



PLANNING COMMISSION
REGULAR MEETING
August 18, 2009

DRAFT COPY

Present: LeeAnne Jachim, Bill Cole, Nicki Arendshorst, Ed de Vries, Steve Schaftenaar, Joseph Lampen, Dan Martin, attorney and Eric Davis, Zoning Administrator

Absent: None

Nicki Arendshorst, Chairperson, called the regular meeting of the Park Township Planning Commission to order at 6:30 p.m.

MOTION

A motion was made by Cole and supported by Jachim to approve the agenda as presented.

VOTE

Motion carried: 6-0

The minutes for the July 21, 2009 regular meeting were approved as presented.

PUBLIC COMMENTS

No one spoke.

AGENDA ITEMS

Item #1 Special Use – Home Occupation – Boy Scouts of America – 1990 Ottawa Beach Rd.

Chris Nusbaum, 420 Spruce St., applicant and assistant scout leader, presented the special use. He stated that the selling of firewood is one of the main fundraisers for his troop. They attempt to sell two hundred bundles per year which usually takes approximately one month during the peak camping season. Camp Kiwanis lets them cut down the nuisance trees and the profit is shared with them. He clarified that the scouts give back to the community with many projects. He stated that they did research other options. He stated that they have the support of the property owner. He stated that they try to put the wood in a location so that is it not dangerous on Ottawa Beach Rd. (OBR)

Schaftenaar asked if all the wood is delivered at once.

Nusbaum stated that it is portioned out. The site is unmanned.

Arendshorst clarified that this is not permitted by right because of the signage, the traffic, etc. She asked why they were coming now if they have done this in the past.

Nusbaum stated that they got a letter from the township due to a complaint or due to township investigation.

Arendshorst asked if this stand had had any impact on the neighborhood or on traffic, etc.

Nusbaum stated that customers pull off of OBR and onto Spruce St.

The public hearing was opened at 6:47 p.m.

Dan Szymanski, 385 Spruce St., stated that customers use his driveway for the turnaround. He stated that he has concerns for his small children. He stated that he is also curious what else the applicant would be allowed to do. Would he be allowed to operate longer than four weeks?

The public hearing was closed at 6:50 p.m.

Arendshorst read the seven standards found in section 4.22 for a home occupation special use. She asked Nusbaum to respond to the neighbor's concern.

Nusbaum stated that the customers do have to turn around somewhere as this is a dead end road. It would be difficult to stop people from turning into the neighbor's drive. He stated that perhaps they could use the Chippewa "chapel lot".

Martin reminded the Planning Commission (PC) members that a home occupation has to be accessory to a residential structure.

A discussion ensued.

Arendshorst read the seven standards for a special use home occupation found in section 4.28 (c).

There was a discussion on traffic, different locations on the lot, signage, safety, etc.

Davis clarified that no sign is permitted with a home occupation. A sign would require a variance.

MOTION

A motion was made by de Vries and supported by Jachim to approve the special use allowing the sale of two hundred (200) bundles of wood within a six (6) week window.

Arendshorst stated that she did not feel that the safety issue had been addressed.

Martin clarified that a third party is the one asking to use the property for a home occupation. The applicant does not own or reside at the property.

De Vries withdrew his motion.

MOTION

A motion was made by de Vries and supported by Schaftenaar to deny the application based on the fact that the applicant is a third party who does not own or reside at the property and that it does not meet the standards because of the traffic safety issue.

Jachim clarified that the safety issue swayed her vote.

VOTE

Motion: 6-0

Item #2 PUD Amendment – DRS, LLC (Tiara Yachts) – 2077 Lakeway Dr.

Bob Slikkers, DRS, LLC, stated that they would like to make two changes to their Planned Unit Development (PUD). He stated that with the current state of the economy they want to pursue additional ways of using their facility. They want to be able to rent out the facility and to be able to have alcohol on the premises including the boat slips. He stated that they were not thinking to advertise but rather to be able to say yes to people who ask to rent. He stated that they currently have no boats of their own there. He clarified that they are not asking for a liquor license.

Arendshorst asked if they had considered selling the facility.

Slikkers stated that that could be a possibility. He stated that he had a meeting with the neighbors. He stated that they don't want to sell but they would not discount that idea. They have gone from eight hundred employees to less than one hundred. They would like to keep the facility if possible.

