

**MINUTES
PARK TOWNSHIP
PLANNING COMMISSION**

Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
January 9, 2019
6:30 P.M.

DRAFT COPY

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; Howard Fink, Manager

APPROVAL OF AGENDA:

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

Voice Vote:

Ayes 7, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Kleinjans asked for a clarification on page 5, which Nestel corrected for the record.

Motion by DeHaan, supported by Ervine, to approve the December 12, 2018 Regular Meeting Minutes as amended.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

New Business

A – Zoning Ordinance Text Amendment – Section 38-514 – Prohibition on Marihuana Establishments and Facilities Prohibited

Pursuant to the direction of the Park Township Board of Trustees, Ransford presented a Zoning Text Amendment Ordinance to amend Section 38-514 of the Park Township Zoning Ordinance (PTZO) to prohibit Marihuana Establishments and Facilities as defined in the Michigan Regulation and Taxation of Marihuana Act, which was recently passed by Michigan voters, and the Medical Marihuana Facilities Licensing Act, which was previously adopted by the State, respectively.

As a result of the recent voter-approved marihuana proposal, municipalities in the State may “opt out” of allowing these types of commercial recreational marihuana facilities in their communities. Otherwise, they would be permitted to operate within the Township borders. In order to opt-out the amendment to the Park Township Zoning Ordinance must be adopted.

Ransford provided a draft of recommended language for the Planning Commission to review.

Martin noted a Public Hearing is necessary for the recommendation to the Township Board. He explained this is a zoning ordinance amendment that prohibits marihuana facilities in the Township. The reason for a zoning ordinance amendment is that there could be an argument that prohibiting marihuana establishments in the Township regulates land use. The Township has already approved a separate police power ordinance prohibiting the same but this amendment prohibits marihuana facilities within the confines of the Township through the zoning ordinance, following the process as set forth in the Michigan Zoning Enabling Act. The proposed ordinance will not prohibit the private consumption, use and possession of marijuana in the Township, as the new law does not authorize the Township to regulate those issues. The proposed ordinance provides that no dispensaries or commercial establishments would be allowed in the Township. He pointed out that residents may grow their own plants for personal use only. Only 12 plants can be grown at home and possession is allowed for up to 10 ounces at home, and 2.5 ounces of usable marihuana outside of the home. No residents can sell marihuana in the Township for recreational purposes, but they could give away up to 2.5 ounces without any compensation.

Kleinjans asked what happens if the Planning Commission should make a recommendation against this proposal.

Fink advised that if the Planning Commission does not move forward with a recommendation to the Township Board then we have a policy debate. Approval of the proposed ordinance aligns the policies as already determined by the Board, which previously adopted a police power ordinance to do what is proposed by the zoning ordinance amendment. Ultimately it is the Township Board’s decision. The Planning Commission only makes the recommendation – it does not adopt ordinances.

Kleinjans asked if there are any criteria to review.

Fink said this is a policy ordinance which does not include a list of criteria.

Martin said the Township can opt out by ordinance. If the Township chooses to not adopt the ordinance amendment the law provides that the residents could petition for the amendment to opt out, or could petition for an amendment that would allow a limited number of establishments. The statute gives the Township the opportunity to opt out. The residents could overturn it by filing a petition for a vote allowing a limited number of dispensaries. If the Township passed an ordinance that would allow some limited number of establishments, there would have to be standards in the ordinance guiding that decision. He noted that opting out excludes the Township from receiving a share of any tax dollars from marijuana revenue received by the state as part of the new law.

Pfost suggested moving Public Comment forward to allow the audience to speak before the rest of the agenda.

PUBLIC COMMENT

Chair Pfost opened Public Comment at 7:05 P.M.

Mary Jackson is a resident on North Shore and spoke to land use and tree preservation. She attended a grass roots meeting this past week about land uses, land development, and creation of tree ordinances in local government entities. She referenced South Haven and Grand Haven that have tree preservation recommendations in their Master Plans. Meeting attendees were advised to attend their township meetings and raise awareness regarding land use responsibility with special focus on tree preservation.

Rhonda Gehringer is a resident of Park Township and was concerned about tree preservation and said an ordinance is necessary to protect the beauty of Park Township in order to preserve the trees. She is concerned about the Township's responsibility to future generations. She also expressed concern regarding Ottawa Beach Road and the speed limit where the road turns into one lane and the speed limit changes from 45 mph to 35 mph. It was her opinion that this situation is a traffic safety problem.

Chair Pfost closed the Public Comment at 7:12 P.M.

PUBLIC HEARING

Chair Pfost opened the Public Hearing for Section 38-514 – Prohibition on Marijuana Establishments and Facilities Prohibited at 6:53 P.M.

There was no comment.

Chair Pfost closed the Public Hearing at 6:53 P.M.

