

**CHARTER TOWNSHIP OF FENTON PLANNING COMMISSION
MINUTES FOR REGULAR MEETING OF APRIL 13, 2010**

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

Chairman Tucker called meeting to order at 7:06 p.m.
Present: Carlson, Franz, Lorraine, McGuirk, Richard, Tucker
Zoning Administrator: Piggott
Recording Secretary: McDonald
Absent: Spees

APPROVAL OF AGENDA:

Motion to approve the agenda as presented

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

Motion carried

NEW BUSINESS

Discussion of Lake Access Zoning Regulations

Piggott explained this discussion is a follow-up to conversations that the Planning Commission Chairperson has had with the president of the Lake Fenton Association regarding potential expansion of the public access site on the lake. The question has been raised with regard to the Townships ability to regulate the expansion of a Michigan Department of Natural Resources and Environment (MDNRE) public access site. In a case (Burt Township v MDNR) related to this matter, the Michigan Supreme Court ruled that the MDNR needed to comply with local zoning when constructing boat launches. Currently the Township has a Lake Activity Regulation (a separate "police powers" ordinance) which requires approval by the Planning Commission for any expansion of a MDNR boat launch. In the Burt Township case the Supreme Court ruling specifically extended permission to regulate MDNR boat launch to the Zoning Ordinance. It has been suggested by the Township Attorney that the Township consider adopting a zoning ordinance amendment to regulate public boat launches. Although the Township does not specifically regulate boat launches in the Zoning Ordinance, Section 3.04 C states in part "a use of land, buildings, or structures not specifically mentioned in the provisions of this Ordinance shall be classified upon appeal by the Zoning Board of Appeals or by request of the Zoning Administrator." In addition, Section 8.02 of the zoning ordinance specifies that a site plan is required as part of an application for a special use permit or any change in use which requires construction of ten (10) or more additional parking spaces. Therefore, it is my position as the Zoning Administrator that before any changes could be made to the boat launch site, zoning compliance would be required. Since the use is not specifically listed in the Zoning Ordinance, the ZBA would be asked to classify the use. If they classified it as a use by SUP and/or the DNR proposed an improvement that added 10 or more parking spaces, review by the Planning Commission would be required. Piggott suggested the Township would benefit from amending the Zoning Ordinance to specifically provide for the use to clarify the districts it is allowed, if it is a use by right or SUP, and any specific review standards the Township requires. Piggott explained the site on Lake Fenton is zoned R-4 so if the Ordinance is to be of any use, it would need to apply to the R-4 district. The uses listed in the current ordinance that come closest to the boat launch are Marine Sales and Service, allowed by right in the C-2 and C-3 districts, Public Parks, allowed by SUP in all residential districts, Commercial Outdoor Recreation Establishments, allowed by SUP in the AG district and by right in the C-3 district. Given that similar uses are only allowed in residential districts

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by SUP, it would be consistent for the Township to require a SUP for a public boat launch. Piggott explained that development requirements/specific standards are problematic. While zoning is accustomed to regulating impacts on adjacent property, impacts on a lake are infrequent. In Section 4 of the current Lake Activity Ordinance, the Standards To Be Applied are that the Planning Commission analyze both the environmental carrying capacity and the recreational carrying capacity of the body of water on which the facility requesting the permit is situated. The Planning Commission shall make every effort to ensure a balance between recreational objectives and environmental objectives as well as to protect the community character. One approach is to incorporate these Lake Activity Regulation standards. However these standards are vague and difficult to quantify. Piggott noted several years ago the Planning and Zoning Center prepared a report with a proposed analytical framework for calculating the carrying capacity of a lake, however there are no generally accepted carrying capacity standards and the research necessary to prepare such an analysis would be substantial and very costly. We contacted Burt Township to see what kind of standards they had for a boat launch. The current Zoning Administrator was not there in 1999 when the Supreme Court case was being decided and is not sure what the regulations were in place at that time. The current Zoning Ordinance, adopted in 2006 does not specifically address boat launches. Their Ordinance addresses common access sites under the definition of Recreational Areas and Facilities which states in part; "recreational uses permitted herein include parks, playgrounds, and common access sites and adds no such facilities shall have a commercial appearance or be of a commercial character" they are allowed in the Conservation Recreation District (CR) as a permitted use along with the several other residential type uses including single family dwellings guest houses, parks, playgrounds, recreational areas and community centers, conservation areas, home occupations and accessory buildings customarily incidental to the principal uses. We also researched other Zoning Ordinances in Michigan and could not find a single one that specifically regulates public access sites. Piggott explained the Planning Commission has several options as it relates to development requirements; (1) do not include specific requirements (this is less a problem if the use requires a SUP, which allows the Planning Commission to apply the general SUP requirements when reviewing the use), (2) incorporate the Lake Activity Ordinance standards or (3) incorporate language based on the Burt Township Ordinance or create new standards. Piggott added the issues of district, by right/SUP and development standards will need to be addressed in order to create a Zoning Ordinance amendment to address public boat launches. The Commission directed staff to prepare a draft amendment to allow boat launches in the R-4 and R-5 zoning districts as a use permitted by Special Use Permit, define a parking space as it relates to a boat launch, and develop standards similar to those that would generally apply to a SUP but be specific to the activities of a public boat launch.

PUBLIC HEARINGS

SUP10-001 Tee Bone'z Tavern on the Water, 3482 Silver Lake Rd.

06-27-100-020

Request Special Use Permit – Outdoor Seating and Entertainment

Chairman Tucker summarized prior hearings and the revocation of the prior SUP after a show cause hearing found violations of the permit in January 2010. After being sworn in, Don Kroeyr of Tee Bone'z, explained that after receiving a copy of the Planning Commission draft of a SUP and the conditions set forth, they contacted a sound engineer who explained that the 65dB called for in the permit would be an unreasonable level to operate the sound system for the business. Kroeyr noted the sound engineer was present and introduced him to the Commission. Joe Heslip of Heslip Audio, brought a decibel meter to the Planning Commission table and noted that it was reading 58dB with no one talking, just the room noise of the HVAC

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system running. As the conversation continued, Tucker noted that the reading was fluctuating between 65 & 68dB. Heslip indicated that he was at Tee Bone'z property on the deck where the meter was reading 64dB with no sounds but that of nature, wind, birds etc., with no traffic or conversation. He noted readings at the property line at this site are problematic because the back of the band stand is right on the property line and the area where the bands play is not entirely enclosed. Tucker asked what decibel level would be a reasonable level. Heslip and Kroeyr requested a level of 90dB at the property line. Tucker asked what, if any, measures could be taken to reduce the backwash of sound coming from the bandstand. Heslip said the backwash could be reduced by installing acoustic treatments to the walls of the bandstand, however these treatments would be very costly and not very effective unless the bandstand was completely enclosed. This is an open air type venue and it is not feasible to enclose the bandstand. Tucker asked what the owners are proposing to do to reduce the sound coming from the bandstand. Heslip stated they plan to install different directional speakers and provide additional sound treatment to the bandstand. Heslip asked about the conditions of the permit to lock down the controls for the system. He suggested the owner purchase a decibel meter like the one he brought and monitor the level that way. Franz explained the owners are not at the site all of the time and self monitoring is not an option in light of the problems last year which resulted in the revocation of the permit. Kroeyr offered to purchase and install a sound level alert alarm and timer. He explained the alarm can be placed where the band can view it to show at what level a sensor placed at the property line is reading. He noted that once the level is exceeded for a number of minutes the alarm will shut down the power to the system. Tucker asked what the alarm would cost. Kroeyr stated about \$250.00. Tucker noted the purchase and installation of such a device could be included in the conditions of the permit. Tucker called for audience comments. Shirley Fisher, 3372 Ponemah stated the summer is a short 123 days, the band plays 12 to 13 days per month, and on some of the holidays such as Memorial Day, July 4th and the Lake Ponemah Venation Nights. She said it is not reasonable that 3 or 4 families have the ability dictate what an entire lake of people consider good entertainment. Al Winter, 4095 Four Lakes, stated concerns about the level of sound, the number of days of the week the Planning Commission was considering allowing the bands to play, and where the property line is established on a lake lot. Tucker explained the sound level and days of the week are up for discussion and the lake front property line has been established to be the waters edge. Winter indicated he did not have a problem with Thursday, Friday and Saturday, however the permit allows them to play 6 days per week. Kelly Flynn, 3394 Ponemah stated concerns about both the days and the times. She noted that children are still in school during some of the summer months and the band should not be allowed to play until 11:00 p.m. on week nights. She also pointed out that though a lawn mower or food processor has a decibel level of 90dB, they are run for shorter periods of time. The bands play for 4 hours or more. She also stated that she thought Tee Bone'z were required to bring a plan to the meeting. Tucker explained they had proposed several resolutions at the January meeting and the conditions of the Special Use Permit were drafted based on the prior discussions and public input. Flynn reiterated that she has a problem with the number of days the permit allows bands to play and allowing them to play until 11:00 p.m. on the week nights. Tucker explained the days and times indicated on the draft Special Use Permit reflect those of the past permit, but noted the owners have stated they have no intention of having live music 6 days a week. Kroeyr said they generally have live music on Tuesday, Thursday and Saturday and on special occasions such as holidays or events. McQuirk stated he recalled the discussion of allowing live music 3 or 4 days per week and giving the owners the flexibility to choose the days. Tucker noted that would be difficult to track and enforce. Lorraine stated the days and times do not seem to be the problem as much as the level of sound. Lorraine indicated he felt if the sound level is fixed, the days and times

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will not pose a problem. Many of the neighbors agreed with that statement. McGuirk asked if the owners have time to configure and install the system, set at 90dB at the property line by May 11th so the Commission could visit the site before the summer season begins and determine if the 90dB is a reasonable level. Heslip stated when a level is set at the property line, that level quickly dissipates with distance. Tucker asked that he prepare a sound propagation map at 90dB at the property line and that will be the starting point. Tucker asked if the owners would be prepared to have the Commission, and any other interested parties, at 6:00 p.m. on May 11, 2010 then come back to the Township for the regular meeting to consider the issuance of the special use permit and the conditions of the permit. Tucker noted, if the permit is issued, there will be a review in July to make sure the owners are following through with all of the required conditions. The owners agreed and welcomed the Commission to visit the site prior to the meeting.

Postponed until May 11, 2010

ONGOING BUSINESS

Review possible amendments to the Medical Marihuana Ordinance

Chairman Tucker explained the history that led to the passage of the Medical Marihuana Ordinance on March 15, 2010. He added that it was noted when it was passed, there were flaws in the Ordinance, and then he turned the meeting over to Piggott. Piggott explained the motion by the Township Board specified that the Ordinance was to be sent back to the Planning Commission to consider changes in the Ordinance to address concerns raised by the public at the two readings. Piggott noted Operations Manager Broecker drafted an amendment to the adopted Ordinance. The Board is asking the Planning Commission to review each of the proposed changes, evaluate the issue they are attempting to address, and indicate to the Township Board whether or not they agree with the proposed changes. The Board wants to review the draft amendments at their April 19th meeting. Piggott went through the proposed amendments starting with Section 6B that states the primary caregiver may only provide services at their legal residence, while Section 6F prohibits consumption at the primary caregiver's residence. The public was confused as to what they viewed as a contradiction. Piggott said he believes the intent of Section 6B is to limit the operation of a primary caregiver to a residential accessory use. The idea is to exclude the use from commercial areas, where they are more likely to take on the nature of a commercial operation. Therefore Section 6B is proposed to be modified to clarify that the primary caregiver may "grow, cultivate or otherwise" provide services to a qualifying patient, and Section 6F is attempting to limit the services provided at the primary caregiver's residence by prohibiting patient consumption at the primary caregiver's location. It does not prohibit consumption by the primary caregiver in their home, if the primary caregiver is also patient. This distinction seemed to clarify the concern. Section 6F is not proposed to be modified. Section 6C allows only one primary caregiver per "location". Concerns were expressed concerning the fairness of this regulation in the case of a couple that would both be primary caregivers. Piggott stated he believes the intent of the requirement is to prevent development of "marihuana dispensaries". The concern is that several people would come together and operate a facility serving dozens of patients causing an associated increase in traffic, number of plants being cultivated, and potential for it to develop into a non-residential use. Obviously this places a burden on a couple that want to both provide care to patients. The question is whether or not the burden is reasonable in order to protect the potential negative impacts of the use on the community. Therefore Section 6C has been modified to allow up to two primary caregivers at the same address. Section 6C also limits caregivers to one per "location". Public concerns were regarding how this would affect people living in apartment complexes and attached condominiums. Piggott stated he believes

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the term “address” can be used in place of “location” which would eliminate the concern with multi-family dwelling units. Section 6C is proposed to be revised to use the term “address” rather than “location”. Section 6D prohibits a primary caregiver from being located within 1,000 feet of any school, daycare center or church. The concern is that this requirement is overly restrictive given the requirement in the Michigan Medical Marihuana Act (MMMA) is that the site used to grow the marihuana must be secured. Piggott said he believes this requirement is an extension of the 1,000 foot “drug free zone” established for schools and was intended on reducing the potential for young people’s access to drugs. The Michigan Department of Community Health has no official position on whether or not the MMMA allows growing or consuming marihuana within a drug free zone. Even if the MMMA does not preempt the drug free zone restriction, the proposed ordinance extends it to churches and day care facilities. Concerns were raised about the impact on a primary caregiver if they begin providing care and then a church or day care center is opened down the street. Because this is a stand alone Ordinance, there is not automatic “grandfathering” of that caregiver. Therefore Section 6D is proposed to be deleted. Piggott indicated Section 6E prohibits a caregiver that is growing or distributing marihuana from engaging in the sale of any other commodity, product or service. The concern is that this would prevent a caregiver from operating an unrelated home business. Piggott said he believes the reason for this regulation is a concern that some caregivers may attempt to develop their status as a caregiver into a “marihuana business”, selling paraphernalia, videos, etc., to the public as well as their patients, and that such a business could then take on a commercial character and/or be a magnet for illegal drug activities. Marihuana paraphernalia is allowed under the MMMA, so an Ordinance cannot exclude its sale but that does not mean that a primary caregiver has to be allowed to sell the equipment. As with other restrictions, the issue is whether or not the restriction on the rights of the caregiver are justified to protect the community from the anticipated problems. Section E is not proposed to be modified. Section 6F prohibits consumption of marihuana at a primary caregiver’s location for cultivation/growing, or a primary caregiver’s legal residence address, unless the primary caregiver is a qualifying patient and then such consumption shall only be by the qualifying patient / primary caregiver. The concern was that one of the potential roles of the caregiver is to instruct a patient on the various methods of using/consuming the marihuana, and this restriction would prohibit the caregiver from doing so in their home. Piggott stated he believes the intent here is to prevent the caregiver’s residence from being a location where people “hang-out” and smoke marihuana. Again, the concern is that the caregiver’s home could morph into a “drug house” or “dispensary”. This requirement does not prevent the caregiver from giving instruction, it just prohibits the patient’s consumption at the caregivers address. It also does not prohibit the caregiver from going to the patient’s home to provide instruction. Obviously it would be more convenient if the caregiver could have all of their patients at their home, but is it more important to ensure that the use does not expand inappropriately or have negative effects on the community. Therefore Section 6F is not proposed to be modified. Section 6G requires a primary caregiver to register with the Township. Members of the public were concerned with this requirement because it would create a list of primary caregivers and their addresses which could potentially be available to anyone under the Freedom of Information Act (FOIA) and that this was an unwarranted invasion of their privacy. In addition it was noted that this list could be a “hit list” for people who were intent on stealing the plants. There was also concern that requiring such information would be a violation of the Health Insurance Portability and Accountability Act (HIPAA). Piggott said the purpose of this requirement is to both ensure that primary caregivers are aware of the requirements of this ordinance and that the Township can track compliance with the ordinance requirements. The concern for privacy must be taken seriously. It is reasonable to assume a site with 60 marihuana plants could become a target. The Michigan Department

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of Community Health indicates that their information is kept confidential and only shared with state and local law enforcement officials to verify a registration card. An alternative would be to post the requirements and to enforce only in the case when a violation becomes known due to a local police investigation. Potential conflicts with HIPAA should be reviewed by the Township Attorney, but since the law applies only to health care providers that transmit patient information in an electronic form that is covered by Health and Human Services standards, it would not appear to be an issue. Section 6G is proposed to be deleted. Section 6H requires a primary caregiver to post a bond to ensure compliance with the ordinance requirements. Members of the public at the Township Board meeting felt that this exceeds the authority of the Township under the Michigan Medical Marihuana Act, and that the bond was another document that could be subject to FOIA creating another unwarranted invasion of their privacy. The purpose of this requirement is to promote compliance, but would require the applicant to register. If 6G is deleted then 6H should be deleted. Whether or not this requirement is pre-empted by the MMMA or not, this issue will eventually take the Attorney General and/or the courts to decide. Section 6H is proposed to be deleted. Chairman Tucker called for audience comments. Jeremy Rupinski, Genesee County Compassion Club, Executive Director spoke along with Chad from Flushing, Chris from Swartz Creek, Eric from Clio, Karen from Davison and Kerri from Linden. They were very appreciative of the Township and the efforts to work with them to address concerns regarding this important issue. Rupinski stated with concerns that Section 2D be reworded because he felt it was an arbitrary statement. He stated in some areas where marihuana is legal, there has been a reduction in crime because it has eliminated the presence of the black market marihuana. He also stated the medical marihuana business can generate revenue and growth in depressed areas. He said his concern is with the statement that the presence of marihuana can present an increase in illegal conduct and/or activity. He added this section also calls the presence of marihuana a threat. Carlson asked if there have been any studies done on this subject and its effect on communities. Piggott explained there is a lot of information with regard to California's experiences but most about negative impacts that surround dispensaries. Rupinski stated that allowing for cooperative operations allows for more control, monitoring and security, as there is more revenue available to install security and monitoring devices, and monitoring one site would be much easier than having the activity all over an area in individual homes. In reference to Section 6B, Ripinski stated concerns about only allowing primary caregivers to dispense the marihuana from their residences. He said not all primary caregivers and their patients have relationships, and some may not want to have these strangers come into their homes, or even have knowledge of where they live and cultivate the cannabis. In reference to Section 6C, Rupinski reiterated what he felt were the merits of cooperative growing and dispensing of the marihuana. In reference to Section 6E, Rupinski suggested rather than to eliminate any home based business, the wording be changed to state no other cannabis based business. Rupinski asked the Township to consider collective growing and dispensing of the cannabis, and noted the two activities can take place in separate areas. Tucker asked about other communities. Piggott stated since the Township began working on an Ordinance to address this issue, two communities, Richfield and Grand Blanc, have adopted Ordinances that allow for cooperatives. In Richfield it is allowed in the industrial district and in Grand Blanc in their Health Care District. Piggott stated there is nothing in the Law that speaks to cooperatives. The Law talks about patients and caregivers. Piggott stated it is his opinion that this is to limit the cooperative aspects of the issue and he therefore does not recommend the Township add another dimension to what the Law addresses. Franz explained that every home business allowed under the Home Occupation Ordinance generates some additional traffic therefore an increase in the number of home businesses allowed increases the traffic until the homes take on a commercial rather than residential character. Piggott explained that home businesses that do

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not generate traffic, or have any visible signs of the business, are permitted by right because they do not affect the residential neighborhood in any way. Rupinski and the others all agreed with the elimination of Sections 6G&H. All who spoke supported Rupinski's suggestion and mirrored his concerns. Chad spoke about allowing cooperatives as a safer alternative and asked that the Township consider allowing patients or caregivers to grow the product at an alternative location, other than their residence, for safety and privacy reasons. Chris noted this is not a high traffic activity. Eric spoke about the stigma attached to the activity and noted some patients, especially those with children, may want to keep this from their children or for other reasons remain anonymous. He supported allowing patients to grow the plants at an alternative site. Eric stated concerns about Section 6F which says there shall be no consumption of marihuana at the primary caregiver's location. Eric said that the caregiver has to have the ability to demonstrate the different ways of consuming the marihuana. There was discussion between the Commission and the public regarding the different method of consumption. The majority of the public that were commenting stated smoking the marihuana is not the most desirable way to consume the product. They indicated patients use vaporizers or ingest it, however there are some methods for topical use. Karen noted, as a nurse and now a patient, she has personal experience with the benefits of medical marihuana. She stated concerns about being able to grow the plants at property other than ones residence, and this prohibition effecting ones right to farm. She also had concerns about elimination of other home businesses. Kerri wanted to go on record supporting all of those who spoke before her and echoing their concerns. Lorraine stated his disapproval of the way the State has handled the Law and the lack of guidance and leadership they have given to this Law. Tucker stated in light of the new evidence presented tonight, he did not feel he is able at this time to make a decision. The other Commissioners agreed and stated they would like to have more time to consider any action. Supervisor Mathis noted the Township Board was looking to the Commission for a recommendation. She stated this item will be talked about at a workshop prior to the Board meeting on Monday, April 19, 2010 and the Board is expected to take action at that meeting.

COMMUNICATIONS

PUBLIC COMMENT & COMMUNICATION CONCERNING ITEMS NOT ON THE AGENDA:

5 Minute Limit – There were no addition public comments

APPROVAL OF MINUTES January 12, 2010 stand approved as submitted

ADJOURN: 10:09 p.m.

John Tucker, Chairman
Minutes Posted 04/15/10

Sandra Carlson, Secretary