

**OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION**

**MINUTES OF A REGULAR MEETING HELD MAY 8, 2014**

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**Agenda**

**PUBLIC HEARING: SPECIAL EXCEPTION USE REQUEST FROM KA-BOOMERS ENTERPRISES INC. FOR ESTABLISHMENT OF A TEMPORARY OUTDOOR SALES USE LASTING LONGER THAN ONE DAY LOCATED IN THE PARKING LOT OF AN EXISTING COMMERCIAL CENTER (MENARD'S) AT 6800 WEST MAIN STREET IN THE C LOCAL BUSINESS DISTRICT (PARCEL #3905-14-155-029).**

**PUBLIC HEARING: SPECIAL EXCEPTION USE REQUEST FROM OCBA ON BEHALF OF OSHTEMO TOWNSHIP FOR AMENDMENTS TO AN EXISTING SPECIAL EXCEPTION USE (PARK) TO IMPLEMENT PHASE II OF THE MASTER PLAN FOR FLESHER FIELD LOCATED AT 3664 SOUTH 9<sup>TH</sup> STREET IN THE RR RURAL RESIDENTIAL DISTRICT AND THE VILLAGE FORM BASED CODE OVERLAY DISTRICT (PARCEL #3905-35-185-010).**

**PUBLIC HEARING: CONTINUED REVIEW OF PROPOSED AMENDMENTS TO SECTIONS 50 AND 60 OF THE TOWNSHIP ZONING ORDINANCE RELATED TO THE 9<sup>TH</sup> STREET AND WEST MAIN STREET SUB-AREA PLANS AS WELL AS THE REQUIREMENTS FOR PLANNED UNIT DEVELOPMENT. (PUD)**

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A meeting of the Oshtemo Charter Township Planning Commission was held on Thursday, May 8, 2014, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

**MEMBERS PRESENT:** Terry Schley, Chairperson  
Fred Antosz  
Wiley Boulding Sr.  
Dusty Farmer  
Pam Jackson  
Millard Loy  
Richard Skalski

**MEMBERS ABSENT:** None

Also present were Greg Milliken, Planning Director; James Porter, Attorney; and Martha Coash, Meeting Transcriptionist. There were approximately 16 other persons in attendance.

## **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

The meeting was called to order by Chairperson Schley at approximately 7:00 p.m. and the "Pledge of Allegiance" was recited.

## **AGENDA**

The Chairperson asked for a motion to approve the agenda.

Mr. Loy made a motion to accept the agenda as presented. Mr. Skalski seconded the motion. The motion passed unanimously.

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

Chairperson Schley asked if anyone in attendance wished to comment on non-agenda items. Hearing none, he proceeded to the next agenda item.

## **APPROVAL OF THE MINUTES OF April 24, 2014**

The Chairperson asked if there were any additions, deletions or corrections to the minutes of April 24, 2014. Hearing none, he asked for motion to approve the minutes.

Mr. Boulding Sr. made a motion to approve the minutes. Mr. Skalski seconded the motion. The motion was approved unanimously.

## **PUBLIC HEARING: SPECIAL EXCEPTION USE REQUEST OF KA-BOOMER'S ENTERPRISES INC. FOR ESTABLISHMENT OF A TEMPORARY OUTDOOR SALES USE LASTING LONGER THAN ONE DAY LOCATED IN THE PARKING LOT OF AN EXISTING COMMERCIAL CENTER (MENARD'S) AT 6800 WEST MAIN STREET IN THE C LOCAL BUSINESS DISTRICT (PARCEL #3905-14-155-029).**

Chairperson Schley indicated the next item on the agenda was the public hearing to consider a special exception use request from Ka-Boomer's Enterprises Inc. He asked Mr. Milliken to present his report.

Mr. Milliken explained the applicant is seeking to locate a temporary fireworks sales tent in the parking lot of the Menard's Center on West Main Street. Such a use is a special exception use in the C zoning district because it will last more than one day. The applicants are seeking to operate from 6/25/14 to 7/4/14 – a period of 10 days. The

tent will be installed two to three days prior and removed one to two days after the period indicated.

