MINUTES
PARK TOWNSHIP
PLANNING COMMISSION
Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
December 11, 2019
6:30 P.M.

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

Staff: Greg Ransford, Planner, Dan Martin, Legal Counsel

APPROVAL OF AGENDA:

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

Voice Vote:

Ayes 7, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Garlinghouse noted two changes on pages 2 and 3; Kleinjans also pointed out two corrections on page 2, and Nestel suggested a rewording on page 4 regarding the Township Board’s intent about firewood sales. Further, Ransford noted that the minutes should reflect action on the Swimming Pool language within section 38-492. These were duly noted for the record.

Motion by Ervine, supported by Garlinghouse, to approve the November 13, 2019 Regular Meeting Minutes as amended.
Voice Vote:

Ayes 7, Nays 0. Motion carried.

NEW BUSINESS:

A. Public Hearing

Pfost advised that he had a conflict of interest and recused himself for the first agenda item.

Ervine moved, supported by Garlinghouse, to allow Chair Pfost to recuse himself for the Geerlings Development Company Special Use Application item.

Voice Vote:

Ayes 6, nays 0. Motion carried.

Vice-Chair Ervine assumed the role of chair for the remainder of the meeting.


Ransford said the zoning ordinance permits for existing lots of record to be merged as noted pursuant to a special use permit from the Planning Commission. He pointed out that the Planning Commission may allow contiguous lots of record under the same ownership to merge into a lot less than the minimum requirement of the zoning district in which it is located but equal to or similar to existing lots in the surrounding neighborhood as a special use so long as it meets the four standards, as well as the general special use standards.

Ransford provided background for the request. The applicant states there are 18 lots of record in the Jenison Park Plat that are part of the proposed area. In addition, the applicant believes the proposed Special Use would create nine residential lots that are less than the minimum requirements but similar to the existing lots in the surrounding neighborhood. The subject area is located within the R-3 Low Density One Family Residence Zoning District.

Ransford explained that the Township hasn’t defined neighborhoods in its ordinances. The Planning Commission can interpret the term “neighborhood” as it believes is appropriate and should consider whether the lots as proposed are consistent, equal to or similar to other lots in the surrounding neighborhood, based on the four related standards.
Ervine asked Ransford if the numbers are accurate regarding the lot sizes in the proposed plan.

Ransford said the numbers used were from the Ottawa County GIS system, however, the Township and the applicant varied on the data to a minor degree.

Ervine asked for confirmation there are nine lots that are requested. Ransford confirmed that number.

Ervine opened the Public Hearing at 6:39 P.M.

The applicant’s representative, Attorney Bill Sikkel, spoke for the Geerlings Development Company and Big Sky Enterprise, LLC, which owns the property. He focused on two primary questions prompted by the Staff Report: 1) How many lots are allowed? The property consists of 19 platted lots in Jenison Park. The Planning Commission may allow contiguous lots of record to be merged under the same ownership into a lot less than the minimum requirement, 15,000 square feet. Is the tax parcel the lot of record or is the platted lot the lot of record? He believes that the plat is the lot of record. They want to merge to the existing platted lots, 19 into 9 new lots. The staff report says the tax parcel is the lot of record.

Mr. Sikkel noted a similar request related to the Harrington School Project. That was a single tax parcel but there were 47 platted lots. Mr. Sikkel noted that those platted lots were made into 20 lots even though it was a single tax parcel. It is his opinion this is a similar issue to go from 19 platted lots to 9 lots of record.

2) The second issue is the lot size of the proposed new lots. He cited the ordinance language (Sec. 483(d)(4)), which states the lots may be merged to something less than the minimum requirement but equal to or similar to existing lots. He noted that the ordinance doesn’t require the new lots to be the average size of all lots in the surrounding neighborhood, and it doesn’t say how many lots. He asked how this should be interpreted.

Mr. Sikkel noted the drawing in the submitted packet. He pointed out what the neighborhood looks like. He compared some of the lots to what the developer wants to do. The proposed new lots range from 6,743 square feet to 9,796 square feet. He suggested that in one section 11 out of the 15 existing lots are approximately the same size range as the proposed lots. He suggested that to the south there are four lots that are within the same size range of the proposed lots. South of the proposed development along Scott Street he suggested there are four out of six lots that are approximately within the size range of the proposed lots. He noted that along Park Avenue, many lots are larger in size than what is proposed. The question is: are they equal to or similar to the existing lots? He pointed out 26 lots within the surrounding neighborhood that he believes are within the same size parameters as the proposal.

