

OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION

MINUTES OF A REGULAR MEETING HELD AUGUST 23, 2007

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**AGENDA**

**SPRINT/NEXTEL - SPECIAL EXCEPTION USE AND SITE PLAN AMENDMENT - 624 NORTH FOURTH STREET - (PARCEL NO. 3905-16-305-050) [FROM TABLE OF JUNE 28, 2007]**

**FOUNTAIN VIEW - STEP 1 SITE CONDOMINIUM REVIEW - 5306 BEECH AVENUE AND THE ADJACENT PARCEL TO WEST - (PARCEL NOS. 3905-12-455-020 AND 3905-12-455-030)**

**WORK ITEM: FENCES**

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A regular meeting was conducted by the Oshtemo Charter Township Planning Commission on Thursday, August 23, 2007, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Terry Schley, Chairman  
Lee Larson  
Fred Gould  
Bob Anderson  
Carl Benson  
Kitty Gelling

MEMBER ABSENT: Deborah L. Everett

Also present were Mary Lynn Bugge, Senior Planner; James Porter, Township Attorney, and approximately three other interested persons.

**CALL TO ORDER**

The Chairman called the meeting to order at approximately 7:00 p.m.

**AGENDA**

The Chairman noted that, because of the weather, the representatives of Sprint/Nextel were delayed and the Commission would adjust the Agenda accordingly to allow them an opportunity to appear and present their request. Thus, the Chairman asked if there were any other corrections or additions to the Agenda. Ms. Bugge asked that the Commission consider setting a public hearing for a requested rezoning under "Any Other Business." Mr. Benson made a motion to approve the Agenda as amended.

The motion was seconded by Mr. Larson. The Chairman called for a vote on the motion, and the motion passed unanimously.

## **MINUTES**

The Chairman asked if the Planning Commission had had an opportunity to review the minutes. Mr. Larson said that he did, and that the minutes were well written. Mr. Larson then made a motion to approve the Minutes as submitted. Ms. Gelling seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

### **FOUNTAIN VIEW - STEP 1 SITE CONDOMINIUM REVIEW - 5306 BEECH AVENUE AND THE ADJACENT PARCEL TO WEST - (PARCEL NOS. 3905-12-455-020 AND 3905-12-455-030)**

The Chairman said that the next item to be considered was Item #5, Step 1 Site Condominium Review for Fountain View. He noted that the property was located at 5306 Beech Avenue and included the adjacent parcel to the west, Parcel Nos. 3905-12-455-020 and 3905-12-455-030. The Chairman asked to hear from the Planning Department. Ms. Bugge submitted her report dated August 23, 2007, to the Planning Commission, and the same is incorporated herein by reference.

Ms. Bugge explained that the applicant was seeking to establish a four unit single-family site condominium located in the "R-2" Residence District. She said that the property consisted of approximately 3.9 acres abutting Beech Avenue. Ms. Bugge explained that proposed Unit 4 contained an existing home. She also noted that Unit 1 would contain an easement area for the City's use to discharge water from the adjacent water tower. She stated that placement of structures within the easement area on Unit 1 should be prohibited in the condominium documents. She also noted that, given the limited traffic in the area and the fact that Beech Avenue was a dead-end street, it was the Planning Department's position that sidewalks would not be immediately necessary. However, she asked the Planning Commission if the condominium documents should include the condominium in any assessment district established for the Beech Avenue sidewalk, in the future. Ms. Bugge then took the Planning Commission through a review of the site condominium provisions under the Township Ordinance, noting Planning Department recommendations, as are more fully set forth in her report.

The Chairman asked if there were any questions of Ms. Bugge. Mr. Larson asked if there would be fencing around the recharge area on Unit 1. Ms. Bugge indicated that she believed so. The representative for Fountain View indicated that area would be fenced. Mr. Larson then asked if there would be a fence around the area leading to the recharge site. The representative from Fountain View said the pipe would be underground and therefore, no fencing would be necessary in that area.

The Chairman asked to hear from the applicant. Mr. Gary Hahn from Wightman Ward, Inc. introduced himself on behalf of the applicant. He said he thought Ms. Bugge had covered their proposal quite thoroughly, and asked the Planning Commission if there were any questions. Hearing none, the Chairman thanked the applicant's representative and called for public comment. Again hearing no public comment, the Chairman closed the public portion of the meeting.

The Chairman noted that this matter required a recommendation to the Township Board, and he asked the Planning Commissioners for their comments, particularly with regard to sidewalks.

Mr. Larson said that he did not believe sidewalks were important at the present time, but he thought it would be important to include language incorporating the condominium into any future sidewalk special assessment district. Ms. Gelling said she agreed strongly with Mr. Larson.

