

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS  
DRAFT MINUTES OF A REGULAR MEETING HELD MARCH 21, 2023 AT  
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

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**Agenda**

**SITE PLAN: TAPLIN**

**GLAS ASSOCIATES WAS REQUESTING SITE PLAN APPROVAL FOR A PROPOSED 40,375 SQUARE-FOOT MAINTENANCE AND STORAGE FACILITY LOCATED AT 5070 WEST MICHIGAN AVENUE**

**TEXT INTERPRETATION: SECTION 41.60.B**

**VISSER PROPERTY MANAGEMENT, LLC WAS REQUESTING AN INTERPRETATION OF SECTION 41.60.B OF THE ZONING ORDINANCE TO DETERMINE IF ASSEMBLY AND CONVENTION HALLS ARE AN APPROPRIATE NEIGHBORHOOD COMMERCIAL USE WITHIN A RESIDENTIAL PUD**

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A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, March 21, 2023, beginning at approximately 3:00 p.m.

ALL MEMBERS WERE PRESENT:

Anita Smith, Chair (arrived late)

Rick Everett

Dusty Farmer

Fred Gould

Harry Jachym

Louis Williams, Vice Chair

Alistair Smith

Also present were Iris Lubbert, Planning Director, Jim Porter, Township Attorney, Colten Hutson, Zoning Administrator, Martha Coash, Recording Secretary, Paul Lippens, Vice President of MCKENNA, and four guests.

**Call to Order**

Vice Chairperson Williams called the meeting to order. Those present joined in reciting the Pledge of Allegiance.

**Approval of Agenda**

Ms. Lubbert indicated there were no changes to the agenda.

Ms. Farmer made a motion to approve the agenda as presented. Mr. Williams seconded the motion. The motion was approved unanimously.

The Vice Chair moved to the next agenda item.

### **Public Comment on Non-Agenda Items**

There were no comments on non-agenda items.

### **Approval of the Minutes of January 24, 2023**

Vice Chairperson Williams asked if there were changes to the Minutes of January 24, 2023. Hearing none, he asked for a motion.

Ms. Farmer made a motion to approve the Minutes of January 24, 2023 as presented. Mr. Jachym seconded the motion. The motion was approved unanimously.

The Vice Chair moved to the next agenda item.

Chairperson Smith arrived at this point in the meeting.

### **SITE PLAN: TAPLIN**

### **GLAS ASSOCIATES WAS REQUESTING SITE PLAN APPROVAL FOR A PROPOSED 40,375 SQUARE-FOOT MAINTENANCE AND STORAGE FACILITY LOCATED AT 5070 WEST MICHIGAN AVENUE**

Mr. Paul Lippens, of McKenna presented the findings for the site plan application for the proposed 40,375 square foot maintenance and storage facility located at 5070 West Michigan Ave, noting the applicant received previous approval to construct a 32,875 square foot building by the ZBA on December 13, 2022. The review was based on the revised site plan dated February 22, 2023.

The site is approximately 12.36 acres with frontage along W. Michigan Ave., west of S. Drake Road and is located in the I-2 Industrial District, which permits warehousing as a permitted use. (Section 27.20.E.)

The application notes the three existing buildings on site will be demolished upon completion of the new warehouse facility.

Mr. Lippens noted the applicant was requesting that the previously granted deviation from installation of the interior sidewalk be extended for this revision of the site plan as it remains a security issue.

Under Landscaping, he noted the required 20 foot wide greenbelt should be shown on the site plan.

In the case of interior site landscaping, he said the applicant would need to provide landscaping calculations to ensure this provision is satisfied. In addition he

noted the applicant has been granted 49 tree preservation credits due to the retention of existing mature growth trees on site. He also pointed out that this provision is only partially met due to the installation of site landscaping around the building as it relates to the retention pond screening.

He recommended the additional gravel proposed on the front yard area be removed to reduce the temptation to store equipment in an unauthorized location. Removal will also reduce the required interior site landscaping by reducing the amount of site alterations.

Based on the revised site plans dated February 22, 2023, Mr. Lippens indicated the Taplin Site Plan Application could be recommended for approval subject to the conditions outlined below:

1. A Soil Erosion and Sedimentation Control (SESC) permit from the Kalamazoo County Drain Commissioner's Office will be required prior to building permit issuance.
2. A permit by the Road Commission of Kalamazoo County authorizing work within the public right-of-way will be required prior to building permit issuance.
3. All watermain connections shall be coordinated with the City of Kalamazoo Department of Public Services. A copy of the City of Kalamazoo water permit shall be provided prior to building permit issuance. Acceptance of watermain construction and testing must be provided prior to issuing a certificate of occupancy.
4. Finalization for the design of the non-motorized facility or any other engineering details shall be subject to the administrative review and approval of the Township Engineer prior to building permit issuance.
5. Prior to any occupancy of the proposed principal building, the existing three structures shall be demolished.
6. Copies of the necessary recorded easements shall be provided to the Township prior to issuing a certificate of occupancy.
7. All non-motorized facilities on the approved site plan shall be installed prior to issuing a final certificate of occupancy.
8. No outdoor storage shall be allowed within the front yard nor the front, side, or rear yard setbacks: the additional gravel area noted in the front yard on the site plan shall be removed.
9. If ownership between 5070 W Michigan Avenue and 5100/5140 W Michigan Avenue changes, a cross-access agreement will be executed and recorded, with approval by the Township Attorney.
10. Additional gravel shown in the front yard be removed to reduce the amount of site alterations project to take place – this will also reduce the amount of on-site landscaping that is required by Ordinance.
11. **SIDEWALK DEVIATION:** The Zoning Board of Appeals approves the request to deviate from Section 57.90 to not install a sidewalk connection from the proposed principal building to the proposed non-motorized facility abutting the public right-of-way appropriate for this industrial site.

12. An updated Landscaping Plan that meets ordinance requirements shall be submitted and approved prior to building permit issuance. The Landscaping Plan shall include:

- i. Clearly delineate the 20-foot required greenbelt on the landscaping plan.
- ii. Provide details pertaining to the type of ground cover to be on site.
- iii. Provide interior landscaping that total 53,975 square feet – not counting the required green belt and parking lot landscaping. Provide calculations of said interior landscaping to ensure compliance with this provision.
- iv. Install screening around the proposed retention pond, such as shrubs or coniferous trees to provide year-round screening.

Chairperson Smith determined board members had no questions and asked if the applicant wished to speak.

Mr. Adam Harvey of Glas Associates, spoke on Taplin Properties' behalf. He indicated after the approval of the site plan in December it was felt that in order to be sure outside storage for equipment would not be needed in the front yard, more square footage was needed to ensure inside storage.

He explained the gravel shown on the site plan will not be added, but is already in place as part of the front yard. It will be used for temporary fleet parking and he noted keeping it in place will prevent additional stormwater runoff.

He also explained they have a concern about condition #5 in the recommendation, as they will need to keep the three buildings in place until the contents can be moved to the new facility. It would be impossible to open if they have to be torn down before the new facility is complete. They expect the new facility to be completed in a November / December time frame.

Ms. Lubbert suggested a change to condition #5 reading "prior to **final** occupancy" rather than "prior to any occupancy," would allow the building authority and Township to work with Taplin regarding temporary measures in granting occupancy until completion would allow final occupancy to be granted.

Attorney Porter noted it is standard to grant such a temporary occupancy if a project completion delay is warranted.

Mr. Harvey said they had no issues with any of the other requirements and indicated he understood condition #9 would require a cross-access agreement if ownership between 5070 W. Michigan and 5100/5140 W. Michigan changes.

Chairperson Smith thanked Mr. Harvey for his comments and asked if there was a need for board deliberations. Hearing no comment, she asked for a motion.