Board members discussed the detrimental effects of marihuana in the school environment and community.

Fink suggested reopening the Public Hearing for a latecomer to the meeting.

Chair Pfost reopened the Public Hearing at 6:58 P.M.

There was no comment.

Chair Pfost closed the Public Hearing at 6:58 P.M.

Martin provided the information on where State dollars from marihuana revenue are distributed: 15% goes to municipalities who allow dispensaries, 15% goes to the counties who allow facilities, 35% goes to the State School Aid Fund, and 35% goes to the State Road Fund.

Ervine moved, supported by Nestel, to recommend to the Township Board that the Board adopt the zoning ordinance amendment on prohibition of marihuana establishments in Park Township.

Roll Call Vote:

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

Ayes 6, 1 abstention. Motion carried.

Pfost asked to recuse himself for the next agenda item since he does consulting work for S-2 Yachts.

Ervine assumed chairing the discussion for the following agenda item.

B. Minor Amendment Request for S-2 Yachts PUD

Ransford reviewed the background for the minor amendment request regarding the S-2 Yachts PUD. He explained that the builder on an adjacent lot needs a variance for one foot because the building on the adjacent parcel is too close to the S-2 property line. The Zoning Board of Appeals found the request to be self-created and suggested seeking acquisition of the needed property from the S-2 parcel. As a result, the S-2 property needs a minor amendment to permit the land transfer, which can be approved administratively, but staff wanted the Planning Commission to confirm they are comfortable with the amendment. Ransford said it is his opinion it can be a minor approval.

Martin agreed it is an acceptable minor amendment request providing there is consensus among the Planning Commission members.

Eade moved, supported by Kleinjans, to approve the minor amendment as requested by the S-2 Yachts PUD.

Garlinghouse asked about the request by the developer.

As a member of the Zoning Board of Appeals, Eade explained that the Zoning Board of Appeals reviewed this request in December 2018. The applicant wanted relief, but it was not allowed according to the application of the standards in the ordinance. Unfortunately, the building was a foot off what it should be. Chair Dreyer suggested an alternative because it doesn't place the property in any further violation.

DeHaan said it apparently just takes a foot off one of two parcels in the PUD to allow the building to proceed. In his opinion, he didn't think it would be seriously impacted.

Eade said there was sufficient distance between the property line and the structure to allow it without putting the other parcel in jeopardy of violating the ordinance.

Kleinjans asked about the line on the drawing which wasn't labelled.

Ransford said it is probably a grade level line.

Nestel asked if we need more information. Consensus among members that no additional information was necessary.

Voice Vote:

Ayes 6, Nays 0. Motion approved.

Pfost rejoined the meeting at 7:23 P.M.

Old Business

A. Condominium Project Review Approval – Proposed Ordinance Amendment to Section 38-514

Nestel said she doesn't feel comfortable voting for this proposed amendment as a recommendation to the Township Board until she received more information. She said she had prepared several questions to review with Ransford and Martin.

Martin said the Planning Commission could move forward with a recommendation if Nestel is the only member who has reservations. Martin indicated the chair sent the questions to him

around 1:00 p.m. earlier in the day, and that he had tried to answer all of her questions ahead of the meeting but ran out of time because of another commitment at 3:00 p.m. Martin advised that he sent his answers to the chair before leaving for his other prior commitment. Martin agreed to review the questions raised by Nestel with Ransford.

Pfost said he didn't see it a pressing issue. He would rather get it right and postpone the item until Nestel has her discussion with Ransford and Martin.

Kleinjans said he was comfortable with moving it forward.

De Haan recommended postponing the item. If there is any substantial change in the language it will be returned to the Planning Commission anyway.

Martin said the Township might not have a way to delay a request from a developer who wants to build a site condo development.

Nestel said the application was proposed as site condos but it appears that the proposed ordinance amendment is not limited to site condos. It was her opinion that this isn't related to site condos – it appears that any condo project that comes to the Planning Commission that isn't proposed as a PUD would be under the proposed ordinance. She asked, shouldn't we consider what we want to include in the ordinance? It needs to be limited to site condos.

Eade suggested we need to define the term site condo before we move forward.

Ervine said if the majority agrees to a delay she concurs with a postponement. She suggested resolving such questions ahead of time in the future.

Nestel concurred and said this issue was proposed before any discussion of what was involved.

Pfost said it appears there is a need for clarification regarding ownership and development. We have three models of development: platting, PUD, and condominium. We need a specific tool to determine what kind of development we are dealing with.

Kleinjans asked if the term "condominium subdivision" is defined. Is it the same as a site condo?

