

**MINUTES
PARK TOWNSHIP
PLANNING COMMISSION**

Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
Via Zoom Conferencing
September 9, 2020
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 via Zoom per Executive Order.

ATTENDANCE:

Present: Terry DeHaan, Rosemary Ervine, David Kleinjans, Denise Nestel, Jeff Pfost

Absent: Dennis Eade, Diana Garlinghouse

Staff: Greg Ransford, Planner, Emma Posillico, Zoning Administrator, Dan Martin, Legal Counsel, Howard Fink, Township Manager

APPROVAL OF AGENDA:

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

Voice Vote:

Ayes 5, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Kleinjans noted two corrections on page 2.

Motion by Ervine, supported by Kleinjans, to approve the August 12, 2020 Regular Meeting Minutes as amended.

Roll Call Vote:

DeHaan, aye; Ervine, aye; Kleinjans, aye; Nestel, aye; Pfof, aye.

Ayes 5, Nays 0. Motion carried.

NEW BUSINESS:

A. Benjamin’s Hope – Minor vs. Major PUD Amendment Determination

Benjamin’s Hope is requesting an informal review by the Planning Commission of proposed modifications to the previously approved PUD amendment from September 2017.

Benjamin’s Hope is seeking to confirm whether the proposed modifications constitute a “minor PUD amendment” under the zoning ordinance. The property is located at 15468 Riley Street, Holland, MI 49424.

The intent of the requested PUD modifications is related to the expansion of the existing community building to better serve the uses already accommodated within that building, including:

1. Reconfigure and expand the existing office use in the community building to allow day programming/life enrichment to expand;
2. Expand building for a nutrition space; and
3. Expand parking area to the east of the building.

The proposed expansion of approximately 9,500 square feet will be completed in two phases, constitutes less than the areas of buildings that have already been approved by the Township but not intended to be built by Benjamin’s Hope, and the community building use remains unchanged. It is on this basis that Benjamin’s Hope requests the proposed changes be considered as a “minor amendment.”

Ransford introduced the agenda item. In 2017 Benjamin Hope was one of the first applicants to seek approval under the new PUD amendments after the PUD adoption. Most of that original proposal has been constructed as approved by the Township. The applicant is asking if the proposed changes should be treated as a major or minor amendment to the approved PUD. Staff chose to defer the decision to the Planning Commission because of the unique circumstance of the request for additional square footage. If it is deemed to be a major amendment, then they need to return to the Planning Commission as part of the regular PUD process which would be followed by a public hearing. If it is deemed a minor amendment, then the Planning Commission can approve the requested modifications at this meeting.

Pfof asked the Planning Commissioners for their opinions about this request.

DeHaan asked Ransford to comment on Section 2 under 38-375 in reference to the proposed changes. Could he elaborate on the process if the request is brought back to the Planning Commission for review?

Ransford said this is a provision for referring the decision to the Planning Commission to determine if the request should be returned to the Planning Commission for an amendment to the PUD. Staff decided it should go to Planning Commission because of the additional square footage involved. If the Planning Commission decides it is a major amendment, then the applicant must return for formal approval.

Martin said the reference is to a determination whether the requested amendment is major or minor. If deemed minor, the Zoning Administrator, or the Planning Commission, can make the decision. If the PC determines the request is a major amendment, then it comes back to the Planning Commission as a full blown amendment.

Ervine asked Martin for his insight in this request.

Martin said the change in the size of the building is usually considered a major change, even though the floor plan won't alter the character of the site. The question is: do these proposed changes fall into what is considered a similar nature that's not too significant in relation to the entire site. Martin indicated that the PC should not deem it a minor amendment simply because the applicant is a non-profit organization such as Benjamin Hope, but would have to determine the status based on the actual modifications. Martin warned the Planning Commission that their decision would set a precedent that could be used by other applicants in the future, regardless of whether for profit or not for profit.

Kleinjans said he had no problem with the proposed changes, however, it appears to be a major change because one building is increased in size.

Nestel concurred and agreed it is a major change.

Ervine supported the conclusion the request is a major change.

Pfost said with that finding regarding a PUD modification he asked for a motion from the floor.

Kleinjans moved, supported by Ervine, to consider it a major modification and directed Staff to work with the applicant to bring the modification back to the Planning Commission for review.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

B. Tree Preservation Language – Public Hearing 38-518

Ransford provided the background for this item. The Tree Preservation Committee reexamined language for tree preservation with regard to lots not in a development. The Committee produced a draft presented in August for a public hearing to be scheduled at this meeting. The Planning Commission determined to make this a zoning ordinance which would make it less likely to be overlooked. Briefly, the ordinance begins with the intent and purpose regarding a basis for the language. The ordinance describes residential, commercial and development. It covers wildlife corridors and requires continuation of some size of wildlife area to support plant and animal life. In developments the ordinance addresses clear cutting, tree canopy preservation, a reforestation plan and protection of street trees in beautification areas of the Township. The language also established limitations for properties along roadways to allow 20 feet to provide continuity along tree lined streets. The Zoning Board of Appeals will determine if standards are met in the appeals section. There are seven standards to grant relief from the ordinance in certain circumstances.