Ms. Farmer made a motion to approve the site plan request for a proposed 40,375 square foot maintenance and storage facility at 5070 West Michigan Avenue as proposed subject to the following 12 conditions:

1. A Soil Erosion and Sedimentation Control (SESC) permit from the Kalamazoo County Drain Commissioner's Office will be required prior to building permit issuance.
2. A permit by the Road Commission of Kalamazoo County authorizing work within the public right-of-way will be required prior to building permit issuance.
3. All watermain connections shall be coordinated with the City of Kalamazoo Department of Public Services. A copy of the City of Kalamazoo water permit shall be provided prior to building permit issuance. Acceptance of watermain construction and testing must be provided prior to issuing a certificate of occupancy.
4. Finalization for the design of the non-motorized facility or any other engineering details shall be subject to the administrative review and approval of the Township Engineer prior to building permit issuance.
5. Prior to **final** occupancy of the proposed principal building, the existing three structures shall be demolished.
6. Copies of the necessary recorded easements shall be provided to the Township prior to issuing a certificate of occupancy.
7. All non-motorized facilities on the approved site plan shall be installed prior to issuing a final certificate of occupancy.
8. No outdoor storage shall be allowed within the front yard nor the front, side, or rear yard setbacks: the additional gravel area noted in the front yard on the site plan shall be removed.
9. If ownership between 5070 W Michigan Avenue and 5100/5140 W Michigan Avenue changes, a cross-access agreement will be executed and recorded, with approval by the Township Attorney.
10. Additional gravel shown in the front yard be removed to reduce the amount of site alterations project to take place – this will also reduce the amount of on-site landscaping that is required by Ordinance.
11. **SIDEWALK DEVIATION:** The Zoning Board of Appeals approves the request to deviate from Section 57.90 to not install a sidewalk connection from the

proposed principal building to the proposed non-motorized facility abutting the public right-of-way appropriate for this industrial site.

12. An updated Landscaping Plan that meets ordinance requirements shall be submitted and approved prior to building permit issuance. The Landscaping Plan shall include:

- i. Clearly delineate the 20-foot required greenbelt on the landscaping plan.
- ii. Provide details pertaining to the type of ground cover to be on site.
- iii. Provide interior landscaping that total 53,975 square feet – not counting the required green belt and parking lot landscaping. Provide calculations of said interior landscaping to ensure compliance with this provision.
- iv. Install screening around the proposed retention pond, such as shrubs or coniferous trees to provide year-round screening.

Mr. Williams seconded the motion. The motion was approved unanimously.

Chairperson Smith moved to the next agenda item.

**TEXT INTERPRETATION: SECTION 41.60.B**  
**VISSER PROPERTY MANAGEMENT, LLC WAS REQUESTING AN**  
**INTERPRETATION OF SECTION 41.60.B OF THE ZONING ORDINANCE TO**  
**DETERMINE IF ASSEMBLY AND CONVENTION HALLS ARE AN APPROPRIATE**  
**NEIGHBORHOOD COMMERCIAL USE WITHIN A RESIDENTIAL PUD.**

Attorney Porter indicated that since it had been a long time since the Zoning Board of Appeals has had to consider an interpretation of the zoning ordinance, he distributed a handout listing the “Rules of Construction for Zoning Ordinances”, and walked through it with the group to provide guidance as they considered this issue.

Ms. Farmer asked if they are to look strictly at the ordinance and not the decision of a previous Zoning Board of Appeals.

Attorney Porter confirmed that is correct. The intent should be determined by looking at all the ordinance language and Master Plan documents pertinent to the specific request.

**Request Overview and Background:**

Mr. Hutson explained Jeff Scheffers, on behalf of Visser Property Management LLC, was requesting an interpretation of Section 41.60.B of the zoning ordinance to determine if Assembly and Convention Halls are an appropriate neighborhood commercial use within a Residential PUD. If determined an acceptable use, it would allow him to establish an Assembly and Convention Hall within the existing building located at 5401 W. H Avenue of the West Port Village PUD. The property in question

was previously approved to serve as the nonresidential component of the Residential PUD for West Port Village. The subject property is located on the south side of W H Avenue, between N Drake Road and US-131.

On November 18, 2004, the Oshtemo Township Planning Commission granted site plan and special exception use approval for 133 residential units and one nonresidential unit. The nonresidential unit was approved to serve as office space for Visser Construction as well as community area for the residents of West Port Village. Per ordinance, up to 20% of a Residential PUD is allowed to be made up of nonresidential development. Since the applicant has the desire to change the community area component within the nonresidential building to an Assembly and Convention Hall use, such a change would require staff, and ultimately the Planning Commission, to evaluate the proposed use against the Township's zoning ordinance and master planning documents.

In reviewing the zoning ordinance for Residential PUDs, Section 41.60.B: Allowable Uses states the following:

*Planned unit developments are restricted to one or more of the following uses regardless of the zoning classification in which the development is located, provided such land uses are consistent with the goals and objectives of the Township Master Plan including the Sub-Area Plans:*

- A. *One-family, two-family, three- or four-family, and multiple-family dwellings, including uses and buildings accessory thereto.*
- B. *Low intensity nonresidential uses such as educational, cultural, recreational, neighborhood office or neighborhood commercial nature, including uses and buildings accessory thereto. Non-residential uses shall be compatible in design, layout, scale and appearance with the residential character of the area and shall be an integral part of a residential development logically oriented to and coordinated with the planned unit development to serve the day-to-day needs of residents in the development.*

Upon staff review of the language outlined in the zoning ordinance, the applicant was informed the proposed use of an Assembly and Convention Hall did not meet the specific requirements of Section 41.60.B, which details the types of uses allowed within a Residential PUD. An Assembly and Convention Hall does not clearly meet the definition of a low intensity nonresidential use nor does it clearly serve the day-to-day needs of the residents within the PUD.

However, given that the zoning ordinance does not clearly define what a neighborhood commercial use is, and there is some subjectivity within this section of the ordinance, staff deemed it appropriate for the applicant to request a text interpretation from the Zoning Board of Appeals to officially determine if Assembly and Convention Halls are an allowable use within a Residential PUD. Per the documents submitted by

the applicant, they believe that the Assembly and Convention Halls use satisfies the requirements of the zoning ordinance and is neighborhood commercial in nature.

## **INTERPRETATION CONSIDERATIONS:**

Mr. Hutson explained The Ordinance currently permits Assembly and Convention Halls within the following three zoning designations: the C: Local Business District, the C-R Local Commercial District, and the 9<sup>th</sup> Street and West Main Overlay. The C: Local Business District under Section 18.40, the C-R Local Commercial District under Section 21.40, and the 9<sup>th</sup> Street and West Main Overlay Zone under Section 35.40 allow Assembly and Convention Halls as a special exception use. He provided the statement of purpose for each of the three zoning designations and correlating subareas:

- C: Local Business District: This district is designed to permit retail sales and commercial service uses (Section 18.10).
- C-R: This district is designed to allow for a coordinated and planned approach to commercial development in areas with unique physical or dramatic topographical characteristics and/or accessibility limitations. These regulations are specifically intended to provide standards of use and design that recognize and complement Township entrance and other focal point locations. (Section 21.10)
- 9<sup>th</sup> Street and West Main Overlay: This optional Overlay Zone is designed to allow for commercial and residential development along the West Main Street corridor within the West Main Street Sub-Area and the 9th Street corridor within the 9th Street Sub-Area. This Overlay Zone is in keeping with the goals, objectives and standards of the 9th Street Sub-Area Plan and the West Main Street Sub-Area Plan. (Section 35.10)
  - 9th Street Commercial Sub-Area: Uses in this land use designation may consist of office buildings and low intensity commercial, similar to the use and intensity of the commercial development existing as part of the Sky King Meadows PUD (Hannapel Home Center). Auto-oriented and big box type retail are not envisioned in this land use designation. The Planned Unit Development tool will be promoted in this land use designation as a means to effectively and efficiently accommodate limited commercial development while keeping with the goals of this Sub-Area Plan. (Page 190 of the 2011 Master Plan)
  - West Main Commercial Sub-Area: Uses in this land use designation may consist of office buildings and low intensity commercial, similar to what has already developed along the West Main Street frontage between 9th and 10th Streets. Big box type retail is not envisioned in this land use designation. The Planned Unit Development tool will be promoted in this land use designation as a means to effectively and efficiently accommodate commercial development while keeping with the goals of this Master Plan. (page 174 of the 2011 Master Plan)



Assembly and Convention Halls are currently allowed within the 9<sup>th</sup> Street and West Main Overlay that is designated by the Master Plan to permit low intensity commercial development.

