

**CHARTER TOWNSHIP OF FENTON PLANNING COMMISSION
MINUTES FOR REGULAR MEETING OF AUGUST 11, 2009**

**TOWNSHIP CIVIC COMMUNITY CENTER
12060 MANTAWAUKA DRIVE, FENTON, MICHIGAN**

Chairman Tucker called meeting to order at 7:02 p.m.
Present: Carlson, Franz, McGuirk, Tucker
Zoning Administrator: Piggott
Recording Secretaries: McDonald, Sharich
Absent: Lorraine, Richard, Spees

APPROVAL OF AGENDA:

Motion to approve the agenda as presented

Motion by: Tucker
Seconded by: Carlson
Ayes: Carlson, Franz, McGuirk, Tucker
Nays: None
Absent: Lorraine, Richard, Spees

Motion carried

PUBLIC HEARINGS

NEW BUSINESS

ONGOING BUSINESS

Review draft of the Township Dangerous Building Ordinance

Tucker noted memo from Cooley dated 7-30-09 had been received as requested with the recommendation that Section 7G be deleted. Tucker explained he agreed with Cooley's recommendation, he also felt similar legal remedy could be granted to the Township by the courts on a case by case basis if necessary. Piggott explained the history and process of drafting the proposed ordinance including the notice of hearing, the appointment of the hearing officer his/her duties, hearing and order as well as the enforcement, implementation, sanctions for nonconformance and the appeal process. Franz said there is a need for a dangerous buildings ordinance in Fenton Township. Chairman Tucker called for audience comments. There were none. The Commission directed staff to delete Section 7G and forward the proposed ordinance to the Township Board.

Review draft amendments to the Township Zoning Ordinance for utility grid and on site wind energy systems and anemometer towers

Piggott explained the amendments to the Zoning Ordinance presented are a result of previous discussion with the Commission, the Township Board and staff. The amendments presented have been drafted based on the most relevant and pertinent recommendations in the models developed by the Michigan Department of Labor and Economic Growth and Michigan State University as well as a sampling of other communities ordinances. Piggott noted several definitions are recommended to be added to the definitions section of the Ordinance as they relate to the wind energy systems. Section 11.78 is recommended to be added to the design standards to address issues related to on site wind energy systems, the zoning districts in which the systems will be permitted by right and/or by special use permit, the dimensional requirements, set backs, performance standards, spacing and number of systems allowed. Section 11.79 is recommended to be added to the design standards to address issues related to utility grid wind energy systems and on site systems over 66 feet in height, the zoning districts in which the systems will be permitted by right and/or by special use permit, the dimensional requirements, set backs, performance standards, spacing and number of systems allowed.

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Tucker asked about the definition for shadow flicker. Piggott stated he would check to make sure there was not a typographical error. The Commission discussed broadening the range of zoning districts to allow on site systems in most of the residential districts. They noted that set back requirements would safely limit them to parcels that would be large enough to protect neighbors from adverse effects. It was noted that the letter B in the B-2 district should be a C. Carlson stated concerns about a 15 foot set back for the roof mounted systems. The Commission concurred and asked that set back to be increased to 25 feet. Piggott added that an amendment will be required to each of the zoning districts were the systems are going to be allowed. Chairman Tucker called for audience comments. There were none. The Commission directed staff to incorporate the above changes and schedule a public hearing for September 15, 2009.

Discussion of the regulations for digital signs

Piggott explained the history behind the digital sign discussions which began at a joint meeting of the Commission and the Township Board at which staff was directed to develop an amendment to the sign ordinance. Piggott explained he had tried, unsuccessfully, to contact Michigan Department of Transportation to find out if they had any restrictions that would take precedence over Township regulations. Staff took a look at several other ordinances and the current ordinance. Upon review staff agreed on certain recommendations and in other cases have identified several options for the Planning Commission's consideration. First issue was the size of the digital sign, the options are number one – do nothing. Piggott explained currently digital signs are treated the same as any other sign. In the C-1 and C-2 districts they can be 100 sq ft and in the C-3 they can be 300 sq ft in area. The other two options are – limit the digital portion of the sign to 35% of the total sign area or limit digital signs to for example 36 square feet or whatever percentage or square footage or combination of the two the Commission feels would be appropriate. There was a lot of discussion about size and no real consensus so Piggott suggested addressing other issues first and coming back to the size. The next issue was the location. Currently the ordinance allows digital signs in all zoning districts. The Commission stated concerns about allowing them in residential districts but recognized that churches, for example, are allowed by special use permit in residential districts and they do utilize digital messages. The Commission noted light intensity and flashing lights are the main concern. Piggott explained the recommendation was to require digital signs in residential districts be shut off at 11:00 pm. The Commission questioned allowing the sign operation that late. Staff explained consideration was based on the fact that some functions are at night and by 11:00 pm traffic is minimal. The Commission recommended digital signs in residential areas be shut down from 11:00 pm until 5:00 am. The issue of color was discussed next. Piggott explained currently the ordinance prohibits flashing red, green and blue signs. Piggott stated the recommendation is to maintain this requirement. These colors represent emergency and traffic signals and can cause distraction. The Commission stated they want to prohibit flashing signs altogether. McGuirk noted that red is the least expensive color to use. The Commission agreed that it is not their intention to limit color to white, they want to eliminate distraction. They recommended prohibition of the use of red as the predominate color, requiring the signs to dial down at night when the need for brightness is not as great as it is in the daytime and changing the sign transition limitation time from 3 seconds to 60 seconds in commercial, office and industrial districts and once a day in residential districts. The Commission also stated the use of full motion video should be prohibited.

