes. If you create a permanent open space, when it’s private property and then the property owner can’t build on it, there may be a potential takings issue. To create a park or permanent open space district can be challenging. The Park 12 property is scattered throughout the residential area, so if it were zoned as park or permanent open space, it would be separate zoned areas within the residential zoning district. Historically this was called spot zoning. Also, Park property cannot be sold according to some ordinances.

D. Draft of North Beach Master Plan Amendment

Master Plan Amendment

Also, as a result of the focus group, Staff anticipate that the proposed revisions to the North Beach area language of the Park Township Master Plan are generally self-explanatory. The following are a few items of note:

- Within the language, Staff intend to identify the Ottawa County properties held in public trust as well as the State of Michigan Department of Natural Resources property on the Future Land Use Map.

Pfost had a suggestion on page one. “A new Ottawa County Marina is located…” This should be an edit.

Staff will meet with the residents to discuss the height issue further, and subsequently present it to the Planning Commission for forwarding to the Township Board.

Direction was provided to Ransford to send the notice to plan to start the Master Plan amendment. In addition, staff will prepare other revisions as directed, following the future meeting with the residents.

PUBLIC COMMENT

Pfost opened Public Comment at 9:28 P.M.

There was no comment.

Pfost closed Public Comment at 9:28 P.M.
ANNOUNCEMENTS

The next meeting date is September 11, 2019. Emma Posillico will attend this meeting.

Pfost noted the Fire Chief, Scott Gamby, would like to speak to the Planning Commission during the September meeting.

ADJOURNMENT

Ervine moved, supported by Kleinjans, to adjourn the Regular Meeting at 9:33 P.M.

Voice Vote:

Ayes 6, Nays 0. Motion carried.

Respectfully submitted,

Judith R. Hemwall
Recording Secretary
August 17, 2019

Approved:
Pursuant to your recent direction, attached are several proposed text amendments to the Park Township Zoning Ordinance (PTZO). They include revisions to temporary agricultural signage, temporary commercial signage, Planned Unit Developments, ponds, and earth changes. In addition, pursuant to the request of Manager Fink, the proposed revisions include language regulating firewood sales and garage sales. For your convenience, language proposed for addition is shown in underlined text and deletions are shown in strikethrough text. Below, we summarize each of the proposed text amendments.

**Text Amendments**

**Agricultural Signage**

Section 38-575(a)(5) and (b)(b) – Permitted signs in each zoning district (AG District)

This section is proposed to be revised to allow one (1) or more temporary seasonal signs for businesses within the Agricultural and Permanent Open Space District, not exceeding a collective area of 64 square feet with no individual sign greater than 32 square feet. In addition, in an effort to comply with the decision in *Reed vs. Gilbert* the draft language includes revisions to create text that is content neutral.

Section 38-575(b)(b) is proposed as new language to allow the same signage as provided for within Section 38-575(a)(5), within the Rural Estates Residence District (R-1).

**Commercial Signage**

Section 38-575(c)1 – Permitted signs in each zoning district (C Districts)

This section is proposed to be revised to reference the newly created Section 38-575(b)(b) given the existing reference to signage allowed within the R-1 District. Further, however, that reference reduces the sign and dimensional provisions by fifty percent (50%) within C Districts.

**Planned Unit Developments**

Section 38-367 – Development requirements for PUDs with residential uses

The language is proposed to exclude any area of a development intended for the general circulation of vehicular traffic, whether public, private, or otherwise, from the net buildable acreage.
Section 38-368 – Dedicated open space requirements

Similar to the language drafted for Section 38-367 of the PTZO, the revisions propose to exclude any area of a development intended for the general circulation of vehicular traffic, whether public, private, or otherwise, from dedicated open space.

Ponds

Section 38-504 – Ponds

While the Planning Commission directed us to provide two (2) options concerning amendment to Section 38-504 – Outdoor Ponds, following our review of said section, the attached presents only one (1) option for amendment (although we provide additional suggestions below). In short, the language is drafted to exclude the term “outdoor” for reasons we expect to be self-explanatory, as well as to replace the Park Township Zoning Board of Appeals (PTZBA) with the Park Township Planning Commission (PTPC) as the official review body for ponds, as currently provided by the PTZO (excluding those permitted by the Zoning Administrator). No other substantial changes to the existing language are proposed.

In regards to alternative language, the Planning Commission could consider requiring a public hearing for any pond construction, which the language does not currently require. In addition, the Planning Commission could consider removing all storm water references since they are reviewed by the Ottawa County Water Resources Commissioner’s office as well as the Township Engineer, in part.

Earth Changes

Section 38-505 – Earth change regulations and permits

Similar to the language drafted for Section 38-504 of the PTZO, the proposed revisions replace the PTZBA with the PTPC as the official review body for earth changes. No other substantial changes to the existing language are proposed.

In regards to alternative language, we modified language regarding a public hearing to reference Section 38-36 of the PTZO, which requires a public hearing for all special uses. While we did not necessarily intend that earth changes are special uses, although it may be implied by our section reference, the Planning Commission could consider requiring special use approval for said activity. This would require additional standards of review as well as provide for a process of revocation beyond that provided by Section 38-505.