The Township Board will receive this for adoption after the Planning Commission's review.

PUBLIC HEARING

Chair Pfof opened the Public Hearing at 6:56 P.M.

There was no comment.

Chair Pfof closed the Public Hearing at 6:56 P.M.

Pfof said it is the intent of the Planning Commission in drafting the Tree Preservation ordinance to strike a balance in protecting trees and property rights. Toward that effort Commissioner Nestel submitted a list of questions to be considered by the Planning Commission. He asked for discussion of the following:

Integration of this language with existing PTZO language:

1. When applying the proposed ordinance, how does the **PC propose** to reconcile any express or implicit inconsistencies? For example, does the **PC intend** that this proposed ordinance will always trump inconsistent existing ordinances?
2. If the existing ordinance is silent on an issue, does the **PC intend** that language in the Tree Preservation section controls?
3. Does the **PC intend** to define standards for resolving express or potential conflicts?
4. *Does current legal counsel propose any "order of precedence" language for resolving inconsistencies or ambiguities?*
5. The language authorizes the ZBA consider appeals and to "grant relief from any provision of this Section and shall consider the following standards." *Is it legal*

counsel's position that the standards for ZBA consideration are specific enough to be upheld if challenged in court?

6. Does the PC **intend** the ZBA can waive bargained for/negotiated terms imposed by the Board as a condition of approving a PUD?

The practice of clear cutting:

The proposed ordinance defines clear cutting as “The removal of any trees beyond that *reasonably required to construct Development infrastructure and buildings.*”

1. Does the PC **intend** that the PC and/or the Board will be the arbiter of “reasonably required”?
2. If the Owner / Developer challenges (either in or out of court) the PC/Board’s denial of an application because the tree cutting not being “reasonably required”, how does PC/Board propose to respond?

“Wildlife Corridor”

1. Does the PC **intend** that existence of an “artificial obstacle” such as a “dam, road, pedestrian pathway or railway” is necessary to qualify as a “wildlife corridor”?
2. Or, does the PC **intend** that a site qualifies as a “Wildlife corridor” **if** “one or more lot lines of the Development boundary *at locations that provide a logical continuation of the Wildlife Corridor on the adjacent properties and beyond.*”
3. 38-518(c),(2), provides that the PC (apparently with or without Board approval) has “discretion to increase, decrease or eliminate the Wildlife Corridor. Again, does the **PC intend for this discretion to be unlimited.** Specifically thinking about a case where the Board required bargained for / negotiated conditions relating to “wildlife” before approval of a PUD?

Development

The text states Development expressly includes any PUD, condominium, site condominiums, plat, private road, site plan, “*or other application subject to review by the PTPC.*”

1. Can the **PC** list or describe the properties that the PC **does not intend** to be include within the scope of this proposed language?
2. Per 38-518 (c) RESIDENTIAL, COMMERCIAL AND INDUSTRIAL DEVELOPMENT, expressly includes “a “residential Development of two (2) or more residential building sites”. Does the PC **intend** that the 2 sites must be continuous? Abutting?

Management or Management Plan

1. Does the PC **intend** that a management plan is always required or that the PC has the authority to require it for any Development?

2. Does the PC **intend** that the owner/developer engage (and pay for the services) of a properly qualified and credentialed experts (such as a “Forester”) to determine if the submitted plan satisfies each of the 3 areas expressly identified?
3. Is it the PC’s **intent** that the would-be owner/developer of the property must submit and obtain approval of the PC (or PC and Board) of the Management Plan **before**:

Approval of the application by the PC and/or Board?

Any construction activity, including dirt work, begins on the site?

Outside Agency Approvals

1. Does the **PC intend that all of these approvals must be obtained before cutting or trees and/or construction (including dirt work) begins?**

Discussion of questions:

Pfost noted that in addressing conflicts and inconsistencies this is a legal question for Legal Counsel.

Martin said the first three questions raised by liaison Nestel are in regard to the specific intent of the Planning Commission. There are rules for construction contained in the zoning ordinance. Regarding common rules of statutory interpretation, when you have conflict between ordinance provisions in the Code of Ordinances, the specific rule has control over the general provisions. Specific rules for the tree preservation ordinance will control over those potentially conflicting general provisions that deal with the environment or other issues in general. He can’t address the first three questions regarding what individual Planning Commission members intended, but, regarding rules of statutory interpretation, if there is a conflict between the new ordinance and existing ordinance provisions, the specific will have control over the general.