Assembly and Conventions Halls are a special exception use when permitted in the zoning ordinance. Uses categorized as a special exception use are typically a more intensive use compared to the uses permitted by right within the respective zoning district or overlay. An example of this would be to look at the R-3: Residence District. Uses permitted by right within the R-3: Residence district include one family dwellings, two family dwellings, and houses of worship. Uses allowed through a special exception use permit within the R-3: Residence District include three and four family dwellings, banks and credit unions, schools, and office buildings. A use is selected as a special exception use because of the unique characteristic of the use which, in the particular zone, involved under certain physical circumstances, and without proper controls and limitations, could cause it to be incompatible and detrimental with the other uses permitted in such zoning district. For this reason, many special uses have specific review requirements and all of them are required to be evaluated by the Planning Commission for compatibility. Assembly and Convention Halls have specific special use review requirements, outlined in Section 49.40 of the zoning ordinance.

The Residential PUD requires that the overall design and all proposed uses be evaluated against Special Use Criteria. The protections of the special use requirements that are present for Assembly and Convention Halls within the other districts which permit this use would be applied in the Residential PUD as well, if permitted. It should be noted that maximum capacities are outlined in Section 49.40 for Assembly and Convention halls within each of the correlating districts it is currently permitted in. If approved, there would be no specifically noted maximum capacity for an Assembly and Convention Halls within a Residential PUD. The Planning Commission would need to determine compatibility on a case by case basis.

Conformance with the Master Plan. The PUD ordinance outlines that uses should be consistent with the goals and objectives of the Township Master Plan. The Master Plan provides three different types of commercial designations within its future land use map; General Commercial, Local Commercial, and Neighborhood Commercial. Mr. Hutson provided descriptions of the three designations:

- General Commercial: The intent of the General Commercial areas is to serve both the residents of the community as well as the regional market and transient customers. Uses like big box retail, shopping centers, and auto-oriented uses would be permitted in this district. (page 69 of the 2017 Master Plan)
- Local Commercial: The purpose of the Local Commercial designation is to provide low volume commercial businesses that mix well with a variety of land uses including residential, industrial, and general commercial. These uses are not high-volume / high-traffic uses with a significant number of cars coming and going, drive-through service, and/or automobile service. (These elements or

characteristics can detract from the residential character or pedestrian orientation of the surrounding area and are therefore not present in the Local Commercial designation). Examples of uses that could be found in a Local Commercial designation include professional offices, unique shops such as antique shops and specialty food shops, and generally low volume enterprises that do not operate 24 hours a day. (page 68 of the 2017 Master Plan)

- **Neighborhood Commercial:** In support of the Rural Character Preservation Strategy, neighborhood commercial areas will be in strategic locations within the western portion of the Township. Low intensity commercial and retail establishments are permitted that would accommodate a planned mixture of farm service business and other locally oriented service establishments. The intent is to provide services, like a small convenience store, that will support and be compatible with nearby residential development. (page 68 of the 2017 Master Plan)

**Mr. Hutson said based on the description within the Residential PUD ordinance, and the given the location of West Port Village PUD within the Township, it could be argued that the closest Future Land Use designation to the intent of the uses permitted in the Residential PUD is the Local Commercial designation. Depending upon the scale of the Assembly and Convention Hall it could be argued that this use could meet or not meet the intent of the Local Commercial Designation.**

A Residential PUD allows for low intensity, neighborhood commercial uses. The PUD ordinance indicates that low intensity nonresidential uses may be permitted within a Residential PUD. Per Section 41.60.B.2 a Residential PUD allows:

“Low intensity nonresidential uses such as educational, cultural, recreational, neighborhood office or neighborhood commercial nature, including uses and buildings accessory thereto. Non-residential uses shall be compatible in design, layout, scale and appearance with the residential character of the area and shall be an integral part of a residential development logically oriented to and coordinated with the planned unit development to serve the day-to-day needs of residents in the development.”