Use Regulations

Section 38-384(8) and Section 38-214(6) – Use regulations

Both of these sections of the PTZO need to be revised to replace the PTZBA with the PTPC in the event the Planning Commission adopts the revisions to Section 38-505 – Earth change regulations and permits.

Firewood Sales and Garage Sales

Pursuant to the request of Manager Fink, language regulating the sale of firewood and garage sales was drafted by the township Legal Counsel in response to said uses being conducted within the township without proper operating parameters. Firewood sales are intended to be a temporary seasonal use and limited to wood cut from the parcel or lot on which it is to be sold. Garage sales are intended to be a temporary accessory use for a period of not more than four (4) days, unless authorized by the Zoning Administrator and would be limited regarding sign placement and setback of the use.
As you will note within the firewood and garage sales language, the appropriate section numbers have not yet been assigned. In the event the Planning Commission agrees with the language, we will provide for said sections prior to public hearing.

**Anticipated Action**

Pending your review of the draft materials, the Planning Commission should provide direction to staff to either revise and return a second draft for review, revise and schedule the draft for public hearing, or schedule the draft as presented for public hearing.

The proposed amendments have been scheduled for your consideration at your September 11, 2019 meeting. If you have any questions, please let us know.

GLR
Planner

Attachment

cc: Howard Fink, Manager
1. **Agricultural Signage**

Section 38-575 – Permitted signs in each zoning district

(a)(5) On farms, one (1) or more temporary seasonal signs advertising business operations such as being “open” or the sale of agricultural products sold at a roadside stand on the farm Lot where the sign is located. The collective total square footage of such signs shall not exceed an area of 64 square feet per farm business and no individual sign shall exceed an area of 32 square feet. All such signs shall be separated by no less than fifty (50) feet.

(b)(b) In the R-1 Rural Estates Residence District, one or more temporary seasonal signs advertising business operations such as being “open” or the sale of products on the Lot where the sign is located. The collective total square footage of such signs shall not exceed an area of 64 square feet per business and no individual sign shall exceed an area of 32 square feet. All such signs shall be separated by no less than fifty (50) feet.

[to be inserted between (b) and (c) rather than shifting and rewording much more]

2. **Commercial Signage**

Section 38-575(c)1

In all “C” designated commercial zoning districts, signs shall be permitted only as follows:

(1) All signs permitted in the R-1 Rural Estate Residence District, subject to the same conditions, restrictions, and requirements as provided in the R-1 Rural Estate Residence District, except that political signs and real estate signs may be larger than permitted in the R-1 Rural Estate Residence District, but shall not be greater than 32 square feet in area, signs permitted by Section 38-575(b)(b) shall not exceed fifty percent (50%) of the dimensional provisions therein, and home occupation signs are prohibited.

3. **Planned Unit Development**

Section 38-367 – Development requirements for PUDs with residential uses

For planned unit developments which will devote all or a portion of the site to residential use, the following requirements shall apply, in addition to the requirements of Section 38-366:

(1) Number of dwellings permitted. An area which is requested for approval to a PUD shall only be developed in accordance with the density determined by using the minimum lot size required by the current zoning district for the area for residential uses according to the requirements of Section 38-367(2).

(2) Formula to determine number of dwellings on net buildable acreage. The number of dwellings which may be constructed within a PUD shall be determined as follows:
   a. Determine gross site acreage. The gross site acreage may include the public road right-of-way(s) to which the site abuts only if the legal description for the land includes the road right-of-way(s).
b. Subtract all the areas of existing wetlands, creeks, streams, ponds, lakes, or other water bodies, floodplains, critical dunes, and slopes of 20% or greater.

c. If requested by the Planning Commission or the Township Board, the determination of the existence of wetlands or floodplain areas on a parcel shall be demonstrated through a written determination by the Michigan Department of Natural Resources, or by a professional biologist, ecologist, environmental engineer or similar professional person deemed acceptable to the Planning Commission or the Township Board and in compliance with the standards for wetlands or floodplains established by the Michigan Department of Natural Resources at the time of the review.

d. Subtract acreage proposed to be devoted to nonresidential uses, except those areas proposed for, but not limited to, parks, playgrounds, and open space, which shall not be subtracted.

i. [New subsection of existing language] Facilities proposed for, but not limited to, community buildings, indoor recreational facilities, and similar facilities shall be considered nonresidential uses and shall be subtracted to determine net buildable acreage.

ii. Streets, alleys, drives, or similar improvements internal to the site designed for the circulation of traffic, with or without a right-of-way, shall be subtracted to determine net buildable acreage. The area for these improvements shall be calculated using a width of no less than 66 feet by their total length. Driveways generally perpendicular to the Street, alley, drive, or similar improvement shall not be included within this calculation.

d-e. The number of acres remaining shall be the net buildable acreage.

e-f. Multiply the net buildable acreage by the number of dwelling units per acre that results using the minimum residential lot size required by the current zoning district.

