

CHIKAMING TOWNSHIP PLANNING COMMISSION
Minutes of the July 6, 2016 Regular Meeting
Approved

The July 6, 2016 regular meeting of the Planning Commission was called to order at 6:35 p.m. by Vice Chairman Joseph Reed with members Mario Zarantenello, Richard Carlson, Gary Wood and Bill Marske in attendance. Grace Rappe and Andrew Brown were absent.

Also present was interim Building and Zoning Administrator Richard Kubsch as well as members of the Zoning Board of Appeals, Park Board, and Township Board.

Wood moved to approve the agenda as presented, supported by Marske.
Motion carried.

No amendments were requested to the proposed minutes of the June regular meeting. Marske moved to approve the minutes of the June regular meeting, supported by Wood.
Motion carried.

Public Comment

Reed opened the floor for public comments.

Janet Schrader came forth to express interest in a costal zoning management program to coincide with updates to the ordinance. Schrader expressed that she is also curious about a tree ordinance and the process for writing such a document as well as the approval process.

Steve Casey, resident of Huntington Drive, came forth to state that a lot behind his property was originally deemed unbuildable and a house has now been built on it. He is unsure of how or why this happened. Casey continued that, had he known the property was buildable, he would have considered purchasing it.

Old Business

None

New Business

Planning Workshop with Kurt Schindler, MSU Extension Service

Kurt Schindler came forth to lead a workshop focused on clarifying questions the Planning Commissioners may have. He started on the topic of the Opening Meetings Act. He continued that the Planning Commission is an administrative board. Schindler defined "ex parte" contact as having conversations outside of the public meeting relevant to a commission decision. He furthered that these types of conversation should be avoided as they make it difficult for everyone to know what was said and respond. It is the duty of the Planning Commission to provide a forum that is fair and give everyone the chance to participate. If a person outside of the meeting cannot resist talking the commission member needs to take copious notes and share the comments with everyone at the public meeting. Schindler compared a Planning Commissioner's role to that of a judge. He stated that there are times that Township Board must take off legislative hats and take on an administrative role with the same "ex parte" restrictions.

Reed questioned the appropriate time frame to share information with the Planning Commission. Schindler answered that the time frame is set in the Planning Commission by-laws. He furthered that it varies per community. Some require up to two weeks ahead of meeting time while others require as little as three days.

Schindler continued onto the discussion regarding the Master Plan. He stated that the MSU extension offers a great Citizen Planning Course that would be a series of seven (3) hour classes that he feels the commission members need to make a top priority. He continued that the Master Plan is a policy defining what the township

would like to see in the future. He continued that the Planning Commission's job is to advocate for the Master Plan. Schindler then shifted to the topic of ordinances. He specified that ordinances are enforceable regulations and come with penalties if not followed.

Wood questioned what Schindler has seen as the biggest challenge to Planning Commissions. Schindler stated that it is the lack of training that Planning Commissioners are required to have after being appointed. Schindler furthered that continuing education is important because case law is constantly being updated.

Reed questioned if Schindler would suggest a part time or full time Zoning Administrator for Chikaming based on what he knows of the role thus far. Schindler suggested that this be based on how many permits are issued a year. He added that what the commission expects the Zoning Administrator to do should also be considered. Wood added that suggesting updates to the ordinance and Master Plan would also be desired. Schindler answered he then feels it should be a full time position if ordinance preparation is part of the administrator role. Schindler added that a consultant could be hired to revise the ordinance but he would suggest the decision be made based upon quality based selection.

Zoning Board of Appeals (ZBA) member Kathy Sellers questioned what role public opinion plays in making important decisions. She furthered that she feels the public is not informed as to their role for participation. Schindler answered that the ZBA and Planning Commission have two types of standards. One is called a "non discretionary standard." The non discretionary standard is black and white. The other is a discretionary standard that requires judgment. Schindler described an example of a discretionary standard as being "this land use shall be harmonious." He explained that the conclusion to whether or not something would be harmonious is open to public input as harmoniousness cannot be measured. He furthered that the ZBA has to review five standards prior to making their decision and some of these standards are discretionary. Schindler added that time can be saved by having the Zoning Administrator make decisions on the non discretionary standards ahead of time.

Schindler suggested that minutes be shared between the Zoning Board of Appeals and Planning Commission. He also advised that once a year all boards and commissions meet to discuss various issues.

Reed questioned why the Master Plan cannot be an addendum to the ordinances. Rich Kubsch answered that the current Chikaming Ordinance is almost in conflict with the Master Plan at times. Schindler added that a Master Plan is not written as a regulation. He continued that in Michigan law the two documents are adopted under two different statutes and must be adopted as separate documents.

Reed questioned the difference between practical difficulty and a hardship. Schindler answered that the Michigan legislature made a decision in 2006 to phase out use variances. "Practical difficulty" is the legal shorthand for the list of criteria for granting a dimensional variance. "Hardship" was the term used to describe the list of criteria for a use variance which is no longer reviewed by the ZBA.

Marske questioned the role of the township official serving on the Planning Commission. Marske asked what he is to do if an issue is denied by the Planning Commission and goes to the Township Board. Schindler answered that Marske cannot vote twice and must recuse himself from the vote. He further advised that Marske leave the room when a decision is being reached on the topic.

Sellers asked if a ZBA ruling sets precedent. Schindler answered that it does not when issuing a variance. He furthered that it does when interpreting the ordinance.

Sellers questioned what happens when a ZBA deliberates on misinformation. Schindler asked if there is an affidavit at the bottom of the variance request he added that the zoning ordinance may specify the process.