He continued, saying the applicant is proposing a 1,600 square foot (20'x80') tent for the sale and display of fireworks. It is proposed to be located in the south-central portion of the parking lot adjacent to the access drive serving the outlot centers and Menard's. He noted the location complies with all required building setbacks and that the applicant has indicated that it will be 200 feet from the front of the Menard's store.

Mr. Milliken said the proposed tent is located in the middle of a row of parking spaces. In addition, a storage trailer for supplies and inventory is proposed to be located within the same bank of parking spaces north of the tent.

He noted state regulations do not allow vehicles within 10 feet of the fireworks area. The bank of parking spaces within which the tent will be located is 40 feet wide. Therefore, space is available to provide the required 10 foot buffer area on each side of the 20-foot wide tent without extending into the adjacent driveways.

Mr. Milliken noted hours of operation will be from 10 am to 10 pm daily. Menard's hours are 6:30 am to 10 pm Monday through Saturday and 8 am to 8 pm on Sunday. The applicant has indicated they will provide 24 hour manned security on the site for the fireworks tent at all times.

He added that the Fire Department reviewed the plans, found them to be acceptable, and will do an inspection of the site prior to initiating sales.

Mr. Milliken pointed out this is the first year Ka-Boomer's has located in the Township. In 2012, another entity was approved to locate at Menard's, the first time a fireworks tent was located at that site. The tent was located in a different portion of the parking lot: the southwest corner. There were no issues or problems with that use.

Mr. Milliken walked through the standards of approval and criteria.

He concluded by saying the proposed use is consistent with existing uses in the C district as well as within the surrounding commercial center.

Chairperson Schley indicated it was time for Board Members to ask questions of Mr. Milliken and began by referencing problems experienced with a different fireworks vendor regarding timely installation and removal of the tent. He wondered if it would be appropriate to establish an escrow requirement for all applicants that would be returned if there were no problems.

After some discussion it was agreed to look into establishing such an escrow in the future that would be applicable to all vendors, but that it is too late to do so this year to be fair to vendors for whom that requirement has not been in place. It was also agreed that if the application is approved, it would be prudent to establish a reasonable amount of time to erect the tent prior to the sales period and after the fourth of July and

to inform the vendor that failure to comply would be enforced and could complicate future requests.

Mr. Antosz inquired about whether training in the use of fire extinguishers is provided to fireworks employees.

Mr. Milliken replied that a specific type of license is required for this kind of operation and Attorney Porter agreed, saying employees are supposed to be trained and that since the license is approved by the state, it is not in the Township's purview to question provisions.

Chairperson Schley asked if there were members of the public who wished to speak regarding this application. Hearing no one, he closed the public hearing and moved to Commissioner deliberations.

Ms. Farmer indicated she would like to restrict time for set up and tear down before and after the sales period to one day prior and two days afterward and that she would like to see establishment of a process for escrow for events lasting longer than one day in the future.

Attorney Porter said as a matter of fairness and due process to the applicant, since more restrictive set up and removal time was not a provision when the application was made, it probably should not be included. But the motion to approve could say they would be cited for permit violation if the tent was not removed within the permitted two days.

Mr. Loy pointed out the people who put up and teardown the tents come from out of town and that he felt a day or two grace period could be burdensome for the tent vendors.

The Chairperson felt establishing an escrow account might be reasonable to add to provisions in the future and might be considered for next year.

Ms. Farmer said the Planning Commission could be understanding but that they have a right to have their expectations met.

Mr. Milliken was concerned about administrative costs to administer escrow arrangements, and noted that to date only one applicant violated removal requirements.

Attorney Porter suggested establishing a rationale for addressing such a violation without escrow, perhaps notifying applicants that repeat violations could cause the Commission to deny future requests.

Mr. Loy made a motion to approve the application with the conditions as recommended by Staff. Mr. Skalski seconded the motion.