The PUD ordinance nor the Definition section of the Township’s zoning ordinance define what constitutes “neighborhood commercial”.

Residential PUDs require that any nonresidential use permitted shall “serve the day to day needs of the residents in the development”. The zoning ordinance defines an Assembly and Convention Hall as “A room or building for the purpose of hosting a party, banquet, wedding, or any other social or business event. Assembly and Convention Halls can also be called meeting rooms, function halls, reception halls, or banquet halls”. Although a gathering space to host graduation parties, networking events, bridal showers, and other events is a complimentary service to offer to members of the community, the PUD ordinance specifically states that the nonresidential uses shall

*“serve the day-to-day needs of residents in the development”*. It could be argued that an Assembly and Convention Hall that is open to the general public does not *serve the day-to-day needs of residents in the development* as it would become a destination for others outside of the PUD community to gather in. However, it should be noted that the PUD ordinance does not specify that nonresidential uses within a PUD shall be restricted only to residents of such development.

The openness of the zoning ordinance regarding non-resident activity pertaining to the nonresidential building/use component of a PUD indicates that non-resident activity is appropriate as long as such a use also serves the residents of said PUD and is not detrimental to the residential character. As an example: The Sky King Meadows PUD on the east side of N 9<sup>th</sup> Street consists of a number of single-family homes as well as one nursing home and a home goods store. Both the nursing home and home goods store were approved as appropriate PUD nonresidential uses. The current home good store’s retail service is available to both the general public as well as the residents of the Sky King Meadows PUD. The same is true for the nursing home that was recently constructed in 2020.

#### Previous Interpretations of Allowable Uses within Residential PUDs.

In researching past Zoning Board of Appeals decisions regarding text interpretations for uses allowed within Residential PUDs, Planning Department staff was able to identify one similar case.

1. Oshtemo Assisted Living, 210 N 9<sup>th</sup> Street, 01/22/2019: The applicant sought a text interpretation from the Zoning Board of Appeals to determine if an assisted living facility would be considered an allowable use within the Sky King Meadows Residential PUD. When this project was initially presented to staff, there was some concern that the use did not fit the intent of Section 41.60.B, which states the following:

*Low intensity nonresidential uses such as educational, cultural, recreational, neighborhood office or neighborhood commercial nature, including uses and buildings accessory thereto. Non-residential uses shall be compatible in design, layout, scale and appearance with the residential character of the area and shall be an integral part of a residential development logically oriented to and coordinated with the planned unit development to serve the day-to-day needs of residents in the development.*

As this parcel was designated as the nonresidential portion of the PUD, staff was concerned that an assisted living facility did not meet the intent of this section of the zoning ordinance. The applicant requested an interpretation from the Zoning Board of Appeals, who found the following:

*Since assisted living facilities are a low intensity commercial use within the C: Local Business District, they therefore are an acceptable low intensity*

*nonresidential use within the PUD Ordinance. The motion was approved 4 – 1, with Mr. Sikora voting against.*

With the above interpretation of the PUD ordinance, the applicant was free to submit a planning and zoning application for Planning Commission review and approval. Minutes from said meeting are attached.