The planning and development provision will allow the Planning Commission to make changes to the general zoning rule within the PUD. Some of the requirements for tree preservation could be waived in the PUD if the Planning Commission deemed it appropriate.

Pfost said with regard to intent it is not to infringe on a single land owner but to rule over development where there is increasing density for profit and there is elimination of trees. The dividing line was multiple development situations. The proposed language was changed to err toward the land owner. The Committee’s intent was to try to drive certain actions and requirements in accordance with the language. If future modifications or amendments are necessary they would come to the Planning Commission.

Nestel deferred to Martin if this is problematic regarding individual lots. With regard to #5 – considering appeals and granting relief: Are the standards for the Zoning Board of Appeals specific enough to stand up in court?

Martin said most of these standards are taken from other provisions already contained in the zoning ordinance. There is no guarantee what will hold up in court but those provisions have come from previous court cases. Even though they may appear to be somewhat vague, the language itself has come from prior court decisions.

Regarding appropriate buffers, these are typical and if challenged he is confident the court will uphold the language.

With regard to #6 – Can the Zoning Board of Appeals waive negotiated terms as condition of approval?

Martin said the Zoning Board of Appeals isn't generally involved in developments, but hears requests for variances from the Zoning Ordinance. The Planning Commission is the body that recommends the Board waive requirements of a development within a PUD. In a PUD if the Planning Commission and Township Board won't waive certain requirements there is no way to get into the variance from these requirements.

Kleinjans clarified that individual lots are affected on tree-lined streets.

Regarding clear cutting: does the Planning Commission intend to be the arbitrator of what is reasonably required? If the owner challenges, how does the Planning Commission respond?

Kleinjans asked how all situations can be covered.

Pfost said we can use a lot of discretion in discussing a PUD. How do we arbitrate? Are there mitigating factors? Our intent is to preserve as many trees as possible and work with the developer to acquire a balance.

Ervine said it would be difficult to anticipate all situations. The Committee tried its best to provide a balance.

Posillico said she can work with these guidelines.

DeHaan said the term "reasonable" is nebulous in working with a developer.

Does the Planning Commission have discretion regarding wildlife corridor consideration in PUDs?

Pfost says it may not be well-defined, but rather an intrinsic value for wildlife protection. The Committee's intent was to protect these elements, but how do you do it with objective criteria.

Kleinjans observed if we can make the corridors contiguous between properties it would be a good addition to the language. He added that an application should be subject to review by the Planning Commission would be a clear dividing line. Regarding single family properties

it would not apply but it would to developmental site plans. We would look at wildlife corridors in these site plans.

Pfost asked Ransford to check the language in the draft ordinance regarding contiguous lots where there are two or more lots for a development.

Ransford said this was in reference to a developer circumventing the language in creating two or more lots. The language was written to prevent that scenario.

Kleinjans said the intent was if trees are to be cut down there should be a plan submitted to the Township. Questions regarding outside approval should be submitted to the Planning Commission for permission.

DeHaan said any PUD or plat site should be subject to review by the Planning Commission. Could a developer build on two lots without coming to the Planning Commission for approval? Could the developer clear cut the two lots on his own without approval by the Township?

Martin said a developer could own a couple of vacant lots that the developer intends to sell for single family homes, and those lots may not be contiguous. This isn't considered a development under the proposed ordinance. Individual homes built on individual lots that are not contiguous wouldn't generally come to the Planning Commission. The Planning Commission is typically seeing developments that require site plans, or plats, or PUDs. A PUD or a plat proposal will come before the Planning Commission. The language could add "two contiguous lots" under development.

Ransford said, in this case, perhaps we need to reconsider some of the potential regulations. The language used to say any tree in the front, side or rear can't be removed. The Committee did not want to be too restrictive in the language because of potential challenges and decided to err on the side of the individual lot owner's freedom.

DeHaan said we have a conflict between the definition of a development or development of two or more in residential, commercial or industrial areas.

Martin said it depends on what the intent of the Planning Commission is. If you have a situation where someone splits 10 acres into 5 two acre lots, and it is not a typical subdivision, it wouldn't come to the Planning Commission currently because it wouldn't count as a development. The Planning Commission does not see land division applications. If the lots are sold individually, they could be clear cut in this case. If it's platted as a subdivision, then it's a development. It's a distinction between use of the property and property ownership.

Kleinjans asked how big a problem would this be.

Martin said splitting lots could be addressed by setting a minimum number of land divisions, i.e. “x” number of lots. Now we define it as two building sites. Typical land division does not come before the Planning Commission.

Pfost suggested we leave the language as is but clearly state the difference between development and land division. We need to recognize a PUD vs. dividing land into certain number of parcels.

Martin said development is a defined term in the proposed ordinance. Land division is not included in the proposed definition of a development. It wouldn’t come before the Planning Commission.