Jachim asked what the facility is used for.

Slikkers stated that it was built as a place to hold dealer functions and employee functions.

Schaftenaar asked how many slips they would want to rent.

Slikkers stated that they would probably like to rent the "B" dock (seven or eight slips). They do not want to run a marina. The rentals would be seasonal, not transient. There would be no boat storage or maintenance.

Schaftenaar asked about the rental of the building.

There was a discussion on what the facilities would be used for such as corporate events, wedding receptions, sales meetings, receptions on the lawn, etc.

Cole asked about parking.

Slikkers stated that they would have to control the rental size. They would allow parking on the lawn.

Davis clarified that residentially zoned property may not be used as a parking lot.

Arendshorst stated that it was her feeling that allowing the proposed changes would create a use that would not be as compatible with the neighborhood as what was first approved there.

Martin clarified that it was the applicant's who had chosen to restrict the use of alcohol on the premises and thus have it prohibited in the current PUD document. This was not a prohibition placed by the township.

Schaftenaar asked if someone would be on site at all times if the slips are being rented out.

Slikkers stated that most likely there would not be someone on site. He presented signed letters of support from some of the neighbors.

The public hearing was opened at 7:50 p.m.

Mitch Padnos, 662 Park Ave., stated that he was opposed to the changes. He stated that he felt that the facility was fine as long as it didn't interfere with the residential nature of the neighborhood. The proposed changes would make a negative impact. Nothing has changed that would suggest any prohibitions should be lifted.

Agnes Cockheyt, 675 Park Ave., submitted a letter of opposition.

Donna Nugent, 2034 Lakeway Dr., stated that she is opposed for the same reasons as Padnos and also regarding traffic. She thought that there would be more liability in the neighborhood with conferences and alcohol in the neighborhood.

Jim Kiewel, 2016 Lakeway Dr., stated that he feels that the building is beautiful and well maintained and the business has been run professionally through the years. However, when business changes, business decisions change as well and hindsight sometimes says that a business decision wasn't perhaps the best. Perhaps public relief is not needed for bad business decisions. He stated that the rental of seven slips and a handful of wedding receptions are not going to be that lucrative. So, what is the real plan? He asked if DRS would even have the right to control who they rent to. He suggested that perhaps this is ill-considered and there is more to the story that the PC is not privy to. He asked that the issue be tabled for a more in-depth understanding of what is driving this decision.

Arendshorst stated that eight letters of approval and six letters of opposition were received.

The public hearing was closed at 8:05 p.m.

Lampen asked if this is an incomplete package. Should it contain a site plan, etc?

Martin stated that the two condition changes do not actually deal with the site layout so a new site plan would not be necessary unless the PC wanted information about parking.

Lampen asked how parking was addressed in the original PUD.

Martin stated that the original PUD does have some parking restrictions and guidelines. The PUD doesn't limit the occupancy to a certain number but indicates that applicable law (i.e. the fire code and building code) would govern.

Arendshorst stated that these amendments do change the original compatibility with the neighborhood.

Lampen asked if it was appropriate to look at the parking issue.

Martin stated that that would be appropriate.

There was a discussion on parking, tabling the item, neighborhood compatibility, future use, future ownership, etc.

De Vries stated that he didn't feel that seeing a site plan would make any difference because he can't see how there could ever be enough room for adequate parking.

MOTION

A motion was made by de Vries and supported by Cole to recommend to the Park Township Board denial of the PUD amendment for DRS, LLC, because of inadequate parking and because the proposed use would be less compatible than what is presently allowed in this residential neighborhood.

VOTE

Motion carried: 5-1 (Schaftenaar)

Item #3 Preliminary Discussion – Benjamin's Hope - 15468 Riley St.

Joel Bouwens, attorney representing Benjamin's Hope, stated that this is a pre-preliminary application for direction on how to proceed. He stated that the proposed use is a unique interactive community for developmentally disabled adults on a forty acre site on Riley St. There would be six residential buildings with twenty residential units total (on the south portion), a barn, a petting zoo, a therapeutic riding center, gardens and greenhouses. He stated that because this is a non-profit applicant they need guidance on the most cost-effective, yet legal way to proceed with an application.