The proposal recognizes some of the lots are larger. Mr. Sikkel noted that all of the proposed lots are larger than 6,750 feet. Mr. Sikkel suggested that because the ordinance does not
require that the new lots be the average size of the existing lots, and doesn’t use any
mathematical formula, Planning Commission members should use an “eye test” Does this
proposal look and feel the same as the lots already developed in the neighborhood? The
developers are aware the Master Plan supports smaller neighborhoods and is trying to preserve
the character of the neighborhood.

Garlinghouse commented the existing lots are twice as long as what is proposed, given the
proposed alley divides the proposed lots in the special use application. It was her opinion the
proposed lots do not look and feel as the existing neighborhood lots.

Martin asked if all of the lots proposed are larger than 6,750 square feet. Sikkel said the
smallest lot is 6,743 square feet. One proposed lot is smaller but the rest are larger.

Martin noted that he agreed with Sikkel regarding the definition of an existing lot of record.
Martin shared copies of the Ottawa County GIS illustration, the first page of which shows the
platted lots of record in the Jenison Park Plat, the second page of which showed both the
platted lots of record and the tax parcels, and the third of which showed only what is an existing
tax parcel. Martin noted that these are 19 existing platted lots of record that have been
previously combined in part to comprise 8 existing tax parcels. Now that they are in common
ownership, he noted that the courts would consider the 19 existing platted lots that comprise 8
existing tax parcels to be one property for a takings analysis.

Martin noted that pursuant to the zoning ordinance, Subsection (d)(3) regarding lots that have
been previously combined under Subsection (d)(1) shall not be split into new lots that do not
meet the zoning district requirements. Martin noted that the Planning Commission could argue
that two or more lots adjacent to one another and held under common ownership have
previously been combined under (d)(1), whether or not they have been given new tax parcel
numbers, and therefore cannot be split unless they comply with the zoning district requirements.
Or, the Planning Commission could find that the standards in Subsection (d)(4) have been met,
and allow the special use application as proposed, or a smaller number of lots that are larger
than are proposed that the Planning Commission believes are more equal or similar to the
existing lots in the neighborhood.

DeHaan asked when this area was platted. Martin said it was platted in the late 1800s, and
he’d check the plat for the exact date.

Jeff Pett said he wrote to the Township and stated most of the neighbors are against this
proposal. He urged the Planning Commission to look at the broader view of the neighborhood
regarding this proposal. It is not clear what the developer wants for the neighborhood.

Mitch Padnos noted the plat was laid out in 1891 for Jenison Park. Martin confirmed that date.
Padnos stated these proposed lots are 60% smaller than what is already there. The plan should
be more in line with R-3 requirements. He is opposed to the alley in the plan. There will be too
much density, resulting in both parking and traffic problems. He shared photos of the property
as it has been used during yacht center activity – there isn’t enough parking for the PUD so they have been using the property subject to the special use application. He noted that several proposals for this property have been denied in the past. The application is silent on boating lifts and what impact they will have.

Chris Meyer, Legal Counsel for Padnos, stated that Mr. Sikkel cited the Harrington School project as precedent, and he agreed that the Planning Commission should consider it as precedent. Mr. Meyer referenced the Township ordinance (d)(3): “Lots combined under Subsection (d)(1) shall not thereafter be split, re-divided or otherwise reduced in area unless all the resulting lots comply with the minimum lot area requirement for a buildable lot in the district in which the land is located.” In the Harrington School project those 47 lots that comprised one tax parcel were allowed to be merged into 20 lots, each of which were equal to or larger than the requirement for the R-3 zoning district. Each one of those lots from the Harrington School project met the requirement. Clearly, Harrington School is a precedent. He said the part of the ordinance, (d)(3), is what applies here.

In Mr. Meyer’s opinion, the “eyeball test” for the neighborhood is a soft standard for a decision. He recommended that the Planning Commission use a reasonable formula for determining whether the proposed lots were equal or similar to existing lots in the neighborhood, even if the ordinance doesn’t specify a particular formula. He suggested that the Planning Commission take the average lot size of 12,918 square feet – their proposed average lot is less than that – or take the median, which is 10,611 square feet. By that calculation you would have six not nine lots. Finally you have a Master Plan – that is your guide. It says in-fill development on the south side of Lake Macatawa should meet R-3 requirements. It can be done. Mr. Meyer suggested that if the special use application were to be approved, then the Township would be spot zoning in this case. He requested the proposal be denied.