Details of the specific request. An Assembly and Convention Hall, like the one envisioned by the applicant, consisting of only 2,000 square feet is relatively small compared to other event spaces that are typically associated with hosting private parties, bridal showers, networking events, etc. Vehicles traveling to and from a small-scale Assembly and Convention Hall use would be no different or even less intrusive than the permitted uses of a specialty food store or office use within the local commercial district designation. In that particular case, a smaller Assembly and Convention Hall could arguably be an appropriate neighborhood commercial use as described within the Residential PUD ordinance. The residential character of the exterior of the nonresidential building would be maintained and be consistent with the surrounding residential area. An Assembly and Convention Hall use would be commercial in nature. As a special use, the Planning Commission would be able to evaluate whether any proposed Assembly and Convention Hall would be appropriate as a Residential PUD use. In addition, occupant load requirements through the Southwest Michigan Building Authority would need to be met, parking and other site elements updated as needed to meet the ordinance requirements of this use, and fire and building code would also need to be satisfied.

Reasoning of Applicant.

Mr. Hutson provided a summary of the applicant's rationale for the interpretation request:

- "However, such a distinction between residents and non-residents is not found within Section 41.60 of Oshtemo Charter Township Zoning Ordinance, which states that the allowable uses under a planned unit development include: "[l]ow intensity nonresidential uses such as educational, educational, cultural, recreational, neighborhood office or neighborhood commercial nature, including uses and buildings accessory thereto."
- "The use of Unit 1 for meetings, showers, and small gatherings is comfortably within the scope of the Ordinance as they are (1) low intensity nonresidential uses of (2) a neighborhood commercial nature."
- "Upon information and belief, the Zoning Board of Appeals recently interpreted an Assisted Living Facility as an acceptable low intensity nonresidential use within the PUD Ordinance. Similarly, these small gatherings would not constitute a "high" intensity use like a large assembly or public event."

- “Upon our review of the Ordinances, “neighborhood commercial” is left undefined.”
- “While non-residential use should be coordinated with the planned unit development to serve the day-to-day needs of residents in the development,” there is no limitation within the Ordinances to indicate that renting Unit 1 to non-residents is outside of the scope of neighborhood commercial nature. In fact, without the help of the revenue that is derived from such rentals to non-residents, Unit 1 would not be able to stay viable for the use of the residents in the development.”
- “Thus, when interpreting an ordinance to determine the extent of a restriction on the use of property, the language must be interpreted in favor of the property owner where doubt exists regarding intent. *Talcott v Midland*, 150 Mich App 143, 387 NW2d 845 (1985) .”

#### **FINDINGS SUMMARY:**

Mr. Hutson provided the following summary of the interpretation arguments which could influence the Board’s deliberations. He noted that this interpretation should not be considered solely for 5401 W H Avenue within the West Port Village Planned Unit Development. The interpretation should focus on whether an Assembly and Convention Hall is an appropriate use in all Residential PUDs within the Township, existing or not.

- Assembly and Convention Halls are currently allowed within the 9<sup>th</sup> Street and West Main Overlay that is designated by the Master Plan to permit low intensity commercial development.
- The special exception use protections in place in the zoning ordinance for other zoning districts which permit Assembly and Convention Halls would still be applicable. Compatibility with the surrounding area and uses would be evaluated by the Planning Commission.
- A smaller Assembly and Convention Hall could arguably meet the intent of the Master Plan’s “Local Commercial” designation which would be in keeping with the intent of the neighborhood commercial character required by a Residential PUD. However, if permitted, all Assembly and Convention Halls, regardless of size, could be an allowable use.
- An Assembly and Convention Hall use does not clearly meet the “day-to-day needs” of the Residential PUD residents, as required by Section 41.60.B.
- Section 41.60.B of the zoning ordinance does not restrict nonresidential uses to PUD residents only.

## **POSSIBLE ACTIONS:**

Based on the considerations outlined above, Mr. Hutson said the Zoning Board of Appeals might wish to deliberate the following possible actions:

1. Conclude that an Assembly and Convention Hall is neighborhood commercial in nature and therefore is an acceptable use within a Residential PUD.
2. Conclude that an Assembly and Convention Hall is not an acceptable use because it is overall considered an intensive nonresidential use and the use does not serve the day-to-day needs of residents within the Residential PUD.

Mr. Hutson indicated that if assembly and convention halls are deemed an appropriate neighborhood commercial use within a residential PUD, the ZBA would review future requests on a case by case basis to ensure the intention of the ordinance is met.

Attorney Porter noted once the board reached a conclusion their decision needed to be supported with findings of fact as to how the determination was reached. Their decision will affect future requests for assembly and convention halls within PUDs.

Chairperson Smith asked if there were board questions regarding this complex issue.

Attorney Porter agreed this was a unique situation. When they look at the ordinance it should be read as a whole and the intent considered. If there is ambiguity or no restriction, the ZBA's decision should be weighed in the favor of the applicant. The fact that this is a "special use" provides a safety valve. The decision today is to decide whether assembly and convention halls fit in neighborhood commercial within all Township PUDs. Whether in theory one thinks a hall might be too large, that is not part of the decision here. A determination for future individual requests would be up to the Planning Commission.

Ms. Lubbert added this is a big picture issue, should not be just considered for a specific development, as the decision will affect all PUDs.

Ms. Farmer confirmed their decision will affect only PUDs.

Chairperson Smith asked if the applicant wished to speak.

Mr. Jeff Scheffers, Visser Property Management LLC, indicated their perspective on provision of a community room has not changed since construction. The residents have always had use of the community room. This issue arose when they started allowing non-residents to also use the room and directly charging users for the sure. Use of the room will not change for residents, they will just have to go through Visser to

rent it. There will be a cost per use of the room for both residents and non-residents rather than a set fee paid by all residents for upkeep and maintenance.

Attorney Sam Gilbertson provided a summary of the letter he submitted; attached to these minutes.

He explained that residents of West Port Village have paid dues for 19 years in support of the existing community building. Without that income the ability to maintain the facility is jeopardized. If non-residents are also allowed to use the facility, that will provide needed income to support the building.

Ms. Farmer summarized that since dues are no longer collected, funds will need to be found elsewhere which will be accomplished by opening use up to people outside the community at a cost. She said there is nothing in the ordinance that would prohibit that.

Mr. Williams noted the allowable uses as described by the applicant will still serve the day to day needs of the residents.

Hearing no further comments, the Chair moved to Board Deliberations.

Ms. Farmer said if assembly and convention halls are deemed an appropriate neighborhood commercial use within a Residential PUD, residents can still use them if they choose to do so. She felt approval falls in line with that and after hearing all the arguments, she felt they would be an appropriate commercial use within a PUD. As this falls under "special use" the ZBA does not have to worry about specifics as to scale as that would be considered by the Planning Commission as issues arise and should not be considered relevant to decision making on the interpretation request.

Chairperson Smith said although their decision will affect other, future PUDs, the board should not be concerned about the future. The question is whether it is correct to allow assembly and convention halls to be placed in PUDs because of ordinance wording. As the ordinance does not say they are prohibited, they need to stay with what the ordinance does say.

Hearing no further comments, the Chair asked for a motion.

Ms. Farmer made a motion to interpret Section 41.60.B to allow Assembly and Convention Halls (meeting rooms) as an acceptable neighborhood commercial use within a Residential PUD as they can be a low intensity commercial use serving the neighborhood as well as the needs of the residents within the development. Mr. Smith seconded the motion. The motion was approved 6 - 0 by roll call vote: Mr. Gould – yes; Ms. Farmer – yes; Mr. Smith – yes; Mr. Everett – yes; Mr. Williams – yes; Chairperson Smith – yes.

### **Other Updates and Business**

Ms. Lubbert reminded board members of the 6:00 p.m. joint board meeting later in the evening and encouraged attendance.

She also informed the group that Township Supervisor, Ms. Heiny-Cogswell had announced she would resign her position as of May 1, 2023. Interviews for a replacement supervisor for the remainder of her term, until November 20, 2024 will be conducted at a April 4 special meeting and an appointment will be made that night. Applications for the position are open until 5:00 p.m. March 24.

### **Adjournment**

Chairperson Smith noted the Zoning Board of Appeals had exhausted its agenda. There being no other business, she adjourned the meeting at approximately 6:49 p.m.

Minutes prepared:  
March 22, 2023

Minutes approved:  
\_\_\_\_\_, 2023