Pfost recommended including Nestel’s questions with the minutes as part of the official record. Martin will forward them to Hemwall. The letter from a resident concerning tree preservation will be attached to the minutes for the record.

Pfost said the questions helped us with due diligence to be sure the record is clear.

Pfost asked for a motion.

Ervine moved, supported by Kleinjans, to advance the Tree Preservation language to the Township Board for review and approval.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried

DeHaan asked about the language under Section D regarding tree stands removal “unless absolutely unavoidable.” How do you define this – it seems nebulous.

Posillico said if there is a situation where the property owner may disagree with the Zoning Administrator’s ruling the owner always has the option of appealing to the Zoning Board of Appeals for a decision regarding the trees.

C. Front Yard Parking

Posillico submitted a Staff Memo, dated August 19, to the attention of the Planning Commission regarding consideration of front yard parking regulations. She noted that over the past several months the Township Staff have received numerous complaints from residents regarding front

yard parking in residential neighborhoods. This year most of the complaints appear to be concentrated on the north side of Lake Macatawa, south of Ottawa Beach Road, between Division and 168th Streets.

Park Township has a Traffic and Vehicles Ordinance (Chapter 32) which includes regulations pertaining to stopping, standing and parking and parking junk vehicles in front yards. However, if a registered and operable vehicle is parked in a front yard there is not a current regulation that would provide the Township with authority to regulate removal of such a vehicle.

Pfost asked the Planning Commission what it wants to do with regard to front yard parking. Should the Township have an ordinance? This involves policy and enforcement issues. He asked Howard Fink, Township Manager, to speak to his perspective on this subject.

Fink said, in general, Park Township has been a community that has had less rather than more regulation. This is a policy decision for the Planning Commission. This has come about relative to short term rentals, although some complaints have come in from a residential area. We need to look at the problem rather than symptoms caused by the problem.

Ervine said she was in a meeting where a resident was concerned about a short term rental and the parking problem. It is her opinion that the real issue is short term rental. This will be difficult to deal with. There are many short term rentals in the Township, some of which are homeowner associations that have regulations regarding parking.

Kleinjans asked if the Township Board should decide this rather than the Planning Commission.

Fink clarified that there are a number of areas in the Township that do not have homeowner associations that are legally mandated. However, there are some areas that cannot self-regulate. The newer developments have homeowner associations that are legal.

Pfost said there are several cottages that have been in families for generations. This would have another dimension for regulation. Do we eliminate short term rentals or do we have a parking provision? We will have to be considerate regarding an approach to a policy. The Planning Commission has the legislative authority to develop a policy and forward it to the Township Board for its review.

Fink said the Zoning Administrator has heard several complaints regarding front yard parking.

Posillico said the complaints have been primarily directed toward recreational vehicles and the number of children in a family parking on properties.

Pfost said a committee could be created to draft some language. He asked the Commissioners to give this possibility some thought. Again, there should be a balance with property owner

rights and homeowner association restrictions and Township responsibilities. An idea is that short term rentals could have a parking provision.

Ervine said we need to consider what the obligations on staff would be as a result of such a regulatory policy, and with new board members coming on to the Planning Commission who will need to be brought up-to-date on the proposal. A small committee is a good idea.

OLD BUSINESS

Pfost recommended a strategic planning session could include front yard parking as a discussion item. Shall we wait until after the new Planning Commission member/s join the group?

Ervine asked if we should seek support of the Township Board.

Fink pointed out the Planning Commission has the ability to propose ideas to the Township Board. Code enforcement improvements should come from the Planning Commission then be forwarded to the Township Board if it is an opportunity you see as important.

Pfost said we have had a “no surprises” approach to the Township Board. We have the authority to develop such a policy. Our desire to have a strategic plan is our own decision. But we can certainly share this idea with the Township Board.

Ransford added that there is a benefit of a strategic plan but should we wait to see how many new members the Planning Commission will have.

Kleinjans supported moving forward.

Ransford asked how the Planning Commission wishes staff to proceed in setting up a strategic planning meeting schedule.

Ervine said it would be good to get input from current members before any significant change. Perhaps we could structure a framework for new members and where we want to go.

Pfost suggested an October date for a work session. Would a half day on October 5 be workable for everyone’s schedule? He said he will share with Jerry Hunsberger what the plan is. Everyone agreed October 5 would be a good date.

PUBLIC COMMENT

Pfost opened Public Comment at 8:37 P.M.

There was no comment.

Pfost closed Public Comment at 8:37 P.M.

ANNOUNCEMENTS

The next Planning Commission meeting date is October 14, 2020.

ADJOURNMENT

Ervin moved, supported by DeHaan, to adjourn the Regular Meeting at 8:37 P.M.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

Respectfully submitted,

Judith R. Hemwall
Recording Secretary
September 12, 2020

Approved: