

Colfax Township, Weldon Township and Village of Thompsonville
Community Joint Planning Commission
14714 Lincoln Avenue, Thompsonville, MI 49683
Minutes – November 2, 2013 Special Meeting

Sue Meredith declared the meeting open at 9:05 a.m. following the Pledge of Allegiance.

Present at roll call: JPC Members Jack Richter, Shelley Greene, Peggy Minster, Irene Dunham-Thayer (alt.), Sue Meredith, Don Suchocki, Chris Jones, Debra Franke, Eugene Allen and Zoning Administrator Craig Meredith. Absent: Mike Foust (alt.) and Pat Workman (excused). Guest Mark Eidelson of LANDPLAN.

Citizen Matters/Public Comment. None.

Agenda Additions/Corrections. Peggy moved, seconded by Jack to approve agenda; motion carried.

Approval of Minutes. Debra moved, seconded by Peggy to accept the October minutes; motion carried.

Draft Joint Zoning Ordinance Review and Discussion

Mark Eidelson said he read the JPC minutes, will focus this review on issues of concern and acknowledge other revisions that have been identified. Some revisions are of no concern; on others he will raise issues on JPC suggestions and recommend we rethink it or change direction.

- Articles 1 and 2

No concerns with JPC comments.

- Article 3

- Section 3.1: Mark explained 'establish the use' phrase; keep as is..

- Section 3.3: certain situations could go beyond the JPC's authority such as going to court which involves decisions and costs; the JPC serves the legislative bodies. Don said we were looking for clarification. Mark will include the boards/council to clarify.

- Section 3.5: by law the building department has to issue a certificate of occupancy but, in practice, their sign-off on final inspection functions as a certificate of occupancy. This is Benzie County practice for additions as well as new dwellings. Keep as is.

- Section 3.6: Mark is okay with inserting 'fiduciary' and will add a definition. Other items are okay.

- Section 3.7: For the time being, subsection B1 will be changed to 'receipt' to match 3.4(B)2(b).

'Submittal' is open to interpretation – does the sender obtain a receipt when mailed? Discussion; the Zoning Administrator may not be available every day; there is no backup. Mark suggested we may want to officially, not informally, designate someone. Don said this should be part of our succession planning. Craig spoke of the clerk time stamping zoning mail. In general terms, Mark said the zoning administrator should have daily access to mail; most of it for this area will involve homes and accessory structures. He said problems could arise if the ZA gets mail 5, 10 or 20 days old; it's poor administration. Craig acknowledged some items have a 10-day response and no response is an automatic approval. Shelley suggested using the JPC mailbox because going forward the Weldon clerk won't be involved. JPC will explore options.

Subsection B2: yes – 'amendment petition' refers to the Joint Zoning Ordinance.

Subsection B3: amendment petitions (zoning change) go to the legislative bodies; all have to agree to final action. Jack: how can it be worked out if one denies? Mark explained decisions are rendered at regular board/council meetings; the JPC holds the public hearing. Mark said a joint legislative body meeting to discuss petitions may allow tweaking so everyone is on the same page. Sue asked how it is initiated. Mark: ZA receives petition, notifies JPC, they meet and verify the petition is complete, JPC schedules hearing, holds hearing then sends recommendation to legislative bodies. At this point the

JPC may act independently with legislative bodies or suggest a joint meeting which is advertised, roll call and minutes are taken and the issue is discussed. The ZA then takes it to all three entities. Shelley asked about a legislative body taking action on an application within 90 days. Mark said the way it's evolving, legislative bodies won't be making administrative decisions and the first sentence in 3.7(B)3 will probably not apply. He is hesitant to delete it in case the ordinance gets amended and gives legislative bodies more administrative authority; that's where this would kick in. After discussion, it was decided to delete the first sentence.

- Section 3.8: in Subsection A the 'clerk of the fiduciary municipality' change is okay. Regarding fees, by law they are set by the legislative body, not the JPC. Mark suggested the JPC recommend fees based on real anticipated costs; each legislative body would then adopt. Make sure certain projects require an escrow fee to cover any costs that might be incurred such as sending an application to an engineer, planner, attorney, etc. Better to have the applicant pay for reviews rather than use public money. In Subsection B, splitting last sentence is okay.

- Section 3.10: changes are okay to Subsection A and C1. On Subsection C2, Mark's only concern with changing 'legislative body' to 'Joint Planning Commission' is whether a joint planning commission by law has the authority to determine who can or can't issue municipal civil infractions. He suggested keeping a list of questions for our attorney and has no concerns if the attorney does not.

- Section 3.11: Mark said the municipality always generates the mailing list for public hearing notices. Craig said he has been working with the applicant to get parcel numbers and names/addresses and provides to the clerk to complete the certified mail form. Mark said a clerk either handles it from beginning to end or at least verifies the information is correct. They have access to up to date information and works with the assessor, etc. Shelley felt the issue is to understand how it should be handled going forward. Much discussion concerning how much Craig does. Shelley said that is her point – why is he doing it if it is a clerk's responsibility. Need to establish how it should be done in the future; certainly Craig can help if he wants to. Mark said there are two parts: drafting the notice which is the ZA's responsibility given familiarity with it; the other half is making sure it gets sent to the right people. Mark said the clerk has to sign off on the list. He also would not take as the final word any names/addresses given by another party and gave an example of an invalid hearing. Craig feels it is the ZA's responsibility. Jack asked if he visits sites; yes, sometimes. Mark said this issue is all administrative paperwork...does not require site visit. Having a joint planning commission does not eliminate certain clerk responsibilities. This will not involve the village clerk since tax/assessment records are a township's responsibility. Subsections B4 and D will remain as is with 'clerk of the municipality.' Mark said it's too bad the public is not here to see we aren't rushing through anything!

- Article 13

Mark believes the applicant should pay fees up front rather than using public tax dollars. Sites plans can get complicated, even at the preliminary stage and there are costs involved including mailings and special meetings. His opinion: require a fee but make sure it is true cost; the applicant gets back what is not spent. The fee schedule could include escrow line items for preliminary and final site plan reviews. It is not uncommon to see an escrow fee of \$2,500-5,000 for professional review of a commercial or industrial site plan. The fee is deposited in a reserve account; any balance is returned. If fees exceed the deposited amount, work on the application stops until additional fees are paid. Sue asked if this is the same as a performance bond; it is not. Mark said a performance bond is used as a remedy to an uncompleted project; it is typically determined during site plan review deliberations. Balance of Article 13 revisions: Mark is okay with these.

- Article 15

There are a number of open Joint Zoning Board of Appeals issues, many because the number of members has not been determined. With a population under 5,000 at least three members are required; one must be from the JPC and one may be from a legislative body. Sue said our attorney suggested seven. Mark said technically a ZBA has three primary responsibilities: variances, interpretations of the ordinance and a review of a previously made administrative decision by the ZA. The

administrative review is really the appeal and the only thing classified by law as an appeal. Mark said it is an incredibly important job. Persons have to be committed, do their homework, analyze issues and, not to be funny, be able to read/comprehend the zoning ordinance. This is the last stop before court; they must be clear thinkers with independent minds. Mark is okay with comments in the minutes. Some hinge on number of ZBA members. The current draft reads a concurring vote of 2/3 is required. This only needs to be a majority.

- Section 15.7(C)3: why there is a one-year time limit on a variance? Surrounding conditions may change over time, sometimes drastically, and if asked for today a variance may not be granted.
- Section 16.3(A): twenty copies seem excessive. Officials number JPC 9, township boards 10, village council 9 plus the zoning administrator. Revise copies to 30. Copies are made by applicant.
- Section 16.3(C): reason for additional hearing by legislative body? It's the law and a private citizen can also request it. A legislative body may have concerns not shared by the other two and wants to revisit the issue for more information or give the public another opportunity to voice opinions.
- Section 16.3(B)3: Don asked why the JPC has to forward recommended action to the Benzie County Planning Commission for advisory comments. Mark said it's the law and no action is required on their comments.

Group took a break at 10:50 a.m. and reconvened at 11:00 a.m.

- Article 5

A Planned Unit Development District is a district an applicant can apply for because he/she has a unique project they can't do in any other district. If the area thinks it's a good thing it could be rezoned to a PUD designation. It would be linked to a site plan for a specific use or combination of uses.

- Section 5.3(A)6: are there issues the JPC should be aware of, such as sale of the property before project completion? Zoning runs with the land; new owner can continue.
- Section 5.7(A): keep 'may require a phasing plan.' Question was asked how number/percentage of units in phasing plan was determined. Require X number of residential units (or whatever) before next step. There is lots of flexibility and no magic rule – it's case by case. Mark said we could include a specific standard, such as a provision saying 50% of dwellings must be built before the rest go up. Establish parameters or a minimum. Mark said PUD approval is totally discretionary. Do not approve if it's "not right."

- Revise quantity of copies to 30.

- Article 7

- Section 7.4: Mark said the intent is to get rid of nonconforming structures.
- Section 7.4(A)2: add to fee schedule 'appraisal shall be at applicant's expense.'
- Section 7.4(A)5: remove the 10% replacement cost.

- Article 18

- Section 18.8(E)2: yes, all yards may be occupied around dwelling not to exceed 25% each.

Discussion on pole buildings/garages in front yards. It was agreed to permit accessory buildings and structures in front yards with setbacks.

- Section 18.9: okay as is.
- Section 18.10: okay as is.
- Section 18.11: okay as is.
- Section 18.13: other municipalities either prohibit "dangerous" animals or allow with permit from DNR. Okay except revise the density – 10,000 square feet seems too restrictive.
- Section 18.16: Mark said the definition states a swimming pool is a structure or basin that holds 300 gallons or more. Currently, this applies to anything bigger than a kiddie pool (6' diameter 2' high is about 400 gallons). There was agreement to not permit pools in front yards. Threshold of 400 gallons was established. Side and rear yard setbacks shall be five (5) feet.
- Section 18.18(B)3: Mark clarified the draft intends plantings to be required in addition to a berm/wall/fence in a buffer area for a more aesthetically pleasing appearance. Craig suggested adding

non-invasive species. Don said item 18.18(D) references plant material indigenous to Benzie County; the group felt this seemed sufficient. Keep as is.

