

**OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION**

**MINUTES OF A REGULAR MEETING HELD JANUARY 9, 2020**

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**Agenda**

**Election of Officers: Chair, Vice Chair and Secretary**

**Appointment of Planning Commission Liaison to the Zoning Board of Appeals**

**Old Business**

**a. Discussion – Nonhazardous Materials**

**New Business**

**a. Discussion – Permitted Uses vs. Permitted Uses with Conditions vs. Special Uses**

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A meeting of the Oshtemo Charter Township Planning Commission was held Thursday, January 9, 2020, commencing at approximately 6:00 p.m. at the Oshtemo Charter Township Hall.

**ALL MEMBERS**

**WERE PRESENT:** Bruce VanderWeele, Chair  
Ron Commissaris  
Dusty Farmer, Secretary  
Micki Maxwell  
Mary Smith, Vice Chair  
Anna Versalle  
Chetan Vyas

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney and Martha Coash, Meeting Transcriptionist. Two other persons were in attendance.

**Call to Order and Pledge of Allegiance**

Chairperson VanderWeele called the meeting to order at approximately 6:00 p.m. and invited those present to join in reciting the “Pledge of Allegiance.”

**Approval of Agenda**

Since no changes were necessary, the Chair asked for a motion of approval. Mr. Commissaris made a motion to approve the agenda as presented. Mr. Vyas supported the motion. The motion was approved unanimously.

## **Public Comment on Non-Agenda Items**

Chairperson VanderWeele asked if anyone in the audience cared to address the Commission on a non-agenda item. As no one came forward, he moved to the next item.

## **Approval of the Minutes of the Meeting of December 12, 2019**

The Chair asked if there were additions, deletions or corrections to the Minutes of the Meeting of December 12, 2019.

Ms. Smith noted her comments on page four regarding banners and flags that were intended to be temporary but were still in place, should have referred to Olga's, not Spectrum as listed.

Ms. Maxwell made a motion to approve the Minutes of the Meeting of December 12, 2019 as presented, with the correction as noted by Ms. Smith. Mr. Commissaris supported the motion. The motion was approved unanimously.

Chairperson VanderWeele moved to the next agenda item.

## **Election of Officers**

The Chair solicited nominations for officers for the positions of Chairperson and Vice Chairperson for 2020.

Ms. Smith confirmed with Mr. VanderWeele that he would be willing to continue as Chairperson and nominated him for the position of Chairperson for 2020. As there were no other nominations, the Chair asked for a vote.

The vote to elect Mr. VanderWeele to continue in the position of Chairperson for 2020 was unanimous.

Ms. Smith confirmed that Ms. Maxwell would be willing to accept the position of Vice Chairperson for 2020 and nominated her for that position for 2020. As there were no other nominations, the Chair asked for a vote.

The vote to elect Ms. Maxwell to the position of Vice Chair for 2020 carried unanimously.

The Chair noted the bylaws were changed to eliminate the position of Planning Commission Secretary and that Commission members needed to designate a recording secretary for 2020. He asked for a motion.

Ms. Farmer made a motion to designate Martha Coash as recording secretary for the Planning Commission for 2020. Mr. Commissaris supported the motion. The motion was approved unanimously.

### **Appointment of Planning Commission Liaison to the Zoning Board of Appeals**

Chairperson VanderWeele noted the need to also appoint a Commission Liaison to the Zoning Board of Appeals.

Ms. Farmer determined Ms. Maxwell was eligible and willing to continue as Liaison to the Zoning Board of Appeals for 2020 and nominated her for that position. The vote to appoint Ms. Maxwell as liaison for 2020 was unanimous.

Chairperson VanderWeele moved to the next agenda item.