The Chairman asked if there were any other comments, and hearing none, he called for a motion. Mr. Larson made a motion to recommend Step 1 approval of the site condominium of Fountain View to the Township Board with the following conditions:

- (1) Language shall be incorporated into the condominium documents stating the properties agree to be included in a future assessment district established by the Township for sidewalk installation along Beech Avenue.
- (2) Condominium documents shall prohibit Unit 1 from locating any buildings or structures within the limits of the City of Kalamazoo easement area for the discharge of water.

The Chairman asked if there was a second to the motion. The motion was seconded by Mr. Benson. The Chairman asked if there was any further discussion. Hearing none, he called for a vote on the motion. The motion passed unanimously.

### **PUBLIC COMMENT ON NON-AGENDA ITEMS**

The Chairman said the next item on the Agenda was Item #7, Public Comment on Non-Agenda Items. Hearing none, the Chairman closed the public comment portion of the meeting for non-agenda items, and asked the Planning Commission to move on.

### **WORK ITEM - FENCES**

The Chairman said the next item up for consideration was the work item dealing with fences. The Chairman called for a report from the Planning Department. Ms. Bugge submitted her report to the Planning Commission dated August 23, 2007, and the

same is incorporated herein by reference. Ms. Bugge pointed out the changes made to the language for a proposed Fence Ordinance since the Planning Commission's last meeting. The Chairman called for Commissioners' comments.

Mr. Larson said he agreed with the proposed changes as set forth by Ms. Bugge in her report. Mr. Benson asked if the Commission should consider a change to Section 78.210, subparagraph F. Mr. Benson suggested removing the word "and." Attorney Porter noted, as it currently read, it would require fences to be maintained, as well as not endanger life or property. He said if the word, "and" was struck, it would only have a single requirement which would be that fences would have to be maintained so as not to endanger life or property. He said he thought that the duality of the meaning was superior to a single purpose. Mr. Benson said he understood.

The Chairman asked if there was further discussion. Hearing none, he called for a motion. Mr. Larson made a motion to set the text amendment for a public hearing on September 27, 2007. Mr. Anderson seconded the motion. The Chairman called for discussion, and hearing nothing further, called for a vote on the motion. The motion passed unanimously.

### **ANY OTHER BUSINESS**

The Chairman asked that the Commission move on to "Any Other Business," since the representatives from Sprint/Nextel were not yet at the meeting.

Ms. Bugge said that she had received a request from a property owner on South Van Kal Avenue to rezone a ten (10) acre portion of a parcel from "AG" Agricultural District to "RR" Rural Residential. She said that the property owner owned a total of three adjacent parcels currently zoned "AG" and wanted to know how the Planning Commission wished to proceed with the request. Ms. Bugge noted that all properties in the area were indicated as Rural Residential on the Future Land Use Map.

The Chairman asked if there were any questions. Mr. Larson asked if "AG" was consistent with the Master Land Use Plan. Ms. Bugge said currently it was, but that the Master Land Use Plan recognized that agricultural uses would eventually phase out in this area. The Chairman asked about the zoning of the surrounding properties and if the Future Land Use Map showed the subject property as Rural Residential. Ms. Bugge said that other than the three subject parcels, all of the land was currently zoned Rural Residential, which was consistent with the Future Land Use Map.

Mr. Larson said he thought it would be most fair to everyone concerned, including the property owner, to notice the three parcels and consider the subject property as a single parcel. Ms. Bugge said that she was not sure what the property owner wanted in that respect. Mr. Larson asked what the Commission's options were. Attorney Porter

said that they were within their authority to notice the three parcels, and they could then determine how much of the property they would recommend for rezoning. He said they could recommend rezoning less than the entire three parcels, but if they only noticed out the ten acres, the Commission could not expand its consideration at the time of the public hearing.

Mr. Gould asked if any of the subject property was being farmed. Ms. Bugge said she thought some of the land might be farmed, and that they would be allowed to continue farming as a nonconforming use if the properties were rezoned.

The Chairman asked if there was a reason the applicant did not request all of the three parcels to be rezoned. Ms. Bugge said the reason could have had something to do with the fees associated with the rezoning request. Mr. Larson said he thought it would be appropriate for the Planning Commission to initiate review of all three parcels and consider it as part of one larger hearing. Mr. Gould said he thought it would be good to give the applicant more options by noticing out the entire three parcels. The Chairman said it was not unusual to look at larger areas when considering a request for rezoning.

