

THE CHARTER TOWNSHIP OF OSHTEMO
Township Board Meeting
March 28, 2006

The Oshtemo Township Board public comment session was held at the Township Hall. Supervisor VanDyke called the meeting to order at 6:00 p.m.

PRESENT:

Supervisor John VanDyke
Clerk Deb Everett
Treasurer Nancy Culp
Trustee Dave Bushouse
Trustee Neil Sikora
Trustee Stan Rakowski

Also present was James Porter, Township Attorney, Bob Snell and Marc Elliott, Township Engineers, Planning Director Jodi Stefforia and approximately 10 interested people.

There was no public comment.

Items discussed by the Board included:

Liquor License Ordinance – language should reflect application process applies to new licenses as well as transfers. The Attorney will draft for next agenda.

Attorney Porter advised a suit has been filed against the DEQ by Comstock and Kalamazoo Townships regarding the stormwater permitting requirements.

Motion by Bushouse, second by Sikora to send a letter of support to the Michigan Townships Association. Carried.

Trustee Bushouse advised the building addition is near completion, a gas line was broken which brought to attention a broken sewer line. He also advised an alternative location for the sidewalk system boiler is being considered.

A response is being drafted to the letter received from Kalamazoo College turning down the offer made by the Township regarding the Drake House driveway.

Trustee Sikora advised maps of the park trails and disc golf course will be provided through an Eagle Scout project.

Planning Director Stefforia advised discussion has been held with AT&T regarding release of their easement along Atlantic Avenue.

The public comment session adjourned at 6:25 p.m.

Supervisor VanDyke called the regular meeting to order at 7:00 p.m.

Also present were James Porter, Township Attorney, Bob Snell and Marc Elliott, Township Engineers, Planning Director Jodi Stefforia, Planner Mary Lynn Bugge, Fire Chief Ken Howe, and approximately 125 interested people.

RESOLUTION HONORING TED CORAKIS

A Board resolution honoring Trustee Ted Corakis who passed away on March 15th was presented to members of his family. A moment of silence was observed.

Motion by Sikora, second by Rakowski to approve the minutes of the March 14th regular meeting. Carried.

Income to the General and Fire Funds of \$9,591.97 and disbursements of \$161,409.84 were reported. Motion by Rakowski, second by Sikora to accept the receipts and disbursements report. Carried.

CITIZENS COMMENTS

None.

REZONING REQUEST – 6312 WEST MAIN – R-2 TO R3

A recommendation from the Planning Commission for approval of a rezoning request for property at 6132 West Main from “R-2” Residential to “R-3” Residential was before the Board for Second Reading.

Motion by Culp, second by Rakowski to rezone the property. Carried.

RELEASE OF EASEMENT – PINE ACRES

Planner Bugge advised the public road required by the Township Board on August 15, 2000 to release the easement across the property developed as Pine Acres has been constructed and accepted by the Kalamazoo County Road Commission.

Motion by Rakowski, second by Sikora to approve the release of the easement. Carried.

ORDINANCE TEXT AMENDMENT – WALL SIGN HEIGHT

Planning Director Stefforia presented recommendation for approval of a text amendment to the sign ordinance to increase wall sign height from 25 feet to 35 feet for commercial buildings and establishments.

Trustee Bushouse commented he had observed other areas with limitations on height and felt the change would promote more requests and he was not in favor of the amendment. Trustee Sikora concurred.

In response to Trustee Rakowski, Ms. Stefforia advised a sign had been erected in error at 26 feet prompting the request.

Motion by Bushouse, second by Sikora to send the item back to the Planning Commission. Carried 4-2 with Everett and VanDyke voting no.

COMMUNITY SEWER SYSTEM ORDINANCE

An ordinance to establish provisions for community sewer systems was before the Board for Second Reading.

Motion by Bushouse, second by Rakowski to adopt the Community Sewer System ordinance. Carried.

OSHTEMO WOODS – SITE CONDOMINIUM

A recommendation from the Planning Commission for approval of the proposed site condominium of Oshtemo Woods to be located north of the Oshtemo Woods plat containing 45 single family home sites on 19 acres was before the Board.

Planner Bugge advised the Planning Commission determined the proposed development satisfied the Zoning Ordinance provisions, sites will be served with public water and sewer, and noted the conditions of approval should not have included Fire Department review since the plan is not subject to Fire Department approval of public streets.

There was no public comment.

Motion by Rakowski, second by Bushouse to accept the Planning Commission recommendation and conditions of approval, and approve the site condominium for Oshtemo Woods. Carried.

BUCKHAM WOODS – SITE CONDOMINIUM

A recommendation from the Planning Commission for approval of the proposed site condominium of Buckham Woods to be located immediately east of Buckham Highlands containing 73 single family home sites on 30 acres was before the Board.

Planning Director Stefforia advised the Planning Commission determined the proposed development satisfied the Zoning Ordinance provisions, sites will be served with public water and sewer and the Planning Commission has reconsidered the cul-de-sac and now recommends the Road Commission approve it.

At the request of Supervisor VanDyke, Attorney Porter advised the Planning Commission performs site plan review and makes a recommendation to the Township Board under the Site Condominium Act which asks the Township Board if a proposed development complies with the Township ordinances; the act does not require the Board conduct site plan review. He further advised the law does not allow different treatment of site condominium development from other types of development, must be performed in a timely manner; the Board must have substantive reason to deny or table, i.e., non-conformance with the ordinance. Mr. Porter also commented zoning should be used to implement the MLUP, the MLUP is a guideline and general overall view not necessarily applicable to each specific parcel. He commented he would not recommend the Board deny approval or table the recommendation.

Jason Nuzzo, 5964 Scenic Way, commented he was speaking on behalf of a group of citizens, had recently purchased his home, move here for the quality of life, rural atmosphere, and open space. He inquired how growth can be encouraged and accomplished and not sacrifice elements wanted. He commented the Master Land Use Plan (MLUP) address the specific area with a set of objectives in the 9th Street Focus Area Plan and mentioned protecting woodlands, and applying open space techniques. He commented the vision should be followed and resist the lack of open space in the proposed development which he felt was in contrast to the MLUP. He further commented the issue should be tabled and referred back to the Planning Commission as was the sign ordinance amendment. He felt a period of 60 days would allow all interested parties time to meet, research, perhaps reach a compromise with the Township as an intermediary. He then presented the Board with a petition with 196 signatures opposing the proposed development.

Lowell Seyburn, advised he is an attorney representing a group of residents, referred to a letter which had been faxed to the Township addressing several issues including representations made to residents of Buckham Highlands, representations made to the Stocking family concerning a water retention area agreement, access to surrounding parcels, additional access to 9th Street, storm water retention, sidewalks, recreation area and invitation to trespass, and consistency of the approval process. He commented he felt the ordinance provides for the Township Board to review the proposed development, the issue of access is

within the purview of the Planning Commission and Township Board, staff failed to present pertinent information to the Planning Commission; the Commission was told the proposed project complies.

Attorney Porter commented the issue of promises made by the previous owner of Buckham Highlands is a private matter as is the easement agreement between the previous owner and Mr. Stocking. He also commented there is currently no requirement in the Zoning Ordinance for a second access point, and the Township Engineer will review the plan for stormwater requirements.

Jane Nuzzo, 5964 Scenic Way, commented she had environmental concerns and provided information from the Department of Natural Resources, stating it indicated development may not harm or take endangered species. She felt a biological survey should be done, and referred to the DNR mapping cougar. She also referred to language in the MLUP addressing environmental concerns, natural features, and woodlands. She felt the issue should be tabled to allow an environmental study and moving forward compatibility of the MLUP and the ordinances should be considered.

Alida Geppert, 6462 Caddum Wood, commented the original developer of Buckham Highlands had promised an upscale single family development and quoted from a sales brochure describing the development.

Andrea Halstead, 37 West Ridge Circle, commented she is a 32 year resident and presented a letter to the Board from her husband Donald Halstead. She commented there were legal opinions not agreeing with the Township Attorney, people love the community and are only asking for time to address concerns.

J. R. Carson, commented he has built a home in Buckham Highlands but not yet completely moved in, questions the motive of the developer noting a newspaper article that indicated the developer was not interested in the area until after the Kalamazoo Promise, the motive is profit. He commented he would encourage the Board to think of individuals who moved to the area to retire, the Buckham Highlands promise is being swept away in the sea of the Kalamazoo Promise. He inquired if there was any legal reason why the Board could not vote to table and study the will of the people and if the Board is legally bound to treat the development differently from a subdivision. He further commented the value of his home will be reduced

Sue Mellinger, 351 West Ridge Circle, commented it would behoove the residents and Board to send the item back to the Planning Commission and review the impact.

Eric Geuren, 251 North Rose Street, advised he was the attorney for the applicant, commented the Board's function was to determine if the project complies with the ordinance, the development is consistent with the MLUP, the Planning Commission reviewed the site plan and found it complies. He also commented promises made in the sales brochure by the previous owner may have applied at the time, but did not include the property being proposed for development and involves a private issue with Buckham Highlands residents and the previous developer; the current owner has the right to develop and referring to the questions raised regarding access commented the Planning Commission determined there was reasonable access and no issues were raised by the Kalamazoo County Road Commission.

Richard Walsh, 5989 Valley View, commented the new developer is now the Board of Directors for Buckham Highlands and has a fiduciary responsibility to the association. He also commented if the issue is a done deal he wondered why everyone was there; the reason for a hearing should be to listen.

Kenneth Hall, 462 Club View, commented he has a background in finance and inquired why degrade existing assets for this development, is it really necessary, is it all about tax revenue, and does the threat of legal action by the developer factor into the decision.

Denise Simenaur, 6201 Horizon Heights, commented the Planning Commission was a 4-3 vote, they were not privy to information gained since the hearing, the Township Board should consider new information, she is an elementary school principal happy about the Kalamazoo Promise, however, most families will have 2 or 3 children per home and wondered where they would play. She commented there are safety concerns; children will have no place to go, could trespass or would have to cross 9th Street to get to the Township Park. She inquired whose obligation is it to follow the MLUP, she felt the Planning Commission did not hear or consider the MLUP, and what is the reason for the plan if it is not used. She commented a title search did not indicate access could be gained through her property and she pays taxes on the adjoining out lot. She also commented group discussions did not include keeping the developer from building, but a desire to maintain what Oshtemo is. She also inquired regarding the process of noticing for the Planning Commission meeting indicating she felt sufficient time was not given, concerned citizens have a legal rights, if there are irregularities between the MLUP and ordinances, the Township Board adopts ordinances to implement the plan, legal recourse for residents may be to sue the Board for them not being in parallel.

Red Sharp, 6485 Buckham Wood, commented under the previous development homes were bought as condos and how can the Board 200-300 children move in with no place to go.

Steve Duisterhof, 309 West Ridge Circle, commented if the MLUP is not necessarily applied to every parcel is it an objective process.

Gerard Pahl, 5817 Manorwood, commented some people were in favor of the overlay zone, money is not Oshtemo, people are; the developer is only thinking of money, will the Township look at the ordinance make necessary changes to keep this situation from happening again.

Vern Hoag, 6374 Buckham Wood, commented he was concerned with one access for the number of additional homes and vehicles, it would be dangerous for children, a traffic signal will be needed, traffic has already increased on 9th Street and there have been several accidents. He further commented there seems to be three different attorney opinions and inquired if such discrepancy gives leeway to review; give interested citizens a chance to interact with the Planning Commission. He also commented current residents of Buckham Highlands had been told there would be trails and things remain pretty much the same. He also commented he had submitted a Board Appointment application but had not been contacted.

Perry Jackson, 83 West Ridge Circle, commented laws are passed because of concerns that bring issues to those who represent interests, the Board is a symbol of other lawmakers. He further commented he had been meeting with members of the community, he's sorry he did not attend meetings in the past but felt he was represented, and while the developer has a right to profit, this development is not appropriate.

Brian Molony, 2015 Ravine Road, commented he owns Rollerworld and has been coming before various boards of the Township for many years addressing issues he has encountered regarding zoning and use of his property. He commented he is neither for or against the project; it can take a long time to affect change but the process must be followed and he has learned through experience the process starts with the Planning Commission and Zoning Board of Appeals.

John Hazel, 147 West Ridge Circle, commented the vision is stated for guidance, the Board should not be robots and follow specific numbers, their job is to see if the project conforms to the vision and should at the very least delay.

Lou Zacharias, 559 Sunrise Circle, commented the basic principle of democracy is officials are elected to represent the people.

Jeff Brennan, 6051 Horizon Heights, commented he moved here to avoid urban sprawl, understands growth and profit but some decisions are wrong and when made in business are corrected, the Board's responsibility is to fix mistakes.

Dominick Tomaski, 1059 Laurelwood Court, commented he thought he came to utopia but has seen a lot of changes, there is a difference of attorney opinions and inquired who was noticed for the Planning Commission meeting.

Barbara Hughey, 587 Lodge Lane, commented she has been a resident since 1962, she felt the residents were not treated with love and respect at the Planning Commission meeting, they were told to get involved, this is not their first fight and there is a need to investigate further.

Gordon Stocking, commented it appears elected officials are more interested in someone else, the Planning Commission vote was 4-3, the Commission spent a lot of time with the developer to make sure minimum requirements were met; the Board has more responsibility than just the ordinances.

Dan Thompson, 105 Echo Hills, commented the overall picture is the area residents feel they are under siege noting the two multiple family developments to the south of Country Club Village Plat will have more students than K-College.

In response to questions from Treasurer Culp regarding the number of lots, Scott Sanderson, representing Allen Edwin Homes commented they are a for profit company, the original developer put the property on the market, the proposed plan meets the ordinance, and the master deed for Buckham Highlands does not address the property being proposed for development. In response to Ms. Culp's inquiring if he would be willing to work with the area residents, Mr. Geuren responded they are willing to work with anyone but would have an expectation of approval since the project is in compliance.

Supervisor VanDyke commented he understood the feelings of the residents, however, the Board must comply with law and respect the right of a property owner to use their property, the MLUP is a guide and Township ordinances are law. He noted the only way to completely control what occurs is to own the property.

At the request of Supervisor VanDyke, Planning Director Stefforia commented the MLUP was discussed at the Planning Commission hearing, referring to Commissioner Schley's question if the ordinance and the proposed development were following the MLUP, projects are generally not completely engineered prior to site plan review by the Planning Commission, the Planning Commission vote reflected some members preferred the cul-de-sac be approved, and in regards to access noted that the Planning Commission considered that the County Club Village Plat has 167 lots with a single access point, and it was her understanding that additional access could have been sought for the proposed development through an existing out lot and easement through Country Club Village. She also noted the proposed project provides for future access to the east and south through placement of the temporary turnarounds as shown.

Trustee Bushouse commented on the many changes in the area since he built his home in 1969, the 9th Street Focus Area recognized there would be a mix of uses, the MLUP recognizes more dense development east of 9th Street, and the MLUP and Focus Area Plan were a result of citizen input. He also commented he had spoken with a resident of the Country Club Village Plat who suggested the Board could make it difficult for the proposed development to move forward. Mr. Bushouse then commented there are consequences if the Board does not follow the law, and relies on the township Attorney's advice. He also commented public input is welcome to hear different points of view, changes can be made to ordinances starting with the Planning Commission. In response to comments made regarding the sign ordinance text amendment being sent back to the Planning Commission, he commented the item was a proposed change, not current law. Mr. Bushouse also commented it has long been Township policy to notice property owners within 300 feet of any proposed development while State law only requires such notice for rezoning. He noted residents of the County Club Village Plat had in the past acquired property adjoining their lots as buffers to neighboring projects.