Nestel asked if Meyer had an opinion if the developer had a second look at the setbacks.

Meyer said this would require a zoning variance.

Dale Koch lives on the south side. He asked if a retention pond would be part of the plan.

Milt VanVente sent a letter to the Township and understands the difference between a lot and a parcel. He owns a large lot along Scott Street. He has a large oak tree on one of his lots and wants to preserve it. It is between 300 and 400 years old. Compromise is acceptable, he loves the neighborhood, but there is no public water. The residents are on wells, and Scott is a narrow street. Infrastructure will be a problem.

Ann Kiewel lives in the neighborhood. She recalled they were approached as a neighborhood to allow something that they could live with and after much discussion with the Township they agreed to go along with it. However, the proposal ended up being rejected. This proposal makes no sense to her. She envisions a strip development which would create even more traffic on a narrow street.
Donna Nugent has lived in the Jenison Park area all her life. She lives a block east of this property. She expects changes but requests they are approved within the guidelines of the Township zoning ordinance.

Ervine closed the Public Hearing at 7:25 P.M.

Ervine asked Martin for comment.

Martin said he wasn’t asked by the Township to be involved in the Harrington School situation. He stated that because the Planning Commission didn’t review a special use application for the Harrington School project, then the resulting parcels that were created out of the 47 platted lots and one tax parcel would most likely have been in compliance with the Township zoning ordinance requirements. Martin advised that the Planning Commission has options: request more numbers from the developer for clarification if you believe the additional information is necessary for you to consider the standards to make your decision; approve the proposal as presented if you believe that it meets the standards; or deny the application as presented and tell the developers they have to develop the property as it exists, or create new lots out of the combined lots that are no smaller than those permitted by (d)(3), meaning the new lots would have to meet the 15,000 square feet requirement.

Martin said the lots that are in contiguous ownership must be combined under Subsection (d)(1), but subject to the possibility of merging into smaller lots than permitted under the zoning ordinance as provided in (d)(4); however, once the lots of record that are contiguous and in common ownership are combined under (d)(1), then they cannot be divided unless the resulting lots comply with the zoning requirements. Martin noted that from a Court’s standpoint, in a regulatory takings analysis, the court will look at the property as a whole, which once you have property that is contiguous and under one common ownership, it is generally considered by the courts to be one property, and then the court looks at whether the Township’s regulations deprive the owner of the economically viable use of the property. Martin noted that the US Supreme Court recently ruled that it looks at three factors to determine whether the property in question is one or more pieces of property, including the treatment of the land under state and local law. Martin noted that the Township ordinance states that nonconforming existing lots of record that are contiguous and in common ownership have got to be combined to become more conforming, and cannot be subsequently split.

Ervine asks if the developers have the right, as the property is now, to develop the property.

Martin said they have to combine the parcels according to (d)(1) requirements, as the platted lots are contiguous and in common ownership. The property owner would have to either comply with the zoning ordinance requirements for any new lots to be created pursuant to the (d)(3) requirement, or get the special use authorization from the Planning Commission pursuant to the (d)(4) provision for something smaller than the lot size required in the zoning district.
DeHaan said this proposal meets only one of the eight criteria. The developer is asking for nine parcels. In his opinion, the developer wants to maximize his investment.

Martin stated that from a regulatory-taking analysis, the Court is not going to ask whether the developer is able to maximize his investment, but rather will ask if it will allow him a reasonable return on his legitimate investment-backed expectations.

Kleinjans observed that the Harrington School is an excellent comparison. He noted that the 47 lots of record that were contiguous and in common ownership were combined into one tax parcel, and were subsequently allowed to be re-divided into lots that complied with the minimum requirements of the zoning district. He suggested that the Planning Commission follow that precedent, as noted by the attorneys.

Nestel said she was persuaded by the Master Plan guideline.

Garlinghouse said the Planning Commission decided this area was R-3 – we cannot go against the Master Plan. She disagreed with this proposal.

Eade is influenced by the Harrington School precedent. He would be comfortable with more square feet. This could go to the Zoning Board of Appeals for yard setback variances.