Martin said the term "condominium subdivision" is defined in the State Condominium Act. He shared the definition from the Act. Martin said the term "site condominium" is not defined in the Act, but is defined or explained in the proposed ordinance. A vacant parcel or condo unit to be built on is a site condo. He said a condo unit in the Township ordinance is the same as what is in State law. He reiterated that State law does not define site condos. In a site condo the unit is a site. Under land division it would be a lot.

Kleinjans suggested an up and down vote on this issue.

Eade recommended postponement.

The Planning Commission discussed procedural action on this item.

DeHaan moved, supported by Ervine, to postpone consideration for Ordinance 38-515 until the next meeting.

Pfost suggested Nestel's concerns should be addressed with Ransford and Martin for further clarification. The discussion will continue at the next meeting.

Pfost asked Ransford to check if this issue needs to be re-noticed to the public.

Voice Vote:

Ayes 6, Nays 1. Motion carried. Kleinjans voted nay.

B. Tree Preservation Ordinance Samples

Pfost distributed copies of an outline of the Tree Preservation Base Language for ordinance guidelines for the Township prepared by Ransford and Fink. In addition, Ransford had previously sent members of the Planning Commission a copy of Grand Haven Charter Township and the City of Grand Rapids ordinances regarding tree preservation. He pointed out in the Ransford and Fink memo Park Township viewshed corridors were identified.

Ransford provided background information for this item. At the December meeting the Planning Commission asked for language on tree preservation from other governmental entities. He and Fink developed the memo regarding rights-of-way and suggestions. They wanted to focus on corridors/major roads and listed them on the memo. The intent is to develop more concrete language. This memo is a beginning to provide information to the Planning Commission in addressing its concerns.

Pfost said the Township Board is interested in the Planning Commission recommending a tree ordinance. He understands there is a balance of private property rights and the common good. He asked for some feedback on the sample ordinances provided by Ransford and the paper prepared by Ransford and Fink.

Eade mentioned concern for the maples on Lakeshore Boulevard and the impact of utility company trimming, removal of diseased trees and replacement.

Garlinghouse asked if the Township has any say on utility companies cutting down trees.

Fink said the utility companies have the right to clear trees that are in their right-of-way. He added that the Township doesn't have jurisdiction. However, there is greater influence with the Road Commission.

Pfost said the Township has negotiating power with developers and PUD restrictions. We should seek a longer term ordinance to preserve trees in future PUDs.

Kleinjans appreciated the copy of the other government ordinances that were shared with the Planning Commission. He asked about the depth of 75' stipulation in the Ransford/Fink memo. Is it for commercial or residential zones?

Fink replied the measurement in the memo considers new development. He suggested the Planning Commission deliberate what the future policy should say about buffering and heritage trees. This would be the minimum consideration. Additional preservation would then be part of policy development.

Ervine said it is important to have some guidelines in place going forward for developers.

DeHaan said a balance is in order – we want to create some clarification for new construction. The tree preservation ordinance would allow some control and important mechanisms should be put in place.

Garlinghouse asked about private property and Township rights in a "taking" of trees because of the ordinance.

Martin said with regard to regulatory taking the court looks at the reasonable investment backed expectations of the property owner. What the Michigan court has said, you must allow a reasonable use of the property.

Pfost said we are talking about scope and expectations. He suggested forming a committee to draft a purpose and outline some parameters to return to the Planning Commission for review. He asked Ervine, Kleinjans, Martin, Ransford and Fink to join him in this effort. All agreed to serve.

Ervine asked for some specific parameters about the committee's deliberations. Should they include new construction and individual residential lots which would be difficult to regulate.

Garlinghouse said a general statement could address residential lots.

Kleinjans wanted new development included and Eade and DeHaan agreed.

Nestel deferred to the committee to discuss this and come up with a recommendation.

Fink said both new construction and residential lots should be considered.

Ervine said the idea of preserving the viewshed corridors is important. We need to look at how these corridors fit into the vision for the Master Plan.

Pfost thanked Fink and Ransford for their work on the memo.

Eade moved, supported by Garlinghouse, to form a committee to develop a draft for the tree preservation ordinance.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

All agreed that the Tree Preservation Ordinance Committee is its official name.

ANNOUNCEMENTS

The next meeting date is February 13, 2019.

Nestel asked members of the Planning Commission to review her list of questions regarding site condos. She will make the list available.

Fink noted that the Township has been awarded a land acquisition grant. The Township Board is deliberating acquiring land for a new park on the south side

Pfost shared copies of the bylaws for the Planning Commission and asked for comments in the future. He plans a work session for discussion.

He also mentioned the idea of a work session for a joint meeting of the Township Board, Planning Commission and the Zoning Board of Appeals.

ADJOURNMENT

Kleinjans moved, supported by Ervine, to adjourn the Regular Meeting at 8:35 P.M.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

Respectfully submitted,

Judith R. Hemwall
Recording Secretary
January 11, 2019

Approved: