

**CHARTER TOWNSHIP OF FENTON PLANNING COMMISSION  
MINUTES FOR REGULAR MEETING OF OCTOBER 13, 2009**

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

Chairman Tucker called meeting to order at 7:10 p.m.  
Present: Carlson, Franz, Lorraine, Richard, Spees, Tucker  
Zoning Administrator: Piggott  
Recording Secretary: McDonald  
Absent: McGuirk

**APPROVAL OF AGENDA:**

Motion to approve the agenda as presented

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

Motion carried

**PUBLIC HEARINGS**

06-27-100-020

3482 Silver Lake Rd.

Tee Bone'z Tavern on the Water

Show cause hearing to review & consider alleged violations of the special use permit issued for outdoor seating and entertainment

Chairman Tucker explained a special use permit was granted in 2005 to allow for outdoor seating and entertainment for Tee Bone'z. The permit is has been reviewed annually and since 2005 there have been no issues. This year the review was held at the May 12<sup>th</sup> meeting there were no residents at the meeting and there had been no legitimate complaints. Shortly after that meeting the Township began receiving complaints about the loud music. Tucker noted that notice of the annual review is sent out to everyone within 300 ft. as required by law. He added there are not many residents within 300 ft. of this property and suggested that the notice be expanded in cases like this one. He explained the special use permit allows for outdoor seating and entertainment Tuesday – Thursday from 7-11 p.m. and Friday, Saturday and Sunday from 3-11 p.m. Tucker said the Township has tried to address the issue of noise by working with the owner(s) and though measures to mitigate the noise where taken by the owner by installing some sound proofing material, the neighbors have alleged the music is still too loud. When the residents met with the Township they were told that conditions of the special use permit only stipulate the days they can have entertainment and that the music must commence at 11:00 p.m. He explained the residents have alleged that the music is being played after 11:00 p.m. but the main concern seems to be about the noise. The permit may be revoked for violations of the conditions, this hearing is to decide if there are violations that warrant revocation of the special use permit. He added there are standards for noise in the General Ordinance – Noise Abatement and there are also standards in Section 4.20 of the Zoning Ordinance that restrict the noise to a certain decibel level. Piggott stated the Township does not have the equipment necessary to measure decibel levels. When the Township met with residents and heard the alleged violations of the time limit, it was felt this was a measurable standard that could warrant action by the Commission. The residents asked for a hearing based on that meeting. Katherine Riesterer, Cooper/Riesterer, 7960 Grand River, Brighton approached the podium on the behalf of Tee Bone'z Tavern. Riesterer stated this building has been an established bar for 30 years, under the current ownership for the last 6 – 7 years. The bar has had live music for a number of years prior to the adoption of the new Zoning Ordinance requiring a special use permit for outdoor seating and entertainment which was adopted in 2002. The current owners have not only improved the building and the property but have changed the venue from the previous young, hard rock and rowdy atmosphere to more mature dinner and drink crowd. She

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submitted petition with 143 signatures in support of the operation adding the owners feel that there are other factors that have prompted this request. She stated the outdoor seating and entertainment is the life blood of the operation and claimed that without it the business could not survive. Tucker asked if Riesterer had seen the letters included in the file. Riesterer stated she had not. Tucker gave her a copy of the document submitted by Kelly Flynn and Norman Falconer indicating how many times the band played beyond 11:00 p.m. Riesterer stated the owner has addressed this with the staff and the bands. She implied it was not made clear to the owner that the 11:00 p.m. deadline was the issue, they thought the issue was the noise and installed a sound barrier in accordance with the recommendations of the Township. Piggott address the Commission telling them that the noise was an issue discussed in an effort to relive the professed burden on the neighbors, the time limit was made clear as a condition of the permit to the owner, both when he and the Ordinance Enforcement Officer visited the site and in meetings with the Township at the office. Riesterer indicated that the band only played a few minutes past 11:00 p.m. and after this was brought to the owners attention there was only 1 instance which was addressed and a commitment was made by employees to strictly enforce the 11:00 commencement of the music. She added that no one has complained in the past when the band played past 11:00. She indicated that the strict enforcement of time did not seem to matter. Riesterer stated other factors, out of Tee Bone'z control seem to be the cause in the onset of the complaints, including the property to east of the establishment being cleared for a condominium development, eliminating the natural buffer that existed for a number of years. Franz stated there has been an admission that the band played beyond 11:00 p.m. and the time does matter or the Commission would not have made the deadline a condition of the special use permit. Chairman Tucker called for audience comments. The following people spoke. Norman Falconer, 3394 Ponemah, Ben Green, 3422 Ponemah, Lisa Berthold, 14092 Eastview, Ron Sarkozi, 14120 Eastview, Shirley Fisher, 3372 Ponemah, Cheryl O'Neil, 15054 Roberts, Al Wilson, 14032 Eastview, Sonya Warren, 4033 Rolston, Joe Ceresia, 3506 Silver Lake, Kelly Flynn, 3394 Ponemah, Yvonne Bunton, 11 Emerald Pointe and Rochelle Molyneaux. The concerns of all were relative to the noise level of the live bands playing on the deck. Many residents living in the area stated for many years there was no cause to complain but stated in the last 2 years the sound level has increased to an unreasonable level. Many stated they had to go inside and close their windows and could still hear the music. Many complimented Tee Bone'z, said they enjoyed the music and the improvements the current owners have made to the bar/restaurant. Some said the sound had increased and other stated it had not. Many who spoke praised the owners for their contributions to the community. Those living closest to the establishment noted they did not want to see the business shut down they just wanted relief from the noise nuisance that the outdoor entertainment has become. They noted a condition of the special use permit is that the music stop at 11:00 p.m. and many times the bands continue to play beyond that limit. Several residents stated there must be something that can be done to mitigate the problems without revoking the special use permit. Kelly Flynn stated the level of the music is unbearable and she reminded the Commission the special use permit allows them to have this music 6 days a week. Ben Green asked about other Township Ordinances that relate to sound specifically noise abatement and amplified sound. Piggott explained that amplified sound permits are intended for temporary events usually private parties, it exempts uses permitted by special use permit allowing for live entertainment and/or outdoor seating. The Township has considered violations of the noise abatement ordinance which would constitute a misdemeanor but has not established sufficient evidence to substantiate a criminal case. Riesterer asked the Commission to clarify the number of meetings the owner had with the Township she stated she understood there were 2, she alleged at the first meeting the only thing discussed was the noise, not the time limit. Piggott stated there were 2 meetings one at Tee Bone'z and one at the Township Office and while the emphasis was on the noise the fact that the special use permit restricts the time of the music to 11:00 p.m. was made clear to Don Croyer of Tee Bone'z. Riesterer stated with out the outdoor seating and live entertainment the bar/restaurant can not survive. She added many people have testified that the level of noise has not increased. There was discussion between the Commission and Riesterer about enforcement and proof regarding noise and devices

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designed to measure sound. Carlson stated that when she visited the site the music was so loud on the deck that she could not carry on a conversation with others at her table. Riesterer reiterated that music is critical to the function of the establishment and suggested a compromise to establish an expectable level of sound. Riesterer encouraged the Commission to work with Tee Bone'z to find a solution. She stated that the clearing of the lot to the east may be a contributing factor that is out of Tee Bone'z control and alluded to the possibility that because the establishment has had music prior to the adoption of the Ordinance that requires a special use permit, they may have some grandfather rights, but they will do what they can to come to a reasonable compromise that will not jeopardize the business. Tucker asked who authored the petition circulated in support of Tee Bone'z and how it was presented to those that have signed it. Michelle Baldwin said that she had typed the petition and presented it customers of Tee Bone'z personally. Spees explained that a noise level is very hard to enforce and the use of decibels and decibel meters is a very scientific process, the meters have to be calibrated, the operator must be trained to use it and they can be very expensive. Spees stated that loud means something different to almost everyone, however 11:00 p.m. is 11:00 p.m. While noise is subjective the time is an objective measure. He said it does not appear the owner is taking the time limit serious. Spees suggested the owner present a plan to enforce the time limit and suggested the owners be required to hire an independent consultant to provide the Township with decibel readings. Franz stated the special use permit should be revoked because of the violation of the time and if Tee Bone'z wants to reapply for the permit they can present there plans to address the concerns that were pointed out at this hearing and the Commission can condition the permit accordingly. Carlson stated concerns about the noise and how it is effecting the quality of life for neighbors. Richard said that the drums do not need to amplified and the simple solution would be to turn the volume down. Lorraine stated upon his site visit the noise level, in his opinion, was unreasonable especially for the neighbors living nearest to the restaurant. He said he observed the sound barrier installed is not enough to remediate the noise issue, the solution seems to be to simply turn the volume down. Tucker asked if the bands use equipment belonging to Tee Bone'z. Riesterer stated the bands bring their own equipment. Tucker asked if the outdoor music has ceased for the season and if so when it would begin. Riesterer said it has ceased until May of next year. Tucker said he would like to investigate sound measuring devices and establish a measurable standard for noise that would be appropriate. Carlson suggested the Township have the owner bear the cost for the equipment or an independent contractor to supply the Township with data. Tucker stated he did not want to take an adversarial position but would rather come to a viable solution that would include amending conditions of the special use permit to include a reasonable sound level and a way that the time limit can be enforced. Bonnie Mathis, Township Supervisor, stated the establishment needs to turn the volume down to a level that is reasonable for the neighborhood. Mathis said she understood enforcing sound by limiting the decimal level will be very difficult for a number of reasons. She asked that the owner simply turn the music down. Vincenzo Amore, owner of Tee Bone'z stated they have made major improvements to the property, he said they would turn the music down, but added he was afraid that would not be enough for some of the neighbors who do not want music at all. The Commission discussed the pros and cons of decimal meters, enforcement of noise and the alleged violation of the time limit. Tucker stated he wanted to explore the decimal issue to be able, if possible, establish an objective standard. Franz stated the time is an objective standard and they have admitted allowing bands to play after 11:00 p.m. He added if there is a way to include a limit to the sound and the time he would like the owners to propose a plan. Tucker explained the Commission could revoke the permit based on evidence of this hearing and the time limit violation, they could find no violation based on lack of evidence to that fact or they could postpone action to allow for modification of the conditions of the permit to mitigate the alleged nuisances. He said that, based on testimony, he feels the situation merits cooperation in finding solutions that will work to eliminate the bands playing over the time limit and mitigate the noise problems. The Commission discussed postponing the decision to come up with a plan and modifications to the special use permit. Tucker noted that the owners would have to agree to modifications and asked if they were willing to come up with a plan to ensure the bands quit at 11:00

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p.m. and the music level is held to something that is reasonable. Riesterer said the owners fear that whatever they do will not be enough to satisfy some of the residents, but they are willing to work with the Township. Riesterer stated concerns about a reasonable standard for noise. Tucker asked how quickly they could return with a plan. Riesterer said they could have something by the January meeting. Carlson asked about the notice requirements. Piggott explained the requirements in to notify everyone within 300 ft. McDonald stated there are few residents within 300 ft. Tucker suggested the area be expanded. Piggott suggested the Township contact their attorney regarding expanding the legal requirement. Tucker explained the issue is being postponed until the January meeting and though the 2010 meeting schedule has not been adopted the meeting will most likely be the 12<sup>th</sup>. He suggested those in the audience that interested in following this contact the office to verify that meeting. He added agendas are also posted on the Township website.

Postponed

R09-004 Cox/Phoenix, LLC. 3452 Thompson:,  
06-03-100-068 (the north 180 feet)                      vacant land north side of Thompson east of 3452  
Rezone C-3 to M-2

Secretary Carlson reviewed file. Jeff Cox, 3452 Thompson sworn in, explained request to rezone the north 180 ft. of parcel 06-03-100-068 to M-2 in order to combine it with parcel 06-03-100-066 which is zoned M-2 and possibly with the 06-03-100-065 to build a storage facility for the M-2 business Cox/Phoenix, LLC. at 3452 Thompson. Cox explained the business is growing and needs to expand. The plan is to move product stored in the current building to the storage building to free up space in the existing building to grow the business. Cox stated the frontage or south portion of the property will remain C-3 in keeping with his interpretation of the vision for the the Thompson Rd. corridor, having been involved in the corridor planning process. Cox stated the desire to combine this property with 06-03-100-066 which would have access from Phoenix Dr. He explained when he met with the Township he was advised, in order to build an accessory building to serve his business, that building would have to be located on the same piece of property, therefore it would have to be combined with 3452 Thompson creating an "L" shaped parcel that would have access from both Thompson and Phoenix. Chairman Tucker called for audience comments. There were none. He then asked about the outdoor storage taking place on the property now. Cox explain the boats and vehicles stored on the property are used by the Silver Lake Ski Club of which he is a member. Franz asked if any material stored in the building would be hazardous. Cox said there are not hazardous involved. Tucker stated the request is in keeping with the sub area plan for the Thompson Corridor. The Commission concurred. Tucker noted a letter from the current land contract holder granting permission to rezone and a commitment to combine the properties must be presented prior to final board action to rezone.

Motion to recommend approval as submitted

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

Amendment to Township Zoning Ordinance 594 to regulate Wind Energy Systems including addition of several definitions Article 2 Section 2.01, Article 11 Design Standards, Section 11.78 On site wind energy systems and anemometer towers and Section 11.79 Utility grid wind energy systems, and on site systems and anemometer towers over 66 feet in height.

Chairman Tucker called for audience comments. There were none.

Motion to recommend approval as submitted

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

**NEW BUSINESS**

**ONGOING BUSINESS**

Review regulations for digital signs

Chairman Tucker called for audience comments. There were none. Tucker noted that using the terms “LED” and “digital ink” would limit the ordinance to technology of today and suggested those terms be eliminated from Section 2. i. The Commission noted they would like to see a prohibition of the digital signs within 1000 ft. of a residential district and that the dial down of the intensity of the signs should be automatic. The Commission agreed on these three changes and asked that this Ordinance be moved on to the Township Board.

Review regulations medical marijuana

Chairman Tucker noted several typographical errors and called for audience comments. There were none. The Commission suggested the title of the Ordinance be Medical Marihuana Growing, Consumption and Distribution Ordinance. Lorraine stated he had spoken with one of the States Senators about the issue of medical marijuana and found that there is pending legislation that may have an effect on this Ordinance. Piggott concurred. The Commission agreed to postpone action on this issue pending this legislation.

**COMMUNICATIONS**

Free Training Session – Making Local Ordinances Easier to Understand – Doug Piggott

Piggott explained the session will be held at Mott Community College Regional Technology Center on Wednesday October 28<sup>th</sup> from 7 – 9 p.m. and will cover procedural manuals, ordinance enhancements and digital tools.

Crystal Point Condo Revisions

The Planning Commission agreed that these revisions constitute minor changes according to Section 8.10 of the Zoning Ordinance and can be approved by the Zoning Administrator.

**PUBLIC COMMENT & COMMUNICATION CONCERNING ITEMS NOT ON THE AGENDA:**

5 Minute Limit – There were no addition public comments

<b>APPROVAL OF MINUTES</b>	May 12, 2009	stand approved as submitted
	July 14, 2009	stand approved as submitted
	August 11, 2009	stand approved as submitted

**ADJOURN: 10:38 p.m.**

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John Tucker, Chairman  
**Minutes Posted 11/03/09**

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Sandra Carlson, Secretary