

**PLANNING COMMISSION
Minutes for Regular Meeting of
October 3, 2007**

PRESENT Chairman Mary Eley, Tom Thompson, Carol Kooistra, Brian Lernowich, Marcia Funnell, Jan Deur and Bryan Grover.

ALSO PRESENT Zoning Administrator Don Sandel and 15 interested parties.

CALL TO ORDER Chairman Eley called the October 3, 2007 meeting to order at 6:30 p.m. and led those in attendance in the Pledge of Allegiance.

AGENDA **Motion by Jan Deur, second from Marcia Funnell, ADOPTED, to accept the revised October 3, 2007 agenda as written.**

7 AYES

MINUTES **Motion by Mary Eley, second from Tom Thompson, ADOPTED, to amend the September 5, 2007 regular meeting minutes by amending the date on the header from July 18, 2007 to September 5, 2007 and on (page 3) amend According to Article XV Site Plan Review, Section 15.07 Review Standards ~~eonsensus~~ of the Commissioners is these are the preliminary findings: and accept as amended.**

7 AYES

PUBLIC COMMENT

- Gerry Farrar, 6939 Simonelli Road, submitted into public record a official request asking that Commissioners implement the Master Plan Future Land Use Map regarding those areas which are currently zoned Light Industrial to be rezoned to Medium Density Residential.

PUBLIC HEARINGS

- Resolution for Recommendation 2007-09-05 #1** – Application for Site Plan Review and Special Land Use Permit received from Doris Faulknor for a proposed 5,025 sq. ft. Diner & General Store to be located on a parcel of land in the Township with Permanent Parcel Number 61-06-112-400-0005-03, located on Whitehall Road, Whitehall, Michigan.

Motion by Bryan Grover, second from Tom Thompson, ADOPTED, to recommend DENIAL of a Special Land Use Permit request received from Doris Faulknor for a proposed 5,025 sq. ft. Diner & General Store to be located on a parcel of land in the Township with Permanent Parcel Number 61-06-112-400-0005-03, located on Whitehall Road, Whitehall, Michigan, to the Township Board referencing Article XIV Special Land Uses, Section 14.01 Scope and Section 14.03 General Standards (A 1).

ROLL CALL VOTE: Grover AYE, Kooistra AYE, Lernowich NAY, Eley AYE, Funnell AYE, Thompson AYE, Deur NAY

DISCUSSION

Zoning Administrator Sandel explains he has received a revised site plan, landscape plan, lighting fixture & pole data sheets, Muskegon County Drain Commission letter dated 9/13/07, Muskegon County Road Commission approval letter dated 9/27/07 (for revised plan), Muskegon Conservation District NRA Site Review and Muskegon County Drain Commission letter dated 9/27/07. The only thing missing was something in writing about the power lines that run through the property.

Mr. Kadelsik, P.E. from Westshore Consulting said he sent a copy of the letter from METC an ITC Company regarding the power line easement, he will send again seeing it wasn't received.

Based on information he has received, Zoning Administrator Sandel had no further questions or concerns about the application.

The biggest changes to the site plan were the driveway location and larger buffer area.

Mr. Kadelsik, P.E. from Westshore Consulting was here to address questions.

Commissioner Grover asked how much of the forested area needs to be cleared for the project and why leave trees in an area designated for tiles. Mr. Kadelsik explains approximately 20%-25% needs to be cleared and the area designated for tiles is a reserve tile area, its better not clearing it unless necessary.

Commissioner Deur references there is no additional landscaping planned for the west side of the property on the road, will the existing vegetation be left along the road? Mr. Kadelsik states they will leave as much as possible. Why was the 4' berm added and how high will things planned for planting on the berm be? Mr. Kadelsik states the berm was added to minimize car lights shining on properties across the street and the majority of the plants planned are for aesthetic purposes; plantings should not exceed 8'.