(3) Additional dwellings. Additional dwellings above those authorized by Section 38-367(1) and (2) may be allowed at the discretion of the Township Board following a recommendation by the Planning Commission if the development provides additional amenities or preserves additional open space, beyond that required by Section 38-368, which would result in a significant recognizable benefit to the Township and residents of the PUD. In considering whether the PUD will result in a significant recognizable benefit to the Township and the residents of the PUD, the Planning Commission and Board shall consider whether the PUD includes one or more of the following items as well as similar items:

a. Recreational facilities such as playground areas with play equipment, ball fields, bike paths, constructed lake, community building or similar recreation facilities, with the exception of golf courses.

b. Additional landscaping to preserve or enhance the views along the roadway.

c. Enhancement of existing wetlands, or creation of lakes or ponds which are not designed solely to function as retention or detention facilities, but are designed primarily as recreational or visual amenities, subject to applicable regulations.

d. Provision of additional unique open space or mature stands of trees which would be of recognizable benefit to Township residents and residents of the PUD.

e. Provision of a public or private community water and/or sanitary sewer system.

f. If additional dwelling units are to be allowed, the maximum number of dwelling units shall be determined according to the formula in Section 38-367(2)a and f by utilizing the gross site acreage. In no case shall the number of dwelling units exceed that allowed by this subsection.

(4) Mixed-use developments.
a. Where a mix of commercial, residential, or other combinations of land uses are proposed for one PUD, the density of the residential portion of the PUD site shall be calculated based upon the net buildable acreage of only that portion of the site where residential uses are permitted by the underlying zoning district.

b. The formula to determine additional dwellings for a mixed-use PUD shall be based upon the gross site acreage of only that portion of the PUD site where residential uses are permitted by the underlying zoning district.

Section 38-368 – Dedicated open space requirements

(a) A PUD with residential uses shall provide and maintain the following minimum amount of dedicated open space in accordance with the standards of this article. The Planning Commission shall have the discretion to recommend to the Township Board more than the minimum amount of dedicated open space required by the following, if such recommendation is made pursuant to the Planning Commission finding that the purpose and the objectives of the PUD District as required by Section 38-363 are met.

1. For land zoned AG, a minimum of 40% of the gross site area devoted to residential use shall be permanently preserved as dedicated open space.

2. For land zoned R-1, R-2 or R-3, a minimum of 20% of the gross site area devoted to residential use shall be permanently preserved as dedicated open space.

3. For land zoned R-4 or R-5 and not served with public or private sewer, a minimum of 20% of the gross site area devoted to residential use shall permanently be preserved as dedicated open space. For land zoned R-4 or R-5 and served with public or private sewer, and for those uses proposed for multifamily development, a minimum of 15% of the gross site area devoted to residential use shall be permanently preserved as dedicated open space.

4. For land zoned R-4 or R-5 and proposed for manufactured housing community, the regulations of Article IX of this chapter regarding minimum dedicated open space shall apply.

(b) Areas not considered dedicated open space. The following land areas shall not be considered, allowed, or approved as dedicated open space for the purposes of this section:

1. The area within any public or private road easement or right-of-way or within streets, alleys, drives, or similar improvements pursuant to Section 38-367(2)d.ii of this Ordinance.

2. Any easement for overhead utility lines, unless adjacent to qualified open space.

3. Only 50% of the area of any existing floodplain, streams, wetlands, lakes, ponds, and slopes which are 20% or greater shall be counted as dedicated open space.

4. The area within a platted lot or site condominium lot.

5. The area of required setbacks or required distances between buildings.

6. Proposed detention and retention ponds. Stormwater management facilities such as rain gardens, bioswales, vegetated filter strips, constructed wetlands, and similar facilities may be considered, allowed, or approved as dedicated open space upon recommendation of the Planning Commission and approval by the Township Board based upon a review of the purpose and objectives in Section 38-373 and the standards in Section 38-373(i).

7. Community drain fields if such areas are not completely underground.

8. Any area devoted to a golf course.

9. Landscaping buffers and greenbelts as required by ordinance.
4. Ponds/Earth Changes

Section 38-504 – Outdoor Ponds

(a) Required authorization. No outdoor pond shall be constructed, erected, installed, located, deepened, expanded, reconstructed, or widened unless it has first been authorized, as is provided in this section, by either the Zoning Administrator or by the Zoning Board of Appeals Planning Commission, as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). If an existing outdoor pond is to be expanded or widened beyond its existing footprint, the outdoor pond shall be brought into full compliance with all requirements of this section. If an existing outdoor pond is to be reconstructed within its existing footprint (e.g., deepened, cleaned out, etc., but not expanded or widened), the outdoor pond shall not be required to be brought into full compliance with all requirements of this section; provided, however, that an existing outdoor pond that is reconstructed within its existing footprint shall have a slope no steeper than 1:3. For purposes of this subsection, the term "existing outdoor pond" means an outdoor pond that was constructed, erected, installed, or otherwise located on a lot prior to February 10, 2000. All ponds that are constructed, erected, installed, or otherwise located on a lot on or after February 28, 2000, must, at all times, comply fully with all requirements of this section, including, without limitation, if and when the pond is deepened, expanded, reconstructed, or widened.

(b) Application. An application for authorization of an outdoor pond shall be made to the Township. The application shall include the following:

1. The name of the person who will be the owner of the outdoor pond. If the owner of the outdoor pond will be someone other than a natural person, the application shall indicate the name of the president/chief executive officer of the firm, association, partnership, joint venture, corporation, limited liability company, or other equivalent entity that will be the owner of the outdoor pond. If the owner of the outdoor pond will be a trust or an estate, the application shall indicate the name of the trustee or personal representative.

