

**MINUTES
PARK TOWNSHIP
PLANNING COMMISSION**

Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
November 11, 2020
6:30 P.M.

CALL TO ORDER:

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

ATTENDANCE:

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

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

APPROVAL OF AGENDA:

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

Voice Vote:

Ayes 7, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Motion by Ervine , supported byDeHaan, to approve the October 27, 2020 Strategic Planning Meeting Minutes as submitted.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

NEW BUSINESS:

A. Strategic Meeting Recap

Pfost thanked the members of the Planning Commission who attended the Strategic Planning Meeting. As a result of that effort, the Planning Commission has identified many excellent objectives going forward. We need to be mindful to consider these as future agenda items.

B. Roadside Stand Site Plan Application – Bowerman Blueberries, 15793 James Street, Parcel number 70-15-14-300-002. The properties are within the Agricultural and Permanent Open Space (AG) District.

The applicant is seeking an addition of 3,744 square feet for a total of 6,144 square feet to the Roadside Stand building, along with gravel parking lot, and a new drive-thru. The stated purpose of the addition is to accommodate increased storage, a larger bakery area, larger freezer area, and a new ice cream and preparatory area, as well as additional parking and a drive-thru.

Ransford introduced the item. The language in Section 38-184(10) of the Zoning Ordinance allows for roadside stands. The zoning ordinance defines a roadside stand as a temporary structure. This proposal will be a permanent structure. Staff presented the applicant with two options: applying for a PUD, or an expansion of a nonconforming use structure up to 50% of the original nonconforming use, since the existing roadside stand is a permanent rather than temporary structure.

The Planning Commission consideration should be guided by the following:

1. The permanent nature of the proposed addition which is contrary to the definition of a Roadside Stand
2. The extent of products within the facility that are produced on or sourced from the property
3. Standards in Section 38-184(10)

Brian Doyle, attorney with the Varnumlaw firm, spoke on behalf of the applicant. He said what Bowerman has is a farm market that qualifies under the Michigan Right to Farm Act. There is a specific GAAMP (Generally Accepted Agricultural Management Practices) addressing a farm market. If a farm market complies with the GAAMP it is exempt from local zoning regulations. The Right to Farm Act and the GAAMP protects farmers from being excluded by local zoning. In other words, it was his opinion that Bowerman Blueberries doesn't need Township approval to do what they are proposing to do. Under Michigan law a farm market doesn't need approval from the Township so long as it complies with the applicable GAAMP. He made it clear he didn't want to be adversarial. Farm markets have become important to farmers to supplement their products. He has advised the applicant to work with the State of Michigan. This is the position they are taking and he would be happy to answer questions.

Andrew VanTil, developer for the project, spoke to the site plan. He described the expansion plans for the farm market for the purpose of growing the operation. The bakery area will be increased, including an enlarged refrigeration area, and placement of a new drive-thru. Their numbers for curbside pickup have increased due to the pandemic. On the site plan they want to add gravel parking. Part of the construction plan was to add sewer and water. He described the site plan as just an expansion of what is in place now.

Ervine asked for an explanation of the drive-thru, including plans for entrance and exit lanes.

VanTil said the exit would be further into the property. The new entrance would be for the drive-thru and U-Pick visitors. There would be room for 15 cars for the drive-thru. The drive-thru window would be on the east side of the building on the southeast corner of the property.

Garlinghouse asked about a deceleration lane along the public road.

Pfost said the Township or County Road engineer would have to make a determination about this. He doubts the Township has jurisdiction regarding an extra lane for traffic, and that it would most likely be up to the County Road Commission.

Fink said the critical issue at this point in time is approval of this proposal and if it complies with the Right to Farm Act. Consideration of other criteria would follow with approval, if the application is authorized by the Planning Commission.

VanTil said they have to seek Ottawa County Road Commission approval. He was told Bowerman Blueberries has had special consideration in the past and any changes would have to be brought up to standard.

Martin said the Right to Farm Act states that driveway entrances are subject to approval by the County Road Commission if the Right to Farm Act applies in this case. To his knowledge, the GAAMP pertaining to farm markets don't include permanent drive-thrus. Another requirement of the farm market GAAMP is a requirement that at least 50% of the products offered must be produced on and by the affiliated farm as measured by the retail floor space during peak production season, and it's not clear how that would be measured when considering a drive-thru operation as the GAMMP does not address a drive-thru at all. Martin noted that the GAAMP does allow year-round or seasonal markets, with a physical structure such as a building or tent, or simply an area where a transaction between a customer and a farmer is made. So the permanent structure would be permitted as a farm market under the GAAMP, but there is a concern regarding the drive-thru operation and whether that falls within the GAAMP.

Pfost said the Township wants to preserve the rural culture which is an important part of the community. When a farm market becomes a problem is when it looks like a drive-thru restaurant and then we have to determine what to do. It is his observation that the Planning

Commission should obtain additional information whether this is becoming a commercial activity that is not subject to the Right to Farm Act because it doesn't comply with the GAAMP for a farm market.

Doyle said he has spoken with the head of Right to Farm, Mike Wozniak, who, he believes, would say there is no problem with a drive-thru. He is assured that the State of Michigan will be supportive and say a drive-thru is not in violation of GAAMP. Bowerman would be selling more than 50% of their products from other farms or suppliers. He emphasized his client wants to work collaboratively with the Township. They did not desire any adversarial relationship.

Garlinghouse asked if ~~the drive-thru is just for blueberries.~~ what the drive-thru is for.

VanTil said it was ~~for blueberries only.~~ for anything in the shop.

DeHaan asked if Bowerman plans to operate year-round. Will you stay with sales 50% from the farm? In his opinion, this proposal resembles a grocery store. Does this qualify under the Right to Farm Act?

Martin noted so long as they sell 50% of their product from the farm they are in compliance with GAMF guidelines.

VanTil said they sell vegetables most of the year.

Martin said 50% of the products offered must be grown on or produced by the farm or affiliated farm as measured by the retail floor space during the peak growing season. This is where the issue of the drive-thru arises, and why there may be some confusion as to how that would ultimately be measured. If the drive thru is considered retail floor space or not, is that the lane for the drive-thru? He questioned whether other farms are using permanent drive thrus for farmers markets and if it is covered by GAAMP. The current language in the farm market GAAMP doesn't address drive-thru operations. It just mentions a building. It is not clearly articulated whether a drive thru is permitted by the GAAMP, or whether the local zoning regulation would apply.

Fink said he has not had any communication with the applicant or the attorney representing him. Ransford has been the principal contact on this application. He doesn't understand the context of the comment about an adversarial relationship. The Township staff, attorney and the Township Board believe the current use of this operation has expanded over and above the original approval given five years ago. With all due respect, if this application and accompanying e-mails had not been generated in a positive manner by the Township a comment about an adversarial relationship would have been disrespectful to a responsible and transparent government. He had an issue with the approach.

Doyle understood what Fink was saying. He didn't want to argue the point.

Fink said the relevant issue is with the Right to Farm Act and the Township attorney advised staff that this proposal should go through the PUD process.

Kleinjans favored more business for a grocery store if it is allowed. If the Ottawa County Road Commission should allow the additional roadway proposal what does the Township control.

Martin said if this proposal is considered to be under the Right to Farm Act and complies with GAAMP requirements then the Township zoning ordinance has no control. The farm market GAAMP provides that when you expand an existing farm market or create a new farm market, it has to be set back at least 150' from any residential structure. The drawing shows only one side of the public road, and it's not clear whether there is any residential structure within 150 feet of the proposed expanded farm market. The 150 foot setback has to be met for GAAMP requirements.

VanTil elaborated about the drive-thru and the 50% rule. This rule comes up when they have to look at sales records. The regulation regarding the drive-thru is the same since we are building another road or driveway. We are allowed to do this because it is our property. The Ottawa County Road Commission said they don't need to give approval. Because the construction is not over 500' from the storm drainage it is okay.

Eade asked if the Right to Farm Act applies in this case. What rights does the applicant have and how does it comply with the Township requirements?

VanTil said Mike Wozniak from the Michigan Department of Agriculture is willing to appear before the Planning Commission to answer questions regarding the Right to Farm Act and the farm market GAAMP, but was not able to attend tonight's meeting as it was Veteran's Day.

Nestel asked if GAAMP has to certify the plan.

VanTil said he submits a site plan to the State to ensure compliance with the GAAMP, but he doesn't receive a permit from the State.

Ervine supported the necessity for learning more about the Right to Farm Act and whether it applies to the application for expanding the road side stand.

VanTil said a report has to be published if an inspection is done by the State.

Kleinjans asked about that report.

VanTil said it is available under the Freedom of Information Act. He said he has made a request, but has not yet received the written response.

Ervine asked Ransford for his assessment.

Ransford said he cannot say, at this point, whether the applicant is right or wrong. The Township wants to do the correct thing with regard to the applicant. If the Right to Farm Act trumps the review by the Planning Commission then the applicant is entitled to that route and he would defer to the Township Attorney for confirmation.

Pfost asked whether we should postpone a decision pending a review of the Right to Farm Act as it relates to this request. Staff has looked at this as it refers to the zoning ordinance. This is a farm stand issue and we are trying to comply with our ordinances. We don't want to set a precedent.

Martin said the issue is not the property but the farm stand as a farm market, including the drive-thru, and if it complies with the GAAMP. It is not subject to the Right to Farm Act if it doesn't comply with the GAAMP, and the zoning ordinance would then apply to the expansion. The building is covered under the building code.

VanTil said the applicant and the Township are good neighbors. If the Township has concerns they want to hear it. As part of the communication with Ransford, we had an engineering firm look at the plan. They proposed compliance with Township requirements and a PUD. They said water would be required which is what the applicant wants to include. They want to comply with what fits.

Pfost said the Township wants to work with Bowerman and wants to follow the correct path. He requested a motion to postpone action on this application while Staff explores the correct path regarding GAAMP requirements. He asked Staff to return with a final plan for a future decision.

VanTil said the applicant may move forward with construction since they understand they can go ahead under the Right to Farm Act.

Eade moved, supported by Ervine, to postpone action on this application until further research is done by Staff.

Roll Call Vote:

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

Ayes 6, Nays 1 (Nestel). Motion carried.

C. Zoning Ordinance Text and Map Amendment and Master Plan Map and Text Amendment

1. Division 11 – Public Lands and Open Space District

Ransford spoke to the item. Draft language creating Division 11 will add an additional layer of protection for all properties owned by Park Township. As a result of the Planning Commission's July 8, 2020 direction Staff believes it is appropriate to maintain the Public/Open Space Classification (POSC) for all properties owned by Park Township. The exception to the list of properties are those identified in the Ottawa Beach Neighborhood. They have their own classification as Park 12/MDNR. The draft Master Plan Map reflects these changes.

In February the Planning Commission looked at the Master Plan revisions regarding the map. It was Staff's recommendation that the Public/Quasi Public Classification was eliminated because some of that property was for public purpose. During that discussion over the next few months some didn't align with the considerations of the Township Board because some properties are owned by the Township. The intent of the new language is to maintain open space classification. To protect the Township from further development on these properties is the objective. The Township attorney has reviewed it.

The remaining properties owned by the County, schools, and Camp Geneva and other private properties. There is no path for them to be Master-planned and it provides a clear path for new property owners which they are entitled to.

Considerations:

- The proposed Master Plan Map revisions
- The removal of "CHP" and "Community Heritage Preservation" from the Master Plan text
- The removal of "CHP-Community Heritage Preservation" from the Master Plan Map Legend
- Corrections to multiple classifications and of the Macatawa "Lake" Residential classification within the Master Plan Map Legend
- The content of Division 11 – Public Lands and Open Space Zoning District

Pfost thanked Ransford and Staff for this review.

Garlinghouse said the Staff has done a great job on this.

DeHaan asked about eliminating public/quasi-public language throughout.

Ransford said we will keep the public/open space classification to correspond with Division 11. All Township properties will remain in there.

Ervine was in agreement with the revised language.

Kleinjans asked about underlying zoning. He was unclear what it means. The use allows single family dwellings.

Ransford said we could potentially designate lands that are in the public open space classification in the AG zoning district. Consider Camp Geneva and that land along the lakeshore, for example, which is Master-planned for public/open space. None of it is for an AG purpose. It may not be appropriate there. Along the eastern border of the Township there is property that is in a higher density than AG would be. Part of the Master Plan and the zoning plan is to show the correlation between the classifications and the zoning district. If you decide to include AG you would have to request rezoning and it might not always fit.

Pfost said Camp Geneva has private open space use. Looking at the Master Plan we look at future use – our vision is quasi public/open space for Camp Geneva. If it is currently zoned residential, its underlying zoning is residential. What we are correcting in the record is the designation of the future land use.

Ransford said if we had a parcel currently owned by the public and it sold to a private entity, while it is still master planned under public/open space, does the buyer have a case to change the zoning. Is there is a burden on the Township if these weren't modified.

Martin said if you have a Master Plan and zoning district for quasi-public uses and someone wants to change zoning, you can still change it both in the zoning ordinance and in the master plan. The zoning must be based on a plan, so the two should eventually and ultimately be consistent. The new owner would need to apply to amend the zoning before the owner could sue the Township. But the Courts say that a regulatory taking happens when the local government deprives the property owner of their legitimate investment backed expectations, and they might legitimately expect that the property could change to private use. Ultimately it comes to the Planning Commission and the Township Board to decide for the future use of that property because it is no longer publicly owned, but how should it be used and regulated. Further, even if the Township were to rezone the property from the public-use to private use, whether residential or commercial, it could go to a referendum for a zoning change. For example, if someone wants to use it for residential use, and the Township rezones the property to R-3, there could be a petition for referendum that puts the rezoning on a ballot for the voters to decide, and if the voters shoot it down then it goes back to public use. At that point through litigation the Township could do a taking to keep the property in the public realm, as decided by the voters, but the Township would most likely have to pay just compensation to take the private property for a public use.