**Motion by Bryan Grover, second from Carol Kooistra,
ADOPTED, to suspend rules and re-open Public Hearing.**

7 AYES

PUBLIC HEARING

OPEN 6:56 p.m.

CLOSED 7:04 p.m.

- Brian Faulknor, 1944 W. Duck Lake Road, said at the last meeting noise and disruption to wildlife seemed to be the biggest concerns. He states it shouldn't be, deer and turkey live in all backyards and they adapt and the only noise would be from the people coming and going, supports.
- Carol Segar, 5483 Whitehall Road, resides directly across the street, believes this it not a good place for a business and does not want to see another empty building, opposed.
- James Terwilliger, 5483 Whitehall Road, states at the last meeting the applicant said she needed the liquor license to have the business. Has the liquor license transfer been approved? Believes this it not a good place for a business, opposed.

Chairman Eley stated the liquor license transfer request was denied by the Township Board. The applicant was advised and given the choice to withdraw the application, however, she opted not to so the Planning Commission is required to review the application and take action.

According to Article XV Site Plan Review, Section 15.07 Review Standards:

- A. The uses proposed will not adversely affect the public health, safety, or welfare. Uses and structures located on the site shall take into account topography, size of the property, the uses on

adjoining property and the relationship and size of buildings to the site. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance. **Yes it may adversely affect the public health, safety and welfare because of possible police and law enforcement concerns. There is not full consensus, Commissioner Deur dissents.**

Commissioner Deur states after further research he disagrees that the proposed use will adversely affect the public health, safety and welfare. The ordinance clearly allows restaurants in the Neighborhood Commercial District as a Special Land Use with certain requirements and according to Zoning Administrator Sandel the applicant meets such requirements.

Commissioner Grover states the proposed use does not fit with the character of this neighborhood and he has concerns with the number of police calls shown on the incident report that was made part of record at the last meeting.

Chairman Eley explains denial is given usually only because of something that can not be mitigated.

Commissioner Grover states behaviors can not be controlled and police calls can not be mitigated.

Chairman Eley indicates the Freedom of Information Act (FOIA) cover sheet attached to the incident list was not a typical one and that she could not verify where it had come from. She has concerns with the incident list indicating liquor license violations when she knows for a fact that under Doris Faulknor's management there has been none.

Mr. Brad Aherns stated that he provided a summary of the FOIA request form and the incident list that he received from the Sheriff's Department.

Commissioner Grover states this is not the main point of why he objects. It's another point down the way.

Commissioner Deur states he does not know how to interpret the incident report, he believes it is ambiguous, some of these calls could be because the owner called for bad checks, etc.

Commissioner Kooistra feels they have heard enough from enough people to hold up the business sense of the applicant; however, her major concern is what happens when the business is no longer owned by her.

Commissioner Deur states that is the case with any business that changes ownership.

Chairman Eley states that the Planning Commission's job is take a look at a longer view.

Commissioner Deur states then appropriate conditions should be put in if there is to be an approval given. He proposes conditions that 1) prevent outdoor speakers and music; 2) minimize outdoor light pollution; and 3) restrict hours of operation to 10:00 p.m. during the week and midnight on weekend.

Chairman Eley proposed a fourth condition to permit service deliveries only between the hours of 8:00 a.m. to 5:00 p.m.

Chairman Eley states that is the reason they need to go through all review standards and come to some sort of consensus for each. For the reason cited specifically that establishments serving liquor and even retail establishments but particularly those that serve liquor can have enforcement problems. With that specific concern it could in fact affect welfare and safety, not so much health.

Commissioner Thompson notes that consensus was that yes it may adversely affect the public health, safety and welfare, the words he sees in this is public and welfare and this means the neighbors which are part of the public.

- B. Safe, convenient, uncontested, and well-defined vehicular and pedestrian circulation shall be provided for ingress/egress points and within the site. Drives, streets and other circulation routes shall be designed to promote safe and efficient traffic operations and shall use significant traffic calming designs that will reduce speeds naturally; use green islands and curved roads to slow traffic naturally within the site and at ingress/egress points. **The driveway issue of lights shining into properties across the street has been addressed because they have combined two drives into one and moved the location.**
 - C. The arrangement of public or private vehicular or pedestrian connections to existing or planned streets in the area shall be planned to provide a safe and efficient circulation system, for traffic within Fruitland Township. **Concerns alleviated, condition corrected.**
 - D. Removal or alteration of significant natural features shall be restricted to those areas which are reasonably necessary to develop the site in accordance with the requirements of this Ordinance. The Planning Commission may require that landscaping, buffers, native habitats, and/or greenbelts be preserved and/or provided to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property. Every effort shall be made to preserve native ecological communities and minimize impacts to fish and wildlife. Utilities shall be installed to be harmonious with the site and all adjacent property. **Commissioners noted concerns about the removal of trees particularly in the building and detention pond area. Muskegon Conservation District NRA Site Review received on October 3, 2007 will be made part of the record.**
 - E. Areas of natural drainage such as swales, wetlands, ponds, or swamps shall be protected and preserved in their natural state to provide areas for natural habitats; preserve drainage patterns and maintain the natural characteristics of the land. **Drain Commission report is now complete and preliminary approval given.**
 - F. The site plan shall provide reasonable visual and sound privacy for all dwelling units located therein, and adjacent thereto. Fences, walls, barriers, and landscaping shall be used, as appropriate, to accomplish these purposes. **The buffer was increased from 10' to 20', a 4' berm was added in the front, a satisfactory lighting plan was provided; however, some commissioners still have concerns with noise and visual.**
 - G. All buildings and groups of buildings shall be arranged so as to permit necessary emergency vehicle access as requested by the White Lake Fire Authority. **Yes.**
 - H. All streets and driveways shall be developed in accordance with Fruitland Township Private Street Design Standards, the Township Subdivision Control Ordinance, the Muskegon County Road Commission, or Michigan Department of Transportation specifications, as appropriate. Except that the Planning Commission may impose more stringent requirements than those for the Road Commission or Department of Transportation with the respect to driveway location and spacing. No residential street shall provide connection or access to industrial or commercial property.
- In addition, sidewalks may be required if appropriate for the development. **N/A**
- I. Traffic impact study which describes internal circulation and projected impacts on traffic operation, capacity, and access on adjacent and nearby streets which are likely to provide access to

- the site. **An actual study was not performed; however, yes, traffic information was given and entered into record.**
- J. Appropriate measures shall be taken to ensure that removal of surface waters will not adversely affect the neighboring properties, aquatic resources, or the public storm drainage system. Provisions shall be made to accommodate storm water, prevent erosion and the formation of dust. The use of detention/retention ponds may be required. Surface water on all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic or create puddles in paved areas. Catch basins may be required to contain oil filters or traps to prevent contaminants from being discharged to the natural drainage system. The Site Plan shall fully conform to the Muskegon County Soil Erosion and Sedimentation Control Ordinance. **Yes.**
- K. Any exterior lighting shall be arranged so that it is deflected away from adjacent properties and so that it does not interfere with the vision of motorists along adjacent streets. Lighting of buildings or structures shall be minimized to reduce light pollution and preserve the rural character of the Township. **Satisfactory lighting plan provided, new plan minimizes light pollution.**
- L. All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from Residential Districts or public streets, shall be screened by a vertical screen consisting of structural or plant materials no less than six (6) feet in height. The finished side of any wall, fence, or other screen shall face adjacent properties. **Yes it is screened.**
- M. Entrances and exits shall be provided at appropriate locations so as to maximize the convenience and safety for persons entering or leaving the site. The number of entrances to and exits from the site shall be determined with reference to the number of dwelling units or other land uses within the site, the nature and location of the surrounding streets, the effect of traffic in the area, nearby topography, and other factors. **Yes.**
- N. Site plans shall conform to all applicable requirements of County, State, Federal and Township statutes and ordinances. Approval may be conditioned on the applicant receiving necessary County, State, Federal and Township permits before final site plan approval or and occupancy permit is granted. **Yes.**
- O. Hazardous Waste Management shall consist of all precautions to prevent hazardous materials from entering the environment. **N/A**
- P. Appropriate fencing may be required by the Planning Commission around the boundaries of the development if deemed necessary to minimize or prevent trespassing or other adverse effects on adjacent lands. **Not requiring fencing.**
- Q. The general purposes and spirit of this Ordinance and the Master Plan of Fruitland Township shall be maintained. **Yes on current Ordinance and No on the Master Plan. Mr. Deur dissents; he believes the application is consistent with the future land use designation of MPUD in the Master Plan.**
- R. A public sanitary sewer system or an approved privately-owned community sewer system shall be required unless the township determines as follows: **No**
1. The soils and terrain will not substantially limit the use of septic tanks because of wetlands, steep slopes, flooding, percolation, ponding or other topographical characteristics based on information from the Michigan Department of Environmental Quality or the Muskegon County Health Department.