Park Board chairman EnRico Heirman questioned if Schindler is aware of how many elected Park Boards exist in the state. Schindler answered that one of his colleagues is an expert on parks and the question could be deferred to her. Heirman also questioned Schindler's expertise on eminent domain law. Schindler answered that the township attorney needs to be consulted on all issues regarding eminent domain.

Zarantenello questioned if an absent commissioner can write a letter of opinion and demand that it be read into the record. Schindler stated that you must be present to participate in a meeting but there is an option to participate as a last resort electronically. He furthered that when entering a meeting you do not want to have a

preconceived notion. However, if it were the second meeting after the hearing and a decision was postponed he feels a letter may then be appropriate.

Zoning Administrator Report

Kubsch then came forth to present the Zoning Administrator report. He read into the record a letter addressed to himself from Midwest V LLC, the Dollar General applicant. The letter appealed the June 3, 2016 meeting decision made by the Planning Commission to remand the project back to the ZBA for reconsideration of their Dec. 11, 2015 decision. The letter states that Midwest V LLC feels that the Planning Commission does not have the right to remand the decision back to the ZBA based on the ordinance and has requested that their appeal be heard at the next Township Board regularly scheduled meeting. Kubsch then read his response into the record. He responded that the Township Board will review the request at the July meeting and hear the appeal at the August 11th meeting. Kubsch added that this decision was reached after consulting attorney Charles Hilmer. Kubsch clarified that Midwest V LLC can only appeal the decision that the Planning Commission actually made which was to remand the project back to the ZBA. A decision regarding the entire project cannot be appealed to the Township Board.

Reed stated that this is the first time the commission is hearing of this and he questioned the legitimacy of the appeal. Kubsch clarified that they can only appeal the decision that was made. Carlson furthered that they are appealing the decision to send the parking issue back to the ZBA and not the full project.

Wood stated that he feels the commission should let the process unfold and move on.

Reed expressed that he is unhappy with the abrupt introduction of the appeal. Hilmer stated that he feels it is best for the issue to go to the Township Board. The applicant will still then need to go through the merits and prove how it fits within the zoning ordinance. Hilmer furthered that he supports the decision made by the Zoning Administrator. Reed asked if the commission is able to review the appeal any further prior to it going to the Township Board. Hilmer stated that the process that is noted in the ordinance must be followed now that an appeal has been requested.

Reed then opened the floor for public comment.

Public Comment

Jill Underhill came forth to express disappointment with the disconnect between the Zoning Administrator and Planning Commission.

Tom Hackley had questions for Mr. Schindler and asked if the ZBA can review their own decision. He continued that they may make the same decision but at least it would be on correct information. He continued that aggrieved bodies may appeal decisions and if the Township Board disagrees with the Planning Commission decision then the Planning Commission would be considered an aggrieved body. Hackley then asked about Special Land Use (SLU) permits. He asked if zoning changes when an SLU is granted. He continued to ask if it is proper for the ZBA to hear a case prior to the Planning Commission. He observed that it seems like most other parties are reviewing the proposals prior to the Planning Commission's review. Finally Hackley questioned if an appeal is based on a decision or the process followed. Lastly, Hackley stated that the 2008 amendment to the Master Plan was done to specify town center areas, commercial zones, and the Red Arrow corridor.

Laura Jewell asked when the appropriate time for public comments to be taken into consideration is. She then asked if public comment should affect discretionary items. Schindler stated that public comment is most helpful when directed toward discretionary standards. He clarified that a public hearing is the appropriate time to hear the public opinion.

Fran Wersells came forth to state that she would like to see a better system for posting the minutes. She continued that she dealt with an issue last year and had a hard time finding the minutes.

Jerry Kohn questioned who approved the original Dollar General site plan that was stamped by an architect. He continued that he has to wait for an architect, Cecil Derringer, to stamp any commercial plans he submits. Reed stated that it is not the appropriate time to discuss the Dollar General application.

Sellers questioned how the commission is going to inform the two missing board members of what happened tonight. She continued that she is upset the commission did not find out about the appeal in advance. Kubsch answered that the letter is directed toward him and the Planning Commission is being over ridden and is not involved.

Dave Nelson came forth to state that he has been on a Planning Commission for 20 years and found Mr. Schindler's presentation interesting. He continued that he feels 12 days was needed to consult an attorney and react to the letter of appeal.

Hackley suggested the Planning Commission take a few moments to digest the information in the letter and hold a special meeting if they feel it needs to be discussed further.

Schrader asked if it is standard process to see an administrative report during the meeting. She suggested it be given 5 days in advance. Schrader then asked what the time requirements are for posting minutes. Schindler answered that proposed minutes do not have to be posted but must be made public within a certain number of days. He continued that approved minutes must be posted within a certain number of days that he is not sure of.

Gail Grosse stated that she feels it is negligent to be referring to the original calculations of the parking spaces as erroneous. She continued that she was at the meeting when the engineer discussed it. She furthered that the package was approved by the zoning administrator at the time and did show how the calculation was reached. She continued that they gave full disclosure of where those numbers came from. Carlson stated that the engineer admitted that he made a mistake.

Reed questioned where Nelson is a Planning Commissioner. Nelson clarified that he is a commissioner for Oranoko Township. Reed asked if that is also the place where Kubsch is a part time Zoning Administrator.

With nothing further, Zarantenello moved to adjourn the meeting at 10:11 p.m., Wood supported.
Motion carried.

Meeting adjourned.

Respectively submitted,
Jessica Miller
Recording Secretary