DeHaan asked about water for the project.

Sikkel said the plan is the lots would be served by municipal water.

Kleinjans said he likes some of the small lots to allow more people to be near the water. He was sensitive to what the neighbors said about the look of the homes.

Martin said the size, character, and nature of the buildings to be constructed, as well as the effect of the proposed use, being single family houses, on the surrounding neighborhood are both important considerations and part of the standards the Planning Commission must review.

Garlinghouse was also concerned about location of boat lifts and outdoor storage which can be an issue.

Ervine asked if the Planning Commission wanted to review the standards, send the request back to the applicant, or deny the request.

Kleinjans moved, supported by Garlinghouse, to deny the applicant’s request as presented.

Martin recommended the Planning Commission review the standards to explain the rationale for the denial.

Kleinjans reviewed the standards for Section 38-483(d)(4) Contiguous Lots of Record:
a. **The size, character and nature of any buildings to be erected and constructed on the lot;**

The developer should make the lots larger to make them more conforming with the neighborhood. The plan for an alley and the planned lookalike construction of the proposed single family buildings does not conform with the surrounding neighborhood. The surrounding neighborhood has been developed with an eclectic style of structures, and the row houses would stand out. The standard is not met.

b. **The effect of the proposed use on adjoining properties and the surrounding neighborhood;**

The proposed special use of 8 smaller lots as presented would have a negative effect on both adjoining properties and the surrounding neighborhood. Problems include the planned alley, and increased density, both of which would lead to traffic congestion in the neighborhood. Another problem is high water. The impact of the infrastructure that would have to be put in place is a potential problem. Only four of nine properties would be conforming which is 44% of the total proposed units. The current square footage is too small. The lot size proposed is not compatible and the size of the proposed units are considerably smaller than what is there now. The standard is not met.

c. **Available parking for the intended use; and,**

There is a plan for adequate parking so this standard is met.

d. **The size of the lot in question compared to the lots in the surrounding neighborhood.**

The size of the proposed lots are too small compared to the lots in the surrounding neighborhood. The Planning Commission believes the surrounding neighborhood consists of the homes along Park Avenue north of South Shore Drive, along South Shore Drive to the north, to where Scotch Street, East Avenue, and South Shore Drive meet While some of the lots in the surrounding neighborhood may be smaller than the 15,000 square foot requirement of the R-3 Zoning District, other lots in the surrounding neighborhood exceed that requirement. The average lot size in the surrounding neighborhood is 12,918 square feet. The median lot size in the surrounding neighborhood is 10,611 square feet. What has been proposed doesn’t meet the standards, because each proposed lot seeks to be smaller than both the average lot size and the median lot size of the surrounding neighborhood. Even using the “eye test” as suggested by the applicant’s attorney, the proposed lots appear to be too small compared to the lots in the surrounding neighborhood. This standard is not met.
Martin said the Planning Commission doesn’t have to move forward with the other general special use standards if the members agree the above standards have not been met.

Roll Call Vote:

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

Ayes 5, Nays 1. Motion approved to deny the request.

B. Joint Meeting Regarding Affordable Housing in Park Township

The proposed date for this meeting is March 26, 2020. The Planning Commission should notify Chair Pfost if they cannot attend. DeHaan said he would not be present at the meeting.

C. 2020 Proposed Meeting Schedule

Garlinghouse moved, supported by Nestel, to approve the 2020 meeting schedule.

Voice Vote:

Ayes 6, Nays 0. Motion carried.

OLD BUSINESS:
A. **Text Amendment** – Proposed Section 38-516 of the Park Township Ordinance – Campfire Wood Sales

Martin said the Township Board discussed the sale of firewood at the August 8 meeting and agreed to not regulate front yard sales. This issue is now off the table. The Planning Commission does not have to follow up at this point.

**PUBLIC COMMENT**

Ervine opened Public Comment at 8:10 P.M

There was no comment.

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

**ANNOUNCEMENTS**

The next meeting of the Planning Commission will be January 8, 2019.

**ADJOURNMENT**

Kleinjans moved, supported by DeHaan, to adjourn the Regular Meeting at 8:12 P.M.

**Voice Vote:**

Ayes 6, Nays 0. Motion carried.

Respectfully submitted,

Judith R. Hemwall
Recording Secretary
December 13, 2019
Approved: February 12, 2020