Ms. Farmer suggested a friendly amendment to say the tent may be erected no more than three days prior to June 25 and must be removed no later than three days after July 4.

Mr. Loy and Mr. Skalski accepted the amendment. The motion passed unanimously.

**PUBLIC HEARING: SPECIAL EXCEPTION USE REQUEST FROM OCBA ON BEHALF OF OSSTEMO TOWNSHIP FOR AMENDMENTS TO AN EXISTING SPECIAL EXCEPTION USE (PARK) TO IMPLEMENT PHASE II OF THE MASTER PLAN FOR FLESHER FIELD LOCATED AT 3664 SOUTH 9<sup>TH</sup> STREET IN THE RR RURAL RESIDENTIAL DISTRICT AND THE VILLAGE FORM BASED CODE OVERLAY DISTRICT (PARCEL #3905-35-185-010).**

Chairperson Schley stated the next item on the agenda was a Special Exception Use Request of the application from OCBA on behalf of Oshtemo Township for amendments to an existing special exception use (Park) to implement Phase II of the Master Plan for Flesher Field and asked Mr. Milliken to review the request.

Mr. Milliken told Commissioners Flesher Field is located on South 9<sup>th</sup> Street south of Stadium Drive, located in the RR Rural Residential zoning district. A park is a special exception use in the RR district. Amendments to a special exception use require approval of the Planning Commission. In addition, the park is located within the Village Form Based Code Overlay District (VFBC).

He said a Master Plan for the redevelopment of Flesher Field was developed by O'Boyle, Cowell, Blalock, and Associates (OCBA) in late 2009 and approved by the Township Board in February 2010. The Plan calls for improvements to the park to be made in three phases.

Phase I improvements were approved by the Planning Commission in August of 2013. These improvements are currently under construction with an expected substantial completion date of June 6, 2014. Phase I improvements include a new parking lot, restroom building, .17 mile paved loop trail, and a new roof on the existing pavilion.

Mr. Milliken told the Commission the Township is currently seeking approval of Phase II improvements. A conceptual layout of Phase II improvements as well as the preliminary construction plans were provided.

Mr. Milliken explained Phase II includes several important recreation improvements to the facility:

- A garden space with a gazebo, accessible paths, and landscaping.

- The existing play area will be removed and replaced with a new universally accessible play area.
- A new picnic shelter with tables will be added.
- Two new wiffleball fields will be built to replace the existing fields that will be relocated for construction of the garden space.

He said the garden space, located in the north corner of the park, is designed for weddings, outdoor concerts, and family movie nights. It includes an octagonal steel gazebo with a concrete floor. The green metal roof will be selected to match the green metal roof of the new bathroom building and the new roof on the existing pavilion. The gazebo color will be chosen to blend with the brown brick of the existing pavilion and the gazebo will be ADA accessible.

Further, he said the existing tree row along Erie Street and the existing row of large crabapple shrubs and maple trees along 9<sup>th</sup> Street will remain. Landscaping will be added in the form of native shade trees, understory trees, shrubs, and perennials. To mitigate potential noise levels generated by events at the gazebo and impacts from such on adjacent properties to the north and east, a five and a half foot high earth berm is proposed between the gazebo and 9<sup>th</sup> Street.

Mr. Milliken said also proposed is a new picnic shelter along the paved loop trail that is being constructed in Phase I. It is located between the play area and the wiffleball fields. It will feature a green standing seam metal hip roof to match the other roofs on the site. Four brick half columns will match the brick of the existing pavilion and restroom.

He added that the two new wiffleball fields are proposed south of the paved loop trail.

Mr. Milliken noted the park is a unique facility and use within the form based code overlay district and explained the Commission has the authority to approve building types not identified in the text, provided it is pedestrian oriented and consistent with the intent of the district. He also stated the architectural standards would apply to the new gazebo and picnic shelter being constructed. These standards are modifiable. It is noteworthy that these are both unique structures not anticipated by the Code when the standards were crafted and are designed to match the other structures on site.

Mr. Milliken also noted there is no site lighting or trash enclosure proposed as part of Phase II. The Township Engineer and Fire Marshall have reviewed the plans and had no concerns with Phase II.

He said the request meets all standards for approval, and noted the berm around the gazebo will mitigate impact on properties to the north and east.

In conclusion, Mr. Milliken said these improvements are consistent with the Master Plan for the Park and will improve the recreational asset in the Village Area and Township without negatively impacting the surrounding area.

Chairperson Schley thanked Mr. Milliken and asked if the applicant would address the Commission.

Mr. Ken Peregon, President of OCBA Landscape Architects, told Commissioners he had been working with the Township on the Phase II Improvements to Flesher Field and just had one thing to add to Mr. Milliken's comments.

He said, just that morning, in cooperation with the Parks Committee, a modification was made to the proposed plan behind the berm. Rather than planting evergreen trees as described in the application materials, it was decided native deciduous trees would be used to tie into the tree line of mostly oaks for the AT & T right of way would be a better choice. Also, in order to be able to reach out to the DDA area by adding an accessible path from 9<sup>th</sup> Street into the gazebo area. The berm will still create an attractive backdrop and decrease noise from 9<sup>th</sup> Street for events to be held at the gazebo.

There were some questions from Commissioners regarding gazebo lighting and height of eaves. Their concerns were satisfied by Mr. Peregon and he also clarified the expected use of the gazebo will be for events such as weddings as well as a stage for performances. Ms. Jackson wondered about providing pedestrian access to the park from the adjacent apartment complex.

Chairperson Schley thanked Mr. Peregon for his comments and asked for public comment.

Mr. Roger Taylor, 7684 West Main Street, and Chair of the Parks Committee, agreed with Mr. Peregon's assessment of the advantages to the suggested modifications made to the plantings behind the berm. In answer to Ms. Jackson's question about access, he felt the apartment complex might prefer not to have access from the park to the complex, but they could be approached to inquire about it.

There were no further public comments and Chairperson Schley closed the public hearing.

The Chair said that as Chair of the DDA, he was pleased to see the connection to the park at the northeast corner. He felt the Parks Committee did a great visioning job and noted any lighting issues would be addressed by compliance with the Ordinances.

Commissioners were all in agreement that the plan was a good one and that it would be rewarding to see the park when all three phases are complete.

Mr. Skalski asked about the construction schedule.

Mr. Milliken felt it would be similar to Phase I but without so much hard infrastructure and asphalt work needed in this phase, the construction might be able to begin earlier in 2014 and be completed in a shorter length of time.

Mr. Loy made a motion to approve the special exception request application with the changes described and the five conditions as recommended by Staff. Mr. Antosz seconded the motion. The motion passed unanimously.

**PUBLIC HEARING: CONTINUED REVIEW OF PROPOSED AMENDMENTS TO SECTIONS 50 AND 60 OF THE TOWNSHIP ZONING ORDINANCE RELATED TO THE 9<sup>TH</sup> STREET AND WEST MAIN STREET SUB-AREA PLANS AS WELL AS THE REQUIREMENTS FOR PLANNED UNIT DEVELOPMENT. (PUD)**

Chairperson Schley said the next item on the agenda was the public hearing for continued review of the proposed ordinance related to the 9<sup>th</sup> Street and West Main Street Sub-Area plans as well as the requirements for Planned Unit Development. (PUD) He asked Mr. Milliken to review the discussion to date.

Mr. Milliken said a public hearing was held on proposed amendments to the Zoning Ordinance regarding the 9<sup>th</sup> Street and West Main Street Overlay Districts and PUD requirements at the March 27 meeting. A lot of feedback was received, but the comments were not necessarily constructive for the Staff, the consultants, or the Commission to use to be able to modify the draft language. He noted the discussion would continue but no action would be taken at this meeting.

He reported that he had one conversation with property owners subsequent to the March 27 meeting where concerns were raised regarding the limitation on permitted uses within the overlay as well as challenges presented with strict adherence to the access requirements in the language with some of the smaller parcels and the coordination it requires between multiple property owners.

Mr. Milliken noted a new draft had not been done in hopes that more feedback would be received first. He hoped this meeting would generate enough changes to be able to produce a new draft. The goal is to try to engage in constructive dialog that will yield input to help the Planning Commission to make appropriate changes. He said specifics, such as % of open space and access management were key issues to discuss. He noted that one letter was received from a land owner and had been shared with Commissioners.

Chairperson Schley asked if Commissioners had any questions for Mr. Milliken. There were none and the hearing was opened for public comments specific to the continuing dialog regarding the Zoning Ordinance Amendments.



Mr. Jeff Bertolissi asked if any of the Commissioners were residents of Country Club Village. None of the Commissioners reside there.

Ms. Margaret Masuzawa, 331 West Ridge Circle, asked about the relevance of Mr. Bertolissi's question, but had no comment to offer.

Ms. Sheri Mohmand, 6147 Old Log Trail, and property owner on the south side of and adjacent to Wal-Mart, in the 9<sup>th</sup> Street Sub-Area Plan, said the designation for her property called for set back from 9<sup>th</sup> Street of 100 feet rather than 60 feet and sewer and water, so the vision was for commercial retail development. She said after three Muslims were owners of the property, that shifted. She felt Section 50 and 60 permitted uses need to be expanded to include retail.

She said the "green belt corridor" restrictions are offensive to the Muslim property owners. The limited uses for commercial are too restrictive for owners and prospective buyers and make it impossible to develop or market property in the overlay zone. The Costco development and the 60 acres of wooded property behind T.G. I Fridays were not held to the same restrictions; there is different treatment for certain people. She asked the Commission to do its job and treat everyone the same.

Mr. Kadir Mohmand, 6147 Old Log Trail, and property owner in the 9<sup>th</sup> Street Sub-Area, spoke next in the name of the God Mustafa, God Most Gracious. He felt he had been punished for raising his concerns of Township corruption. He wants to see the Planning Commission follow the American Constitution which does not discriminate against Muslims. He felt he has been circled around for 20 years and mentioned special treatment for other property owners. He asked if the Planning Commission wanted his property or to shoot him. He said he has a report for the FBI, mentioned a lawsuit, and provided copies of a related communication to Commissioners.

Mr. Rick DeKam, Midwest Realty Group, said he represents the Longjohn family who own property contiguous to Meijers, and pointed out their land has been assessed as commercial but that it is not zoned commercial even though it is next to a large box retailer and the highway.

Attorney Porter noted that classification for zoning purposes and classification for tax purposes are different and don't always match up.

Mr. Jeff Bertolissi indicated he represented himself and Mr. Ken Bertolissi, who own 3.5 acres contiguous to Ethan Allen and together with contiguous acreage owned by Dick and Judy Weddington, the acreage he is concerned about totals 8.5 acres. He said because there is a 50 foot elevation over 20 feet and a large pond on the property east of the car lot, he would like their parcels considered separately for connectedness and would like drive-through windows considered as a possible exception. He said in 2006 he, his father, and Mike Seelye proposed PUD zoning for this particular area. The PUD was denied, as they understood it, because there was no interconnecting road for 660 feet of frontage where it would not be feasible.

Mr. Dave Ash, Remax Broker, 6404 W. Main Street, has represented property owners on the south side of West Main Street for a long time. He wants to continue dialog and resolve the issues. He said all properties behind Meijers are R-2, and not typical development. He noted it is hard to rent to anyone on West Main Street, that the specific location is stymied. He mentioned zoning in a balloon shape, making the back R-2 and the front commercial.

Hearing no further comments, Chairperson Schley closed the public hearing.

Chairperson Schley said he is concerned about making headway and appreciated the positive suggestions, but heard a lot of broad scope comments when he had hoped for responses to technical aspects of the proposal. He said he did not think anyone on the Commission had anything but the best intent for the citizenry and the community of Oshtemo. He explained it was historically the intent of the Township to not have a saturation of commercial development, but to preserve certain rural aspects within the challenge of the marketplace. He wants to balance following the Master Plan with the feedback received from the public. He noted the idea of the overlay is to provide options and that the Planning Commission is trying to be helpful overall.

Commissioners were in consensus that they want to be open to discussion and change, reactive to the public, and feel that specifics are where they need to focus.

After discussion of how best to proceed constructively, Chairperson Schley suggested at least one informal work session.

Attorney Porter agreed a work session could be conducted if proper public notice was provided.

Chairperson Schley said he envisioned sitting at the back table, provided with maps and appropriate tools, talking in dialog fashion and going through the proposed amendments item by item. He does not think progress is being made in the current format.

Mr. Milliken and Attorney Porter both agreed this would help to facilitate a broader discussion.

The Commissioners were all in consensus that this would be a good way forward.

Mr. Milliken was asked if the property could be used as desired currently. He said his recommendation is that a residential PUD could be done like Sky King Meadows, with some commercial. Conditional Rezoning is another possibility. The initial goal was to have all development in this sub-area go through the PUD, because it would be cleaner. The overlay was added because of the smaller parcels; the PUD wouldn't be appropriate to address all possibilities.

Commissioners agreed to begin the regularly scheduled meeting on May 22<sup>nd</sup> with a work session at 6:00 p.m. The public notice will include that information.

Chairperson Schley said they would work line by line and push ahead paragraph by paragraph; it will be redundant, but most effective.

Mr. Milliken indicated he would revise the draft chapters prior to the meeting.

The Chairperson suggested a shopping list to consider commercial uses in commercial districts be provided.

### **OLD BUSINESS**

Chairperson Schley asked if there was old business to come before the Commission. There was none and the Chair moved to the next item on the agenda.

### **ANY OTHER BUSINESS**

Chairperson Schley asked if anyone had other business to discuss. Hearing none, the Chairperson moved to Planning Commissioner Comments.

### **PLANNING COMMISSIONER COMMENTS**

The Chairperson asked if Commissioners had comments to share.

Ms. Farmer said she was pleased to have made the decision to move forward with the work session; she needs more time to consider the issue and thinks others do as well.

Mr. Antosz agreed and thought the process will help him better understand the issues.

Mr. Skalski also agreed and said Commissioners had been spinning their wheels. The work session format should help them make some real progress.

Mr. Boulding Sr. said some of the comments he heard were disconcerting. A certain segment of the population feels they have been slighted. Whether that concern is real or not, it needs to be addressed. Everyone is in the same society and the rules and ordinances should be applicable to everyone. He hoped they can find medium ground so every can feel included. He also noted no retailers were present to speak who may have concerns. He said the Commission works for the benefit of all and he is happy to work with a group to solve issues in a way that is palatable to all citizens.

Mr. Loy commented he has been on the Board for more than 20 years and the only time people show up is when their own back yard is involved. The Planning Commission tries to make laws and rules for everyone, but since usually no one shows up they have no idea how many hours are spent to work on issues. It is disheartening. The Board is not discriminatory – they have never taken that road. He agreed the work session format will be helpful.

Ms. Jackson said she is looking forward to making progress and understands why people are impressed with Commission Members.

Chairperson Schley said it is a privilege to be able to serve on the Planning Commission and a real challenge. He recognizes that in going forward there is a risk that you can make a mistake. It is the Commission's duty to fulfill the community's wishes. Members feel deeply their responsibility and all want to be careful and prudent as to how they serve the community and would like be respected for what they try to do.

## **ADJOURNMENT**

Having exhausted the agenda, and with there being no further business to discuss, Chairperson Schley asked for a motion to adjourn.

Mr. Skalski made a motion to adjourn. Ms. Jackson seconded the motion. The motion carried unanimously.

Chairperson Schley adjourned the Planning Commission meeting at approximately 9:03 p.m.

Minutes prepared:  
May 12, 2014

Minutes approved:  
May 22, 2014