2. The lack of a public sanitary sewer system or privately-owned community sewer system will not have an adverse affect on area lakes, the watershed involved or other environmental factors.
- S. A public water system or an approved privately owned community water supply system shall be required unless the township determines as follows: **No**
1. The soils and terrain will not substantially limit the use of private water wells based on information from the Michigan Department of Environmental Quality or the Muskegon County Health Department.
 2. The lack of a public water system or a privately owned community water system will not adversely affect area lakes, the watershed involved or other environmental factors.
- T. All abandoned or out of service underground storage tanks shall be removed in accordance with applicable local, state and federal law. **None known of.**

According to Article XIV Special Land Uses, Section 14.04 Special Land Use Specific Requirements consensus of the Commissioners is:

Restaurants, including those with drive-through service.

1. Sufficient stacking capacity for the drive-through portion of the operation shall be provided to ensure that traffic does not extend into the public right-of-way. A minimum of ten (10) stacking spaces for the service ordering station shall be provided. Stacking spaces shall be located so as not to interfere with vehicular circulation and egress from the property by vehicles not using the drive-through portion of the facility. **N/A**
2. In addition to parking space requirements, at least three (3) parking spaces shall be provided, in close proximity to the exit of the drive-through portion of the operation, to allow for customers waiting for delivery of orders. **N/A**
3. Parking areas shall have a front yard setback of twenty (20) feet and side and rear yard setbacks of ten (10) feet. **This standard met.**
4. Public access to the site shall be located at least one hundred (100) feet from any intersection as measured from the nearest right-of-way line to the nearest edge of said access. **This standard met.**
5. The parking and maneuvering areas of the site shall be fenced and screened from the view of any abutting Residential District or use by a decorative fence or wall, or a landscaped equivalent. **To the best of the applicant's ability.**
6. Outdoor speakers for the drive through facility shall be located in a way such that sound transmission is inaudible to neighboring property and uses. **N/A**

Chairman Eley states the list of concerns has been satisfied and the check list has been gone through and a few minor changes made. She then gives brief synopsis of decision making criteria. First is the Site Plan Review which addresses technical standards, then second according to Article XIV Special Land Uses, Section 14.01 Scope, which is a set of procedures and standards for special uses of land or structures which, because of their unique characteristics, require special consideration in relation to the welfare of adjacent properties and the community as a whole, which clearly states the concerns of adjacent neighbors are an important consideration and asks that the commissioners are cognizant of this while deliberating.

Commissioner Kooistra states that her concern is not Mrs. Faulknor's ability to run a business; it is with the serving of alcohol at the proposed location and what that means for the future.

Commissioner Deur suggests the following conditions which he believes will appease some of the neighbors concerns: 1) Make sure that all restaurant and store lighting is directed downward to the maximum extent possible, to minimize light pollution on the adjacent neighbors, 2) no outdoor speakers or music, 3) hours of operation – close no later than 10:00 p.m. on evenings that precede a normal work day, and no later than 12:00 midnight on evenings that precede a weekend day or holiday. He got these hours from the 750 Grill. He hopes these would be acceptable to the applicant and that at least to some degree that these would mitigate concerns of the neighbors of which he can certainly understand.

Chairman Eley states concern with loading and deliveries, she believes these should be done during regular business hours between 8:00 a.m. and 5:00 p.m. She would like to add this to the conditions.

Commissioner Kooistra feels before these conditions can be voted on we should know if they are acceptable to the applicant. It will make a difference if they are not acceptable to the applicant.

Chairman Eley asks Mrs. Faulknor to speak of the four (4) conditions that were suggested. Mrs. Faulknor asks if the close time could be 11:00 p.m. instead of 10:00 p.m. To offer pool leagues the 10:00 p.m. close time is too early.

Commissioner Funnell asks if we put these conditions on will they transfer with the ownership of the establishment. Yes they become part of the approval and do transfer.

The applicant's attorney James R. Staricha states the Township Board has turned the liquor license transfer down and obviously they will go back to the board to try and change their mind; however, that is a separate issue. If either the liquor license or the establishment becomes a problem the township has a right every year at renewal time to deny continuation of the license. The applicant has changed these plans several times to meet our requirements at a considerable expense.

2. Wind Towers – Update

It was decided that we want to write a Wind Tower Ordinance; however, it is not urgent so a subcommittee was formed to work on language to be proposed in the early part of 2008. Commissioner Funnell will chair with Chairman Eley, Commissioners Deur and Lernowich on the subcommittee.

3. Definition of Common Open Space – reminder only

NEW BUSINESS

1. Update the Zoning Map based on the Master Plan (specifically, rezoning Medium Density Residential and the Duck Lake State Park).

**Motion by Carol Kooistra, second from Marcia Funnell,
ADOPTED, to set public hearing for the November 7,
2007 meeting to update the Medium Density Residential
District to be consistent with the Master Plan and Future
Land Use Map and to rezone the current Light Industrial
District to Medium Density Residential District.**

7 AYES

2. North Central Muskegon County Joint Planning Commission Resolution.

**Motion by Mary Eley, second from Carol Kooistra,
ADOPTED, to accept the Joint Planning Commission
Resolution.**

**5 AYES
1 NAY (Grover)
1 ABSTAIN
(Thompson)**

DISCUSSION

The Commissioners just received the resolution at tonight's meeting. Chairman Eley apologizes for that but unfortunately this is something that needs to be voted on tonight. Commissioner Grover stated he could not vote for something he hadn't had time to review. Commissioner Thompson said he would abstain because he had not attended the Joint Planning Commission and had not reviewed the resolution.

PLANNING/ZONING UPDATES

Commissioners Kooistra and Deur have been working on language for a Lake Michigan Shoreline District, the proposed language will be included in the November packets.

It was decided that a special meeting is needed to discuss zoning for the Michillinda Beach Lodge. The meeting was set for Monday, October 8, 2007 at 6:30 p.m.

Chairman Eley states she still needs to check with Attorney Eklund on different ways of noticing for public hearings. Can a sign be posted on the parcel for which the public hearing is for? Can the noticing requirement be extended to more than three hundred (300) feet, maybe only for business applications? She is also thinking that the time to make a decision on Site Plan Review should be extended, possibly to six (6) months.

Proposed amendments for the Inland Lakes District will be in the November packets.

**Motion by Carol Kooistra, second from Bryan Grover,
ADOPTED, to set public hearing for the November 7,
2007 meeting.**

7 AYES

Commissioner Deur is working on proposed By-Law language for the Planning Commission.

ADJOURNMENT

**Motion by Jan Deur, second from Brian Lernowich,
ADOPTED to adjourn the October 3, 2007 regular
meeting at 9:07 p.m.**

7 AYES

Respectfully Submitted,

Sally Garvey, Recording Secretary