Krista Mason, executive director of Benjamin's Hope, spoke regarding the vision of Benjamin's Hope. She stated that Benjamin is her thirteen year old, autistic son. She stated that oftentimes the environment determines or drives the type of experience that such a child can have. She stated that they would be integrating the Holland faith community.

The PC asked several questions trying to reach consensus on which route to go, PUD or special use.

Martin stated that this probably couldn't fall under a foster care because it is not licensed. He clarified that the existing PUD could be amended and that would save some money. In addition,

since individual units would be for sale as condos, condos are only allowed in a PUD. He clarified that this would require a new site plan. He reminded Bouwens that the current PUD is for nine units.

It was decided that a PUD amendment would be the way to proceed.

Item #4 Rezoning with Conditions – Smitty’s Pronto Pups – 2233 Ottawa Beach Rd. (OBR)

Mark Smith, 15860 Fendt Farm Dr., spoke for the rezoning. He stated that he is asking for a rezoning with conditions that would be exactly the same as his current one except that three of the existing conditions would be modified: 1) remove the menu restrictions and allow the business to serve any type of food or drink; 2) remove the seasonal restrictions and allow the business to open any day of the year if the weather permitted; and 3) expand the hours of operation and allow the business to be open from 7:00 a.m. to 11:00 p.m. and allow a special late-hour opening on July 4 or for special events like a fishing tournament, etc. Smith stated that the business has added an asset to the community. The business employs eleven part-time employees and has added to the tax base. Smith stated that in the four months the business has been opened, he has not heard any bad comments from people who have come to the facility. Smith acknowledged that he received copies of some of the letters submitted to the township regarding his project, and responded to a number of those letters. He stated that he is aware that some people do not like the fact that they are playing music. Smith stated that there were some issues of interpretation regarding the current conditions, for example what constitutes similar items for purpose of the limited menu restrictions. Smith stated that he has responded to customers’ requests for some menu items, such as deep fried pickles, and is considering serving deep fried corn on the cob.

Lampen asked if the year-round use would be mostly weekends and holidays.

Smith stated that they would be open mostly April to October but they would open up anytime the weather permits.

Cole clarified that they could operate full time, year-round if this request was approved.

Smith stated that that was correct.

Jachim stated that the time when she was there she did not hear the music; the employees were polite and professional. She stated that she did not find any of the complaints to be valid.

Smith stated that they want to accommodate the music issue in ways that make sense. He stated that Davis had been to the business to investigate and did not find the music to be out of line.

De Vries asked if they were planning on adding grills.

Smith stated that they have two deep fryers side-by-side, that is what they intend to stay with. They have added a shaved ice machine, but there is no room for any other equipment and they do not intend to install a grill.

The public hearing was opened at 9:25 p.m.

John VanIwaarden, 1864 Blue Isle Ct., stated that he felt that decisions should be made in the interest of all the residents of the township and not to benefit one person. He stated that he felt that the original approval was a “test case” for the newly permitted conditional rezoning. He stated that Smith agreed to the original conditions and now wants to expand what would be permitted. He stated that the current request makes a “mockery” out of the process and it would be a “dangerous precedent” to keep changing the conditions. He concluded that the township should base its decision on what is in the best interest of all 19,000 residents and not for the profiteering of one or two people.

Norm Dekker, 2247 First Ave., stated that he lives within 200 feet of the business. He stated it would be a big mistake to start changing the conditions. He noted that the business owner agreed to the conditions, and should now stick to them, otherwise conditional rezoning has no effect if the conditions can be changed within one year. He asked what would happen if Mr. Smith sells the business to someone else in the future.

Sally Pollack, 2285 OBR, stated that conditional rezoning is like a contract between two parties. She noted that last year, the township agreed to rezone the property, and the applicant agreed to comply with the conditions. She felt that the applicant was now seeking to tear up the contract and change the conditions. She stated that if the township decided to change the conditions it would “subvert” the intent of the original conditional rezoning and set a lasting precedent.

Jennifer Linart, 2998 Joshua Ct., stated that she wanted to draw the Planning Commission’s attention to its procedures and found fault with way the township “goes about things.” She asked whether notice of the meeting was sent the owners at Lakeview (sic) Ranch. She asked for the minutes to reflect that notices were sent to the owners at Lake Ranch. Brodie (recording secretary) reviewed the listing of the addresses to which notice was sent, and confirmed that notice was sent to persons at Lake Ranch. Linart noted that Slikkers requested changing conditions for the planned unit development due to changing economic conditions, and that was denied. Jachim noted that the Planning Commission had not made any decision on the current conditional rezoning application at this time. Linart stated that she “contested” that Lake Ranch residents did not receive notice. She said “I contest that there needs to be further investigation because there are participants that were not notified accordingly.” Arendshorst stated that one of the letters received was from a Lake Ranch resident, so they must have received notice.

Bret Docter, 1122 Warwick Ct., former planning commission member and former township board member, noted that when the conditional rezoning for Smitty’s Pronto Pups was approved last year, conditional rezoning was a new process and the applicant could not foresee many things. He agreed that conditional rezoning was like a contract, but noted that contracts could be amended. He questioned the process as to how revisions to the conditions could be made, and was curious why the newly revised conditions don’t go straight to the board. He stated that when he was part of the original decision the comment was made that this proposed business would be something that could make memories for families and tourists in the area. He stated that had happened with him and his son this summer, riding to Smitty’s Pronto Pups on their bikes. He stated that this business has served the community well and is an asset to the community.

Joel Welch, 679 Bosma Ave., stated that he felt that this is a 180 degree reversal from the original conditions. He noted that the menu limitations on the original conditions did not mention chocolate covered cheesecake, Dippin' Dots, or Klondike Bars. He asked that the PC be careful in making an approval because this stays with the land.

Dave Lind, 2411 Lake Michigan Ave., president of West Michigan Park Association (WMPA), stated that the association had not had a meeting, but he felt that he could reasonably attest that they would not want the conditions changed. He stated that he felt that nothing about this business fits the historical nature of the neighborhood area where it is located. He stated that there is a safety issue involved with traffic and expanded hours of operation.

Bruce Blakeman, 283 Portchester Rd., stated that he wanted to applaud anyone who voted for this "experiment." He stated that it was the "most outstanding promotion of Park Township of anything that I've seen." He stated that he felt that the park area is now becoming a destination point. They have done a beautiful job and Park Township residents appreciate it being there. He stated that he totally disagreed with the safety concerns. He stated that he felt that a more significant safety issue involves the people crossing the street to go to the General Store or Black Lake Lookout.

Jack De Vries, 2250 Ottawa Beach Rd. #6, stated that he and his wife have complained about the music, as have other residents of Holiday Haven, because the same music plays over and over. He noted that customers are only present at the Smitty's Pronto Pups for half an hour at a time, but he hears the same song six to eight times a day, over and over again. He noted that he does not want to hear the music start at 7:00 a.m. if the conditions are changed. He stated that he felt that Smith has been unresponsive to their complaints. He stated that cars pull up on their property and leave their vehicles on and run across the street to get food. He noted that he did not wish Mr. Smith to fail at his business.

Dean Brown, 2300 Tunnel Breeze, stated that all he has ever heard is wonderful things about Smitty's Pronto Pup business. He stated that his oldest son works at Smitty's Pronto Pups. He advised that he has tried biking through Holiday Haven and the music is barely discernable. He stated that he could not see any downside to the amendment. He stated that the only reason people would object to the items being sold are because they want the business to fail. He noted that the township can make changes in conditions and in contracts, and suggested the PC consider the requested amendment. He stated that it is a great asset to the township, and that more success means more taxes and more employees.

Kimberly Smith, 15860 Fendt Farm Dr., stated that these requested amendments are not for the benefit of only one person but rather come at the request of local families, campers and tourists. She stated that when they started out, they had a one-track mind about their menu. She stated that since opening the business, they have had numerous sticky notes placed on their building with messages such as "Hungry campers want breakfast." She stated that they want to be able to respond to their customers' requests. She stated that they would not have the music on in the morning.

Marlene Dekker, 2247 First Ave., asked if the business is so wonderful why does it need to be changed. She stated that she does not see a lot of customers there. She stated that she has talked with many people who live in Holiday Haven who have had negative experiences with the applicant, and

that her family has had a negative experience with the applicant as well. She stated that she felt that the owner's negative attitude towards the neighbors should be addressed before any changes are approved.

The public hearing was closed at 9:52 p.m.

Martin clarified the conditional rezoning process. He clarified that contrary to what many members of the audience understood, Smith, as the applicant, did not "agree" to the conditions currently in place, but rather he voluntarily offered those conditions to the township, and that the township had accepted those conditions as part of the rezoning. Martin noted that the conditional rezoning provisions in the statute are somewhat vague, but that those provisions provide that the property owner may voluntarily offer conditions in writing, and that the township may accept those conditions when rezoning the property. Martin noted that the township could not require the applicant to offer any conditions. Martin noted that some municipal attorneys believe that once an applicant voluntarily offers conditions in writing, that a local unit of government can make counter offers, but that it is his opinion that that could be considered to violate the law as requiring a property owner to offer conditions. He stated that it was his opinion that, unlike a planned unit development, there was no real negotiation occurring between the parties for a conditional rezoning – the applicant voluntarily offers conditions in writing, and the township determines whether or not they will accept those conditions and approve the rezoning request. Martin noted that the law provides that the township shall not add to or alter the conditions and that is why the item has come before the PC as a new conditional zoning map amendment. Martin stated that the applicant originally asked the new township manager to amend the conditions, then asked the manager and the supervisor, and then asked the manager, supervisor and zoning administrator to change the conditions. Martin advised that it was his opinion that the township did not have the authority under the law to merely change the conditions, but that the applicant could submit a new conditional rezoning request. Martin stated that pursuant to the current application, Smith has offered conditions voluntarily in writing as is required by the law, and that the PC should consider whether they would recommend that the township board accept those conditions offered. This is a new zoning map amendment with conditions. He clarified that the PC is not supposed to engage in a negotiation with the applicant regarding the conditions the applicant has voluntarily offered in writing. Martin stated that the conditions do not address whether or not the applicant would add additional equipment such as a grill, and does not limit the playing of music. Regarding the music, Martin stated that that would fall under the Park Township noise ordinance.

Cole asked for clarification on what would happen should the business fail.

Martin stated that another owner could operate a business as long as the conditions continued to be met – essentially a seasonal walk-up restaurant with a limited menu, or however else the conditions may be offered and accepted.

The proposed conditions were looked at and discussed in light of the standards contained in the newly adopted rezoning ordinance, section 21.04 (D).

MOTION

A motion was made by Cole and supported by Schaftenaar to recommend the township board deny the rezoning with conditions because of the following reasons:

1. The request is not consistent with the intent of conditional rezoning if the conditions keep getting changed, especially in such a short timeframe. Then it should have been a rezoning without conditions in the first place.
2. The request is not “compatible” with section 21.04.D.1.b and 21.04.D.1.c. The proposed conditions are not sufficient to protect the surrounding neighborhood and will not minimize the potential impacts to adjacent properties. The proposed conditions will not lead to a development that is more compatible with the surrounding uses than the current conditions in place under the existing zoning classification.

Martin clarified that the rezoning with conditions that was previously approved would remain in effect. He clarified that the township board could act contrary to this recommendation of the PC.

Lampen wanted to point out that, given a chance, most likely a lot of tourists would be speaking in favor of this new proposal.

VOTE

Motion carried: 6-0

Item #5 Ordinance Amendment – Wind Energy Ordinance

MOTION

A motion was made by Schaftenaar and supported by Jachim to remove the item from the table.

VOTE

Motion carried: 6-0

Lampen explained the changes that came from the subcommittee. No changes were made regarding wind turbine colors. No changes were made regarding noise levels. It is difficult to state where noise levels are measured from. There was a change made regarding lighting.

MOTION

A motion was made by Lampen and supported by Schaftenaar to recommend to the township board approval of the zoning amendment regarding wind energy.

VOTE

Motion carried: 6-0

ANNOUNCEMENTS

1. Arendshorst encouraged the PC members to consider signing up for the upcoming Citizen Planner series.

MOTION

A motion was made by Cole and supported by Jachim to adjourn at 10:22 p.m.

VOTE

Motion carried: 6-0

Meeting adjourned.

Sandy Brodie
Recording Secretary