Discussion of the medical marijuana issue

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Piggott explained several months ago the Commission directed staff to check with the MTA and other sources to find other sample ordinances based on the Michigan law and draft an ordinance prohibiting medical marihuana dispensaries in the Township. The Michigan Department of Community Health, which administers the Michigan Medical Marihuana Act, has a page on their website with responses to commonly asked questions regarding the program. Since April they have added two points that deal with local regulation of medical marihuana on their site one is about growing medical marihuana within 1000 feet of a school AKA a “drug free zone”. The MMMA does not address this issue. You may wish to contact an attorney about this issue. The other point is with regard to patients forming growing cooperatives. The answer - the law does not address this. Consult with your local law enforcement officer or personal attorney. Piggott added following the Planning Commission’s request for language addressing marihuana dispensaries, staff contacted MTA. Their advice to the Township was not to adopt any regulations until the authority of local units is clarified. The law firm of Foster, Swift, Collins and Smith published a newsletter in May reviewing the question of preemption of local regulation by the Michigan Medical Marihuana Act.

- They noted that the law does not explicitly preempt local regulation and that the issue of preemption would require a court to decide.
- State law generally allows local jurisdictions to adopt additional regulations, provided they do not prohibit something the state law expressly allows, or allow something the state law expressly prohibits.
- They state that any blanket prohibition of the growing or use of medical marihuana by a local municipality would be a violation of the law.
- Because the act prohibits a person from “arrest, prosecution or penalty in any manner or denied any privilege, including but not limited to civil penalty...” there is the potential that a person convicted of violating a local ordinance related to the use of medical marihuana could not be prosecuted.
- The article notes that care givers growing medical marihuana may be protected from regulation under the Right to Farm Act.

As for the investigation of what other communities have done, staff has been able to identify four communities that have adopted regulations, or are considering adopting regulations related to medical marihuana. The City of Clio ordinance bans the sale of marihuana by local businesses, essentially prohibiting marihuana dispensaries. The Village of Decatur adopted an ordinance that primarily deals with drug paraphernalia, but includes a provision that specifically prohibits the operation of marihuana dispensaries, which is defined as “any residence, retail store, store front, office building, or other structure or any type of mobile unit or entity that dispenses, facilitates, sells or provides, in any manner, marijuana, aka marijuana or cannabis or any product containing marijuana, aka “marijuana or cannabis”. The City of Niles adopted an ordinance that requires the facility that the marihuana is grown in must be a building with a roof and walls, prohibits care givers from growing marihuana within 1000 feet of a school zone and prohibiting more than one care giver to grow marihuana at a single location. The City of Royal Oak has been considering an ordinance which would restrict care givers growing medical marihuana to the commercial zoning districts, but which would allow more than one care giver to locate an any given site. Also since we last discussed this issue Senate Bill 618 has been introduced, which would limit the ability to grow medical marihuana to 10 state regulated facilities, which in turn would distribute the marihuana through pharmacies. As of today, there has been no action taken on this proposed legislation. Piggott explained that in summary, the issues that citizens and communities seem to be dealing with are:

- Can marihuana be grown in “drug free” zones?
- Can care givers work together in marihuana cooperatives to operate a facility that grows more than 60 plants per care giver?

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- What constitutes a marihuana dispensary?
- To what extent can local regulations address these issues?

The Commission discussed the issues and reviewed the ordinances provided. They directed staff to draft an ordinance based on the City of Niles example adding a provision that requires care givers to register and post a bond with the Township and require care givers facilities to have hours of operation. Piggott suggested that because the patient can not consume marihuana at the care givers facility hours of operation really are not necessary. The Commission also wanted churches and daycare facilities added to schools in the 1000 foot exclusionary zone for care givers.

COMMUNICATIONS

Notice of intent to plan from Charter Township of Grand Blanc

2009 Planning Conference – September 30th thru October 3rd

PUBLIC COMMENT & COMMUNICATION CONCERNING ITEMS NOT ON THE AGENDA:

5 Minute Limit – There was none

APPROVAL OF MINUTES

ADJOURN: 9:02 p.m.

John Tucker, Chairman
Minutes Posted 08/27/09

Sandra Carlson, Secretary