Regardless of how a property is zoned anyone can apply to have it rezoned. What the Planning Commission has to do is allow residents to use the property in a reasonable way that doesn't constitute a regulatory taking.

Eade said he supported the changes.

Nestel said she was concerned by the term “in perpetuity.” Change is inevitable but she has a problem voting for anything that says “in perpetuity.” She stated that the language in the zoning ordinance violated the rule against perpetuities.

Martin said the rule against perpetuities applies in real estate law and estates and trusts law, like estate planning, not in a zoning regulation. The rule against relates to property owners who attempt to use a deed or will or a trust to control the ownership of property for a long time beyond the lives of the people who are living at the time the document was created, with the idea that the law wants to know who owns and controls the property. The rule prevents a person from creating future interests in property that won't vest beyond 21 years after the lifetimes of those living when the interest was created. But the rule against perpetuities wouldn't come into play here regarding the zoning ordinance, because the zoning ordinance is involved with regulating use, not ownership.

Still, to avoid any confusion and satisfy Trustee Nestel, you could take out “in perpetuity” if the PC or Board desired.

DeHaan asked about “campground” as a term that includes trailer parks and other such entities. Should we be more specific with terms?

Ransford said it is not a commercial entity.

Eade moved, supported by Kleinjans, to approve the Division 11 language and move forward with a Public Hearing.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

Martin spoke to “property owned” – he explained that with regard to Township-owned property you would have discretion through the zoning map amendment.

Pfost requested a motion to bring back the map and language. We will have a public hearing and forward to the Township Board. He asked Ransford to make available a map.

Master Plan Map and language –

Kleinjans moved, supported by Eade, to forward the modification of the Master Plan Map and related language to the Township Board.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

In regards to the zoning map amendment for the Park Township properties, Ransford explained notice will be sent to properties within 300' of those properties and we will hold the public hearing as required. If the Township Board approves, all those properties will be placed on the map.

D. Planning Commission Task List Creation

1. Short Term Rentals
2. Farmers Markets
3. Waterfront Rentals
4. Sexually-Oriented Businesses
5. Small Cell Infrastructure
6. Definition of Building Height
7. Definition of Nursing Home
8. Accessory Solar Use to a residence and agricultural operation
9. Accessory Dwelling Units

Pfost explained that this is a proposed list to consider for the future once the new members are seated on the Planning Commission.

DeHaan asked a question regarding the definitions of #5 and #9.

Ransford explained small cell infrastructure is in regard to cell phone technology. The State mandates how municipalities can regulate these. Do you want to go through the process? These type of structures/boxes can be placed on utility poles and street light poles and as technology expands we can expect to deal with these and their placement. What is this going to look like? The Township will have some authority as to process in handling this new technology.

Pfost said the network will change. Speed and bandwidth are changing. We will be communicating via antennas that will be street level communication points that go to towers.

Re #9 – Inquiries have come to the Township about people pushing the envelope using these accessory units as living space. Posillico received several questions regarding this issue.

OLD BUSINESS

A. NHP Update

Ransford gave an update: the Lake Court (formerly Maple Beach) draft is based on contributions from the August workshop with the residents. They are currently reviewing it. Edgewood residents are taking their time with the draft language for their community. They

promised a response at the end of November. The Idlewood and Eagle Crest neighborhoods processes have been completed with no changes recommended.

Garlinghouse asked how residents are notified of the final draft and where they can find it, following public hearing and related township meetings.

Ransford said before adoption of the drafts the residents will be noticed. All the adoptions will be posted on the website.

Fink agreed the Township should send residents a letter explaining the process and decision.

Fink thanked Nestel for her role in ensuring the NHP areas were part of the agenda for the Master Plan update.

PUBLIC COMMENT

Pfost opened Public Comment at 8:27 P.M.

The Planning Commission thanked our veterans for their service on this Veterans Day.

Pfost closed Public Comment at 8:27 P.M.

ANNOUNCEMENTS

The Planning Commission thanked Nestel and DeHaan for their service on the Planning Commission.

1. The next Planning Commission meeting date is December 9, 2020.

ADJOURNMENT

Ervine moved, supported by Nestel, to adjourn the Regular Meeting at 8:32 P.M.

Voice Vote:

Ayes 7, Nays 0. Motion carried.

Respectfully submitted,

Judith R. Hemwall
Recording Secretary
November 13, 2020

Approved: December 10, 2020