2. The location of the proposed outdoor pond or the existing outdoor pond that is to be deepened, expanded, reconstructed, or widened.

3. A statement of purpose or use of the outdoor pond.

4. The safety precautions to be taken to protect those persons making use of the outdoor pond or who might be in danger thereby. These safety precautions shall address not only those persons who are anticipated to utilize the outdoor pond and its adjoining lands but also any third parties who may elect to utilize the outdoor pond and its adjoining lands without authorization from the owner.

5. A survey prepared pursuant to the survey requirements of Public Act No. 132 of 1970 (MCL § 54.211), by a land surveyor licensed by the state. The survey map shall containing the following:
   a. The dimensions of the outdoor pond.
   b. The distances from the outdoor pond to the parcel's boundaries, to any existing or proposed structures on the parcel, to any septic system, to any existing outdoor ponds, lakes, streams or other watercourses located within the parcel and/or on adjacent properties, and to any buildings and structures on adjacent parcels.

6. Drawings of the outdoor pond prepared by an engineer licensed by the state showing or otherwise stating the following information:
   a. The depth of the outdoor pond.
   b. The surface area of the outdoor pond at the normal water elevation.
c. The surface area of the pond that meets the minimum depth requirement contained in Subsection (d)(6)b of this section.

d. The contour of the outdoor pond's side slopes and of the area in the general vicinity of the outdoor pond.

e. The volume of soil to be excavated for the outdoor pond and the volume of that soil which will be kept on the site of the outdoor pond.

f. Plans regarding excavation for the outdoor pond, including equipment access and the placement of soil on the parcel, if applicable.

g. Landscaping to be installed around the outdoor pond, including any berms, fencing or screening.

h. The effect of the outdoor pond on the water table of the parcel to be occupied by the outdoor pond, the water table of parcels in the vicinity of the outdoor pond, and on the quality and quantity of water available from wells on parcels in the vicinity of the outdoor pond. This information and analysis shall specifically address the consequences of any dewatering planned in conjunction with the construction, erection, installation, expansion, reconstruction, deepening, or widening of an out-door pond. In its discretion, the Zoning Board of Appeals Planning Commission may require that the engineer's statement concerning the matters included in Subsection (b)(6)h of this section state that it can be relied upon by the Township and by the owners of all lands within the vicinity of the outdoor pond.

i. Provisions for maintenance of the outdoor pond, including equipment such as bubblers, aerators, fountains, etc., and the method of filtration and treatment of the outdoor pond water, if applicable.

(7) A soil borings report showing soil borings on the proposed site of the outdoor pond. There shall be a minimum of one soil boring for each full pond acre for the first five acres of pond coverage and, thereafter, one additional soil boring for each additional five acres or fraction thereof of pond coverage, i.e., six borings for a pond with coverage of more than five acres but no more than 10 acres, seven borings for a pond with coverage of more than 10 acres but no more than 15 acres, etc. All soil borings shall be reasonably distributed so as to give comprehensive coverage of the proposed pond area and shall be at least to the anticipated depth of the pond in the vicinity where the soil boring is taken. A geotechnical engineer licensed by the state shall prepare the soil borings report.

(8) A statement concerning the hours of operation relating to the construction of the outdoor pond and the duration of the outdoor pond construction project.

(9) Drawings showing the low water clearance level over stumps and other materials constituting an underwater hazard.

(10) Such additional information as the Zoning Administrator or the Planning Commission Zoning Board of Appeals may request in order to evaluate the application.

(c) Procedure. The following procedures shall apply to applications for outdoor ponds.

(1) An application for outdoor pond approval for an outdoor pond that is less than 1 1/2 acres in size, covers less than 25% of the area of the lot on which it is to be located, and is the only outdoor pond on the lot shall be considered and decided by the Zoning Administrator. In considering the approval of such a pond, the Zoning Administrator may, in his discretion, waive any of the application requirements contained in Subsection (b)(6) and/or (b)(7) of this section. The Zoning Administrator may, in his discretion, decline to make a decision on a pond approval application and refer the decision thereon to the Planning Commission Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). No pond shall be approved pursuant to this subsection.
unless the pond meets all of the restrictions and requirements contained in Subsection (d) of this section.

(2) An application for outdoor pond approval for an outdoor pond that is not subject to Zoning Administrator consideration and approval pursuant to Subsection (c)(1) of this section shall be heard and decided by the Planning Commission Zoning Board of Appeals as a matter referred to the Zoning Board of Appeals for decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603). No pond shall be approved pursuant to this subsection unless the pond meets all of the restrictions and requirements contained in Subsection (d) of this section.

(d) Restrictions and requirements. The following restrictions and requirements shall apply to all outdoor ponds and outdoor ponds may only be located as follows:

1. Landscaping and visual enhancement of the parcel: all zoning districts.
2. Recreation, swimming and boating: AG, R-1, R-2, R-3, R-4, R-5 and C-2 Zoning Districts only as an accessory use to a permitted principal use of the parcel.
3. Livestock watering and fish production for commercial purpose: AG Zoning District only.
4. Wildlife habitat, not used for any commercial purposes: all zoning districts.
5. Source of water for irrigation, spraying or fire suppression: AG Zoning District and for a planned unit development if included as an approved accessory use in the planned unit development.
6. Stormwater retention, detention, or drainage: all zoning districts.

(a) The outdoor pond shall comply with all of the yard requirements for the zoning district in which it is located. As part of the authorization of a pond, the Zoning Administrator or the Planning Commission Zoning Board of Appeals may approve the location of an outdoor pond in a front yard.

(b) Each outdoor pond shall have a required depth over a minimum of 15% of the area of the outdoor pond as follows:

<table>
<thead>
<tr>
<th>Pond Size (acres)</th>
<th>Required Depth (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 or smaller</td>
<td>10 or more</td>
</tr>
<tr>
<td>Larger than 1</td>
<td>15 or more</td>
</tr>
</tbody>
</table>

(c) If the Planning Commission Zoning Board of Appeals shall determine that compliance with the required depth requirement of this subsection is not necessary to maintain acceptable water quality in the outdoor pond, then the Planning Commission Zoning Board of Appeals, in its discretion, may waive the required depth requirement of this subsection.

(d) The side slopes (contour) of an outdoor pond shall be constructed and maintained below normal water level with a slope no steeper than 1:6 until a depth of three feet and thereafter with a slope no steeper than 1:3.

(e) The side slopes (contour) of an outdoor pond shall be constructed and maintained above the normal water elevation with a slope no steeper than 1:6 for a minimum distance of 10 feet measured along the slope from the normal water elevation. This ten-foot area shall be maintained with stone, rock, sand, or other similar materials.

(f) All stumps and other materials that could constitute an underwater hazard shall be removed; provided, however, that stumps and other materials need not be removed if there is at least a ten-foot clearance between the stump or other underwater material and the normal water elevation of the pond.
The discharge pipe from any outdoor pond without a direct outlet to an established drain shall have the drain size designed and engineered by an engineer licensed by the state and approved in writing by the Ottawa County Drain Commissioner. No outdoor pond shall be wholly or partially emptied in any manner that will cause water to flow upon the land of another and no outdoor pond shall be wholly or partially emptied upon any land if a storm drain is readily accessible to the premises on which the outdoor pond is located. Discharge into the public sanitary sewer is prohibited.

No water drawn from a governmentally owned or operated water system shall be used in connection with the filling or operation of an outdoor pond.

If any sand, topsoil, gravel, or other such material is to be removed from the parcel on which the pond will be located, all requirements of this article and all other Township ordinances, rules, and regulations shall be complied with as well as all requirements of all county, state, and federal ordinances, statutes, laws, rules, and regulations.

No outdoor pond located on land that is not included in a subdivision, site condominium, or other residential development consisting of multiple building sites shall be located closer than 75 feet from the exterior boundary of the land on which it is located. No outdoor pond located inside a subdivision, site condominium, or other residential development consisting of multiple building sites shall be located closer than 75 feet from the outside boundary of the subdivision, site condominium, or other residential development, consisting of multiple building sites. However, if written consent is obtained and provided to the Township from the adjoining landowner, the Zoning Administrator (if he is considering and deciding on the outdoor pond application) or the Planning Commission/Zoning Board of Appeals (if it is considering and deciding on the outdoor pond application) may, in approving an outdoor pond, permit a setback of less than 75 feet in either of the two situations described in this subsection, subject, however, to a minimum setback of 25 feet in any event.

Standards. In considering approval of an outdoor pond, the Zoning Administrator and the Planning Commission/Zoning Board of Appeals shall consider the following standards:

1. Whether all other permits or approvals from other governmental units or agencies have been obtained; for example, approval of the Ottawa County Drain Commissioner for any ponds that would come under the jurisdiction of that office and any approval/permit that may be under Part 301 of the Natural Resources and Environmental Protection Act (MCL § 324.30101 et seq.).

2. The location of the outdoor pond on the parcel and its proximity to adjoining parcels.

3. The potential for the outdoor pond to become a safety hazard for adjoining property or the public.

4. The number of other outdoor ponds on the parcel or in the vicinity of the parcel.

5. The character, nature and size of the outdoor pond and its effect on the parcel, including the effect on other appropriate uses of the parcel.

6. The potential for the outdoor pond to result in stagnant water or insect breeding so as to become a nuisance.

7. The effect of the outdoor pond on adjacent properties, on wells and the water table in the vicinity and on the health, safety and welfare of the public.

Conditions for authorization. In giving its authorization, the Zoning Administrator or the Planning Commission/Zoning Board of Appeals may:

1. Require financial assurance for the completion of the outdoor pond project within the time set in the issued building permit. The financial assurance shall be in the form of cash, a bond, or a letter of credit acceptable to the Planning Commission/Zoning Board of Appeals and which
shall permit the Township to access such funds to enable the Township to remedy a violation of the authorization and the issued building permit. The Planning Commission/Zoning Board of Appeals shall determine the amount of such bond or letter of credit at the time of authorization.

(2) Require proof of liability insurance in amounts acceptable to the Planning Commission/Zoning Board of Appeals, which shall be in place at the time the building permit is issued and shall be maintained until the pond construction project is completed.

(3) Require that the outdoor pond be enclosed with a wall, fence, or other type of enclosure. Such wall, fence, or other type of enclosure shall not be less than four feet above the grade line. The wall, fence, or other type of enclosure shall be designed so there are no openings of such a nature or size as to permit any child to pass through or under the fence, wall, or other type of enclosure except as a gate or door, and shall be of a type not readily climable by children. All gates or doors leading to an outdoor pond, except a door in any building forming a part of the enclosure, shall be kept closed when no one is present on the lot on which the outdoor pond is located and such gates and doors shall be fitted with a positive latching device which will automatically latch them when said gate or door is in a closed position.

(4) Require the construction, installation, operation, maintenance, and repair of bubblers, aeration equipment, fountains, or similar devices intended to maintain and enhance the outdoor pond water quality.

(5) Impose such other conditions or require such modifications in the plans for the outdoor pond as are determined reasonable and necessary for the protection of the health, safety and welfare of the general public.

(g) Responsibility. By applying for approval of the outdoor pond, applicant shall be deemed to have consented to and agreed to all of the following:

(1) That the applicant and all parties at any time owning or having any interest in the premises on which the outdoor pond is located agree that they shall, at no time, petition for the establishment of a lake board pursuant to Part 309 of Public Act No. 451 of 1994 (MCL § 324.30901 et seq.), and they shall, at no time, petition for or otherwise investigate any other legal proceeding under any federal or state statute or other provision of federal or state law which would result in the imposition of an assessment, charge or other financial responsibility on the Township in connection with the outdoor pond. Without limiting the generality of the immediately preceding sentence, applicant and all parties at any time owning or having any interest in the premises on which the outdoor pond is located shall at no time petition for the maintaining of normal height and level of waters, maintenance, improvement, or development of the outdoor pond for fishing, wildlife, boating, swimming, algae and other vegetative controls, or for any other recreational or agricultural use.

(2) That the applicant has designed and engineered the outdoor pond and applicant assumes all responsibility with respect to the adequacy of its design, the adequacy of any outlet, the safety of the outdoor pond with respect to adjoining landowners and the public generally, and all other aspects of the ponds’ construction, erection, installation, location, repair, maintenance, expansion, widening, reconstruction, or deepening.

(3) That the applicant shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Township and its officers, board, Planning Commission, Zoning Board of Appeals, employees, and agents against any and all claims, damages, demands, expenses, liabilities, and losses of any character or nature whatsoever arising out of or resulting from the construction, erection, installation, location, maintenance, repair, reconstruction, deepening, expanding, or widening of the outdoor pond, including, but without limitation, any liability to third parties on account of any negative effect caused by the outdoor pond on
the water table of parcels of land in the vicinity of the outdoor pond. The indemnification obligation provided in the preceding sentence shall include the payment of all reasonable attorneys' fees and other expenses of defense.

The provisions of this subsection shall be included as part of the application for an outdoor pond and the applicant shall be required, as a condition of making an application for an outdoor pond, to accept and agree to all of the provisions of this subsection.

(h) Building permit. Upon authorization and compliance with all conditions, the Zoning Administrator shall issue a building permit for the pond construction project. The building permit shall be valid for a period of one year, provided that the permit may be renewed prior to its expiration date by the Zoning Administrator for a period not exceeding an additional six months.

(i) Garden/landscaping ponds. This section shall not apply to small garden and/or decorative landscaping ponds having a permanent liner with an aggregate surface area of 150 square feet or less.

(j) Verification of compliance. Upon completion of the outdoor pond, the engineer who prepared the drawings of the outdoor pond as required in Subsection (b)(6) of this section, unless that requirement has been waived by the Zoning Administrator pursuant to Subsection (c)(1) of this section, shall certify that the outdoor pond has been constructed, erected, installed, located, deepened, expanded, reconstructed, or widened in accordance with the application and the Zoning Administrator or the Planning Commission approval. The engineer's certification shall be made within 30 days of the completion of the outdoor pond and prior to the utilization of the outdoor pond for its intended purposes. The Zoning Administrator may, in his discretion, require a review by the Township's engineer, at the sole cost and expense of the applicant, to verify such compliance. In such circumstance, the applicant shall deposit with the Township a fee in the amount of the reasonable anticipated cost of the Township Engineer's review. If the advanced payment of fees exceeds the actual expense of the Township Engineer's review, the Township shall return the entire or unused portion of the deposit to the applicant. If the advanced payment is insufficient to pay the actual expense of the Township Engineer's review, then the applicant shall promptly pay the Township the balance of the engineering expense.

Section 38-505. Earth change regulations and permits.

(a) Permit required. Except as exempted under Subsection (e) of this section, no earth change shall be conducted on any parcel of land unless such earth change has been authorized by and is in compliance with a permit issued pursuant to this section. For purposes of this section, the term "earth change" means a man-made change in the natural or existing cover or topography of land, including without limitation, the excavating, mining, removing, importing, moving, filling, stockpiling, depositing and/or storing of topsoil, subsoil, sand, gravel, clay, aggregate, stone, sludge, ash and/or any similar materials and resources.

(b) Application for permit. An application for an earth change permit shall be filed with the Zoning Administrator. An application fee, as established by the Township Board from time to time, shall be paid when the application is filed. Such application shall contain the following information and documentation:

(1) The name and address of the applicant. If the applicant is not an individual, the name and title of a contact person for the applicant shall be provided.

(2) If the applicant is not the owner of the parcel, the name and address of the holder of record title and the nature of applicant's interest in the parcel shall be stated.
A survey and legal description of the parcel for which the earth change permit is sought.

A statement together with a map that details the specific nature and extent of the proposed earth change activity including the following:

(a) The type of materials involved in the proposed earth change.

(b) A fair and reasonable estimate of the number of cubic yards of materials involved and description as to what volume of materials are to be excavated from, removed from, imported onto, moved on and/or stored on the parcel as part of the proposed activities.

(c) A map depicting the proposed contours of the parcel upon completion of the earth change activities and showing the location of the proposed earth change activities in relation to the boundaries of the parcel and to buildings, septic systems, existing bodies of water and watercourses, both on the parcel and on adjacent lands.

(d) The location and type of any fencing or other screening to be located on the parcel during the earth change activities.

(e) The proposed landscaping and/or revegetation to secure and stabilize the ground and any slopes during and at the completion of the earth change activities.

(f) A description of the type and amount of equipment proposed to be employed in the earth change activities.

(g) The points of ingress and egress for the parcel and the route the applicant intends to use in transporting materials to and/or from the parcel. The location and size of aprons and scrub pads, if any are proposed, shall be detailed, together with a cleaning and maintenance plan. Aprons and scrub pads may be required as a condition to issuance of the permit and, if so, they shall be constructed of concrete or asphalt with scrub pads having a minimum length of 100 feet from the road onto the parcel and a minimum width of 12 feet and with aprons having a minimum radius of 25 feet, unless the Planning Commission determines other dimensions under the circumstances of the project.

(h) Any proposed road signage for "slow trucks," "truck crossings," etc.

(i) Proposed hours of operation.

(j) Duration of earth change activities.

(5) Information regarding approvals and/or permits required under any other federal, state, local government or agency.

(6) Information regarding financial assurance (in the form of a bond or letter of credit) to be provided to the Township to ensure compliance with the permit.

(c) Action on application. If the Zoning Administrator determines the application to be complete, the application will be forwarded to the Planning CommissionZoning Board of Appeals for action as a matter for a Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603) and Article II, Division 2, of this chapter.

(1) In making its decision, the Planning CommissionZoning Board of Appeals shall consider the following standards:

(a) The nature of the proposed earth change, including without limitation, whether materials are to be excavated and removed from, or imported to, or moved upon the parcel and the purpose for the proposed earth change, together with the clearing of the land.

(b) The size of the parcel.

(c) The effect of such earth change on neighboring parcels and whether such earth change can be conducted in a manner harmonious with the neighboring uses.

(d) The potential of the earth change to create safety concerns or hazards, to cause problems with noise, fumes, dust, lights and vibrations, to create erosion problems, to alter the
groundwater table in the vicinity, to cause flooding or diversion of water, to result in the creation of sand blows, stagnant water pools, bogs and other similar problems affecting the adjacent properties and environment in the vicinity.

(e) The change in the topography and loss of natural resources.

(f) The types of trucks and other equipment to be used and the potential for traffic congestion, damage to roads, noise and debris, and safety hazards resulting from trucks and equipment used in the earth change activities.

(g) Whether the earth change activities comply with all applicable federal, state, county and local laws, ordinances, rules, regulations permits and requirements.

(2) The Planning CommissionZoning Board of Appeals may approve, approve with appropriate conditions, or deny the application for an earth change permit and shall state the findings and conclusions for its decision. The Planning CommissionZoning Board of Appeals shall have the right subsequently to impose additional conditions of approval or to amend any conditions of approval if reasonably necessary to achieve the purposes of the zoning chapter and/or address any change in circumstances or problems; provided that, such action shall not be taken without notice to the applicant and a hearing pursuant to Section 38-36.

(3) If the Planning CommissionZoning Board of Appeals approves, with or without conditions, the issuance of the earth change permit, it shall also establish the appropriate amount and type of financial assurance to be provided by the applicant to ensure compliance with the permit and to make funds available to the Township to correct any noncompliance.

(d) Issuance of permit. Upon approval of the Planning CommissionZoning Board of Appeals, the Zoning Administrator at the request of the applicant shall issue an earth change permit. The issuance and the permit are subject to the following conditions:

(1) The applicant must request and obtain the permit within six months from the date of approval by the Planning CommissionZoning Board of Appeals; otherwise the approval is null and void and reapplication is required.

(2) At the time the permit is requested, the applicant shall provide the required financial assurance.

(3) At the time the permit is requested, the applicant shall provide proof of adequate comprehensive general liability insurance and such insurance shall be maintained during the earth change activities.

(4) The permit shall allow only those earth change activities specified in the terms and provisions of the application, as modified and/or supplemented by any conditions of approval made by the Planning CommissionZoning Board of Appeals, which terms, provisions and conditions shall be deemed included in the permit without further recitation.

(5) The permit issued shall not be transferable or assignable by the applicant, unless an application to approve such transfer or assignment is made and the Planning CommissionZoning Board of Appeals, after a hearing, approves the transfer or assignment, which approval may be with appropriate conditions. The permit, including all terms, provisions and conditions, shall be binding upon the applicant, parties having an interest in the parcel and any successors or assigns.

(6) The permit shall be issued for the duration of the earth change activities as approved in the decision of the Planning CommissionZoning Board of Appeals, provided however, that no permit shall be issued for a period exceeding three years. Prior to expiration of the initial permit period, the applicant may request the Zoning Board of Appeals, in its discretion, to grant an extension of the permit not to exceed one year. Such request will be subject to the laws, ordinances, rules and regulations then in effect and, there is no assurance or commitment for approval of such request under the laws and circumstances that may exist.
(e) Exemptions from permit requirements.

(1) The following earth change activities do not require a permit, but are subject to the provisions of Subsection (e)(2) of this section:
   a. Up to 2,500 cubic yards of topsoil, subsoil and sand may be removed from or imported to a parcel for purposes of the construction of a building or structure on the parcel.
   b. Topsoil or sand may be moved from one part of a parcel to another area of the same parcel.

(2) Exempted earth changes shall comply with the following standards:
   a. The earth change shall not create or cause a safety hazard, erosion by wind or water, alteration of groundwater tables and other similar problems.
   b. The earth change shall not cause or create sand blows, stagnant water pools, bogs or any similar type circumstances that cause injury to adjoining properties.
   c. The earth change shall not cause a significant change in the natural topography or have an adverse or destructive impact on the environment or a natural resource.
   d. The earth change shall not result in traffic congestion, road safety hazards or other similar problems.

(f) Violations. A violation of this section or of any term, provision or condition of an approval granted and/or permit issued under this section shall constitute a violation of this chapter, and in addition to the remedies provided in this chapter, the Zoning Administrator may issue a stop work order and/or may revoke or cancel any permit in the manner provided in Section 38-33(f).

(g) Relation to ponds. The requirements of this section are in addition to and separate from any requirements, approvals and permits relating to the creation of ponds under Section 38-504.

Section 38-184 – Use regulations

(8) – Removal and processing of top soil, sand, gravel, or other such minerals when authorized by the Planning Commission Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL S125.3603) in accordance with Section 38-505.

Section 38-214 – Use regulations

(6) – Removal and processing of top soil, sand, gravel, or other such minerals when authorized by the Planning Commission Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to Section 603 of the Zoning Act (MCL S125.3603) in accordance with Section 38-505.

Firewood Sales

The sale of firewood is considered a seasonal temporary use within any zoning district and is subject to the following conditions.

A. All firewood sales are limited to firewood that has been cut from the parcel or lot where the firewood is to be sold. A person may not sell firewood that has been cut from a parcel or lot other than the lot where the firewood is to be sold.

B. Firewood sales must be conducted in a manner that does not create a traffic hazard or nuisance to neighboring properties.

C. Storage of firewood must be stacked in a neat, compact and orderly manner to avoid creating a harborage for animals, rodents or other pest infestation or other hazard to the public safety
and welfare. Firewood must be stored in a structure or rack that is at least three (3”) inches above the ground, not more than forty-eight (48”) inches in height, and not more than eight (8’) feet in length.

D. Any signs advertising the sale of firewood must conform to the provisions of the zoning district in which the property is located.

Garage Sales

Garage sales, rummage sales, yard sales, moving sales, and similar activities are considered temporary accessory uses within any residential zoning district and are subject to the following conditions.

A. Any garage sale, rummage sale or similar activity will be allowed without a temporary Zoning Permit for a period not to exceed four (4) days within a six (6) month period. Any such activities operating for a period of time in excess of four (4) days will require a temporary Zoning Permit from the Zoning Administrator.

B. All such sales must be conducted a minimum of thirty (30’) feet from the front lot line and a minimum of fifteen (15’) feet from the side lot lines.

C. No signs advertising such sales may be placed upon a public right of way or other public property. All signs advertising such sales must be placed upon private property with the consent of the owner of the private property and must be removed within twenty-four (24) hours of the conclusion of the sale or similar activity.
July 9, 2019

Mr. Doug Dreyer  
Chair, Zoning Board of Appeals  
Park Township  
52-152nd Avenue  
Holland, MI 49424

Re: Interpretation Request of Section 38-492(c)

Dear Chairman Dreyer,

The following is a request for an interpretation of Section 38-492(c) of the Park Township Zoning Ordinance by the Zoning Board of Appeals.

Section 38-492(c) states that,

“A pool of which any wall is greater than 30 inches above grade shall not be located in the required rear yard of a waterfront lot. Any fence used as a barrier for a pool located in the rear yard of a waterfront lot shall be a see-through type which results in minimal visual obstruction.”

There have been recent instances where an applicant has submitted plans for an in-ground pool located in the rear yard of a waterfront lot. However, applicants are then building up the grade, recently on the side of the pool nearest to the waterfront, in order to make it an in-ground pool. Oftentimes, a retaining wall is then built for the pool, which can create a tall visual barrier towards the waterfront (sample photographs attached). It is my interpretation that the intent of Section 38-492(c) is to reduce visual obstructions in waterfront lots, through the requirement that fences be see-through. However, I do not believe that the current language grants me the authority to regulate retaining walls for in-ground pools on waterfront lots.

As such, I request your interpretation on the following questions:

1. As the Zoning Ordinance references “30 inches above grade” – is grade considered finish grade or existing grade?
2. Does the ZBA consider retaining walls for pools in the rear yard of waterfront lots in the same manner as fences, and not allow them to extend 30 inches above grade?
I appreciate your consideration of this matter.

Respectfully,

Emma Posillico
Zoning Administrator
Phone: 616-738-4238
Email: zoning@parktownship.org