The Chairman called for a motion. Mr. Anderson made a motion to notice out the three parcels referenced by Ms. Bugge for public hearing on September 27, 2007, for rezoning from the "AG" Agricultural District zoning classification to "RR" Rural Residential District zoning classification. Mr. Gould seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

**SPRINT/NEXTEL - SPECIAL EXCEPTION USE AND SITE PLAN AMENDMENT - 624  
NORTH FOURTH STREET - (PARCEL NO. 3905-16-305-050)  
(From Table of June 28, 2007)**

The Chairman indicated that the next item on the Agenda was the special exception use and site plan amendment for Sprint/Nextel. He said that the Planning Commission was being asked to conduct a special exception use and site plan review hearing for the placement of a generator outside the existing building on the Nextel site located at 624 North Fourth Street, Parcel No. 3905-16-305-050. The Chairman called for a report from the Planning Department. Ms. Bugge submitted her report to the Planning Commission dated August 23, 2007, and the same is incorporated herein by reference.

Ms. Bugge pointed out that communication towers were special exception uses in all districts, except the Industrial Districts. She said, since the property was located in the Rural Residential District, special exception use approval was needed. She stated the Commission had previously approved the tower with the condition that all equipment be placed inside. She did note, however, that this requirement was not part of the Township Ordinance but was a condition of the original special use. She said they were

now requesting to place a generator outside on a cement pad. Ms. Bugge then proceeded to take the Commission through a review of the criteria for a special exception use under Section 60.100 and site plan review under Section 82.800, as is more fully set forth in her report.

The Chairman asked if there were any questions of Ms. Bugge. Ms. Gelling asked how many cell tower companies use that facility. Ms. Bugge said there were five users on the tower. Ms. Gelling said she was concerned about a precedent which this request could set. The Chairman said he certainly understood her concern. Ms. Bugge said there was a potential for this request to establish a precedent, but there was also a public need for cell phone communication during an emergency.

The Chairman then asked to hear from the applicant. Mr. Dave Friesen introduced himself on behalf of Sprint/Nextel. He said they were making this request for several reasons. First and foremost was to allow cell tower companies to maintain service during storms or issues of national emergency. He informed the Planning Commission the Federal Government was pushing for emergency 9-1-1 compliance, and that this request was a necessity for compliance. He said that it is possible that others may want a backup generator. He pointed out that there was no more indoor space within which to locate generators. Mr. Friesen also said it was not practical to share generators since the current generator on site serving one of the other operators was only 40 k.v.a. He said that Sprint/Nextel needed a generator output of 70 k.v.a. in order to operate.

Ms. Gelling asked what was currently occupying their space within the existing building on site. Mr. Friesen said it was racks and equipment. Mr. Anderson asked if this was a standard generator. Mr. Friesen said that it was. Mr. Anderson then asked about the sound enclosure. Mr. Friesen explained how the sound enclosure worked and provided copies of the sound enclosure information to the Planning Commission. Ms. Gelling asked if there was room for additional generators on site. Ms. Bugge indicated that there was, but to accommodate four generators, they might have to enlarge the fenced area surrounding the tower and the building.

The Chairman said he understood that they would lose some efficiency if they switched from diesel to natural gas, but wondered what the applicant's thoughts were. Mr. Friesen said they had looked at the alternatives and felt that either propane or diesel were their only reasonable options for this model.

The Chairman asked if there were further questions from the Planning Commission for the applicant. Hearing none, he called for public input.

Mr. Chad Hughson introduced himself to the Planning Commission. He pointed out that a propane tank could be buried underground to service the units. The applicant's representative said he was not aware of that fact.

The Chairman asked if there were any other comments. Hearing none, he closed the public portion of the meeting on this matter and asked for input from the Planning Commission.

The Chairman began by stating that he understood the Planning Commission members' concerns over the future use of the property. However, those proposed uses were not before them and they had to deal with the issue at hand. He said that he understood that they would be better off with one generator, but the size necessary to serve all of the various users could be problematic.

Mr. Anderson said that he thought having a single generator would also create problems, and he thought the applicant's request was necessary to serve the public interests. Mr. Benson said that he liked the redundancy of multiple generators and would actually lean toward allowing individual generators for each of the cell phone providers. Mr. Benson said that he knows it is not necessarily popular, but he thought it would be inappropriate to put generators inside an enclosed building. The Chairman said that occasionally it is done, but he said he did understand the space limitations and the difficulty of housing them within an enclosed structure.