Mr. Jackson commented he would dismiss Ms. Stefforia's comments as heresay and took exception to Mr. Bushouse's comments regarding a resident not present to defend themselves.

Trustee Sikora commented he was previously a member of the Planning Commission and in that role encountered many quandaries. He further commented he was confused as to why the Planning Commission vote was 4-3, it was not explained in the minutes. Mr. Sikora commented while he would not wish to live in the proposed development, the developer has a right if within the requirements, the company's reputation is on the line. He commented based on legal counsel, he will grudgingly vote to approve. He also commented as a member of the Board Appointment Committee of the Township Board, they have found it difficult to get people to volunteer; he would like to see more involvement. He advised Mr. Hoag he would attempt to locate his application.

Trustee Rakowski commented he concurred with Trustee Sikora's statements, finds the development lacks imagination but will grudgingly vote to approve.

Clerk Everett commented she would vote no due to what she felt were inconsistencies with the ordinance and MLUP, while recognizing the property owners right to develop, and noting every neighborhood was once vacant land.

Motion by Bushouse, second by Rakowski to accept the Planning Commission recommendation and approve the site condominium for Buckham Woods. Carried 5-1 with Everett voting no.

8th STREET WATER PROJECT – CHANGE ORDER

Engineer Elliott presented a recommendation to add construction of approximately 400 feet of sanitary sewer in the north right-of-way of West Main west from North 10th Street to service Chemical Bank. He noted a deposit has been received from Chemical Bank for the full cost of the sewer extension.

Treasurer Culp commented she was not comfortable with combining the projects and inquired why the project would be considered a change order to the water project. Mr. Elliott advised since James Fulton & Sons were already under contract for the 8th Street water project and are also the excavator for the Chemical Bank project, accepting Mr. Fulton's quote, which he believes to be fair and economical avoids the confusion of coordinating two contractors on site, assures the project can proceed with minimum delay and offers considerable administration cost savings.

Motion by Sikora, second by Bushouse to approve the change order in the amount of \$36,987.00. Carried with Culp voting no.

ADDITIONAL 2006 ROAD PROJECTS

A revised road project list for 2006 was before the Board with additional projects of microseal for Northstar Avenue, Promenade Drive, Nature Way and Wendalyn Way. The Road Committee also requested they be authorized to add additional projects should funds become available due to final project costs being under budget.

Motion by Bushouse, second by Rakowski to approve the additional road projects and authorize the Road Committee to add projects should funds become available. Carried.

FIRE DEPARTMENT SCBA RESCUE UPGRADE

Fire Chief Ken Howe presented request for approval of an expenditure in the amount of \$36,739.62 for an upgrade of existing self-contained breathing apparatus (SCBA).

Motion by Bushouse, second by Rakowski to approve the expenditure. Carried.

TOWNSHIP BOARD VACANCY

The Board discussed the vacancy due to the death of Trustee Corakis. Clerk Everett reviewed Michigan Election Law which provides the Board must fill the vacancy with 45 days or have a special election. She noted since this is a regular election year, the position will be placed on the August primary and November general ballots, anyone wishing to run will be required to file a nominating petition by 4:00 p.m. on May 16th, any appointment made by the Board would be until the new term of office begins on November 20th.

Consensus was to accept applications until 5:00 p.m. on April 14th, conduct interviews the week of April 17th and make the appointment at the April 25th regular meeting.

BOARD MEMBER COMMENTS

Trustee Bushouse commented he felt the policies established for public meetings/comments should be followed.

There was no further business and the meeting was adjourned at approximately 11:15 p.m.

DEBORAH L. EVERETT
Township Clerk

Attested: John VanDyke
Supervisor