- Section 18.19(C): issue is driveways – is unobstructed 10’ high, 15’ wide sufficient? Mark wanted to be sure we are thinking of regulating the maximum grade of a driveway. That would require the applicant to submit a grading plan. Debbie felt if people don’t think about emergency services, she doesn’t want to get into regulating. She asked what the county requires; Mark said the road commission or village only determines where a driveway can intersect with a public road. Keep as is.

- Section 18.20: for private roads, Mark said standards are the easy part. The challenge is when a private road is proposed it affects all neighbors who bought into it. If the proper access easement isn’t recorded for the private road, property owners don’t have access they think they have. A fundamental issue with approving a private road is making sure there is an easement recorded with the Registrar of Deeds that guarantees access to all parcels the private road serves. This can’t be addressed by road commission standards; it is not a standard and the BCRC doesn’t concern itself with private roads. Mark said this is a legal issue making sure that the adequate legal document is recorded that assures access. This is the reason for 18.20(C)2 Easement Agreement. Further, there will be problems down the road if there is no maintenance agreement legally recorded to make sure the road will be maintained. Subsection E already says the road must be designed to road commission standards. Mark addressed nonconforming private roads in poor condition and gave an example of an owner wanting to split lots. More traffic could make the road worse. Subsection G speaks to this fundamental problem. Don asked who takes on the liability and cost of designing/reviewing. Mark said it would be sent to a reputable engineer for confirmation it conforms to the zoning ordinance. Fees are put into escrow to pay for the professional review. Don is concerned about liability in the future. Mark said Subsection E substantially covers it with BCRC standards except that a road serving ten lots or less need not be paved. Don expressed concern about Subsection F Waiver of Design Standards, that waiving could create liability. Irene said under waiver the applicant may propose equal or greater structural stability...and not undermine health and safety. Don said someone would have to determine that; Irene said if it can’t be determined the answer is no. Don asked Craig who does Crystal Mountain? Craig said CM handles it and has a company come in such as Elmer’s; it is done to county road standards and is certified by an engineering firm. Mark appreciated the liability concern and has only seen one lawsuit concerning a parking lot. The court ruled in favor of the township; they performed due diligence, the standards were met and they were not unreasonable in approving what they did. He said we may want to set private roads aside until there is a demand for it. If we want to permit private roads, the key elements need to be in place. Peggy said an engineering firm other than the applicant’s should conduct the review for a fee. Jack asked about reference to the JPC’s engineer. Mark will clarify the wording – it is not a JPC member (maybe add ‘at applicant’s expense’). Debbie asked who records the agreements; Mark said the applicant does and then submits evidence to the ZA. Under Subsection D, all conditions must be met to receive JPC approval, including receipt of copies of recorded agreements. Mark will leave as is unless he hears otherwise.

Eugene departed at 1:30 p.m.

- Article 4

- Section 4.3: issue concerned moving Table 4.1 to directly follow the section. It was decided to keep as is, don’t move.

- Section 4.7(B): periods in table are appropriate for technical writing.

- Table 4-4: Mark said federal and state requirements for airports will be in forthcoming submittal. He assumed the Airport District would be limited to the airport proper to recognize it. He doesn’t feel nearby parcels under different ownership should be zoned in Airport District when there is no airport on the property. He followed the Weldon zoning map as a guide. Sue said the question arose due to Production Industries awaiting state and federal approvals; it will be just west of the airport. How will other neighbors know what they can do? Mark understood and said zoning it AD does not answer the question. He said a person will go to the zoning ordinance or ask the ZA. Okay – leave as is.

- Article 19

Wind and solar will be part of the next draft submittal. Mark felt we should address wind energy systems that function as accessory uses to the property. From the comment, he didn't know if we were looking at private systems or utility grade. Peggy felt that feasibility studies would have to be conducted and didn't believe this is a good area for wind. Mark would lean against utility scale wind energy farms because of all the public land in the area which causes interference.

- Home Occupations

Mark understood we decided to let this stand other than to put provisions in a table format. This is correct – reason is to make it easier to read. For medical marijuana, Mark said there are options: 1) say anything in violation of state or federal law is a violation of the zoning ordinance or 2) authorize it as allowed under the Medical Marijuana Act as a Class 1 Home Occupation. He suggested not being silent on it; take a position. He has written regulations for others under the MM Act.

- Accessory Buildings/Structures

- Section 18.8(G): keep as written – foundation and framing of principal structure are required prior to accessory building/structure.

Mark said the next submittal will contain an article on Standards and Regulations for Specific Land Uses and include a lot of sections on different land uses. Some may be too much and others a good thing. Jack informed Mark that the zoning map should reflect additional C-1 commercial property in Colfax Township. Jack pointed out the map location on Lindy Road from the village limits to Thurman Road.

Adjournment. Next meeting is November 7 at 6:30 p.m. Don moved to adjourn, second by Debbie at 2:30 p.m.

Respectfully submitted,

Shelley Greene
Secretary

Minutes are proposed until approved at the next meeting.