The Chairman asked if there were any further comments. Hearing none, the Chairman called for a motion. Mr. Anderson made a motion to approve the special exception use as submitted by Nextel/Sprint. Mr. Benson seconded the motion. Ms. Gelling again reiterated her concerns about setting a precedent, but understood the need to maintain this type of technology, especially in light of the public interest. Mr. Larson said he wanted to make sure that there was a reference in the motion to having the sound barrier required as part of the overall approval. Mr. Anderson and Mr. Benson agreed to modify the motion accordingly to add as a condition that the appropriate sound enclosure be utilized for the generator. Mr. Anderson said that he thought that issue was addressed but would agree to put it as part of the conditions. The Chairman then called for a vote on the motion, and the motion passed unanimously.

The Chairman said that the next issue was consideration of the site plan for Sprint/Nextel. Mr. Larson asked if the Commission should consider additional plantings near the proposed generator. He said currently there were quite a number of deciduous trees in the area but not many evergreen trees. Ms. Bugge said that the generator would be inside the fence and that she wondered if the Commission actually wanted to disturb the area outside of the fence. Mr. Larson said that he understood that, but he thought additional evergreen trees would also supplement the surrounding buffer in a way which deciduous plants could not. Mr. Gould said that he agreed that some buffering would be nice but did not think that the applicant should have to buffer the entire perimeter of the fence. The Chairman said perhaps it would help if some evergreens were added to the site. Ms. Gelling said that she thought it would be appropriate to have some additional buffer added to the site if, for no other reason, than to not set a precedent of installing

new generators without some additional buffering. Mr. Anderson said that the area was quite grown up and was not sure whether the pine trees would be any more effective than the deciduous trees currently in place. Mr. Larson said evergreen trees were much more effective in that they have the ability to buffer sound year round as opposed to deciduous trees which lose their leaves.

The Chairman said that he felt there was more support than not for adding some evergreens. He suggested perhaps three trees at 10-foot diagonal spacing. Mr. Larson said he would agree with the suggestion. He noted that it is important that the Planning Commissioners do something since they appear to be setting a precedent in this area.

With regard to tree height, the Chairman asked if six to eight feet would be adequate. Mr. Larson said he thought that would be adequate. The applicant's representative said that they would agree to that request and that the size of tree which was proposed was appropriate. Ms. Bugge suggested that the evergreens be hand-planted to avoid disturbing the existing plant materials with machinery. Mr. Larson and Ms. Gelling agreed with that suggestion. The Chairman asked if there was any more discussion, and hearing none, asked for a motion. Mr. Larson made a motion to approve the site plan as submitted with the following conditions:

- (1) Any lighting shall comply with Section 78.700. Details are to be submitted for Staff approval.
- (2) Any plant material disturbed outside the fenced area shall be replaced and subject to review and approval by Staff.
- (3) Site plan approval is subject to the review and approval of the Fire Department.
- (4) The applicant shall hand-plant three (3) evergreen trees, six (6) to eight (8) feet in height, at 10-foot diagonal intervals, outside of the fence on the south side of the property.

The Chairman called for a second to the motion. Mr. Anderson seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

### **PLANNING COMMISSIONERS COMMENTS**

Mr. Gould asked that the Planning Commission look at the landscaping requirements. He said he thought that once the sites begin to mature, they appear to be somewhat overgrown, and he thought the landscaping requirements were detracting from the business rather than enhancing it. He said he thought these issues should be looked at again.

The Chairman commented on the trees cleared on the south of M-43. He asked if they had received an erosion permit. Ms. Bugge indicated that they had.

The Chairman asked that Township Attorney comment on ex parte communication and visitation to the sites. Attorney Porter noted for Planning Commission members that they needed to make sure that the facts upon which they deliberated were all presented in a public meeting. He said that he did not have a problem with them driving by a site, but actually physically walking the site, making physical determinations or discussing the matter with the applicant would run contrary to the requirements that decisions of a public body be made in a public forum. He warned them against having any ex parte communication with the applicants before a public hearing.

Mr. Anderson asked in light of the evening's weather, whether there were Township policies as to where Planning Commission members should go, whether they should show up, etc. A brief discussion ensued regarding the storm facilities for the Township, as well as the Township's policy relating to inclement weather.

Ms. Gelling asked what the protocol should be for calling when a Planning Commissioner is unable to make a meeting. Ms. Bugge requested that a call be made to the Planning Department, and then the Planning Department would, in turn, notify the Planning Commission Chairman to inform him as to who is going to be present.

Mr. Larson brought to everyone's attention a recent Court of Appeals' decision on zoning which limited the impact of the Right to Farm Act due to lack of generally-accepted agricultural management practices for nurseries.

## **ADJOURNMENT**

There being no further business to come before the meeting, the meeting was adjourned at approximately 8:45 p.m.

OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION

By: \_\_\_\_\_

Minutes prepared:  
September 6, 2007

Minutes approved:  
\_\_\_\_\_, 2007