### **Old Business**

#### **a. Discussion – Nonhazardous Materials**

Ms. Lubbert introduced this item, discussed at an earlier meeting and postponed for further study. She reminded the Commission that Taplin, Inc., an environmental services firm within Oshtemo Township, wishes to build a structure to process nonhazardous waste within their facility located at the corner of Drake Road and Michigan Avenue, just west of Bud and Doug Walter Auto Sales. Currently a nonhazardous materials treatment and disposal facility is not permitted within the Township Zoning Ordinance.

The firm's owners met with Township staff in early August 2019 to discuss the possibility of constructing this facility. After discussion with Taplin, staff decided to investigate the use and determine if ordinance language could be written to allow for this development. Staff conducted research on the requirements of nonhazardous material management through the Environmental Protection Agency and the Michigan Department of Environment, Great Lakes and Energy. Other treatment companies were reviewed to determine if special requirements must be met. Finally, a search of ordinance language related to nonhazardous treatment facilities was conducted.

The results of these searches determined treatment of nonhazardous material should occur within an enclosed building with a secondary containment system provided to ensure the results of any process within the facility do not impact ground water. The secondary containment system would be particularly important in Kalamazoo County, as all our water is ground water. Permission from the City of Kalamazoo to discharge the resultant water from the treatment process would need to be obtained.

Taplin's request was originally presented to the Planning Commission at their regular October 24<sup>th</sup> meeting along with a drafted ordinance amendment allowing for nonhazardous materials treatment and disposal facilities within the I-2: Industrial District

as a special use. At this meeting, the Planning Commission expressed concerns about the request and moved to postpone the item in order to obtain additional information from Taplin, Inc.

Ms. Lubbert noted Mr. Steve Taplin, representing Taplin, Inc., was present to answer any questions that the Commission has regarding his proposal to allow for nonhazardous materials treatment and disposal facilities within Oshtemo Township.

Chairperson VanderWeele thanked Ms. Lubbert for her report and asked Mr. Taplin to speak with the Commission.

Mr. Taplin explained hazardous waste can be toxic, flammable or corrosive and is defined by very specific criteria. If waste falls outside of those criteria it is defined as nonhazardous waste and needs to be managed, which may involve added treatment and a separation process which generates recycling of waste and reclaiming water. His business deals with that type of waste as well as foundry waste water which is generated on a regular basis and transported to Taplin for processing and then transported from there.

Ms. Farmer expressed concerns about loading/unloading at the facility as well as the business' proximity to residential uses, and noted zoning goes with property not with the person. She felt the business sounded very useful to the community, but that more research and reassurance from experts was needed before moving forward.

Mr. Vyas asked whether there would be an increase in noise for neighbors.

Mr. Taplin assured the Commission that the requested operation would be done inside and negative air (in not out) is managed accordingly. There should be no odor pollution but carbon treatment filters could be employed on the HVAC system. He said there would not be an increase frequency of trucks coming and going or loading/unloading or more resulting noise.

Attorney Porter said Taplin, Inc. has been a good corporate citizen for years and that the Township probably needs draft language provided by their own engineer for specifics in case the business changes hands and to determine how to define what can be treated and how odor can be contained.

Mr. Taplin said he knew it would take some time to address Township concerns and acknowledged his company does work people do not know about. He pointed out his company was the first responder for the Enbridge oil spill and is one of the largest firms in the State doing this kind of work. He explained it is good for the area to have a local firm that manages waste so it does not have to be trucked elsewhere. He does not anticipate bringing in waste from similar companies for processing.

Ms. Smith explained hazardous waste operations, air and odors are regulated by the DEQ and the EPA. As she believed Mr. Taplin indicated he would be processing

only nonhazardous materials, the Commission does not have to consider those things; their responsibility is to determine whether the proposed use is appropriate for zoning.

Chairperson VanderWeele thanked Mr. Taplin for coming to speak to the Commission. He determined the consensus of the group was to turn the request back over to Ms. Lubbert to find an expert advisor to help review and revise the applicable zoning. He acknowledged timelines can stretch out when trying to find an expert to assist, but they will try to keep this moving forward.

Mr. Commissaris asked if there would be a need for zoning consideration given that the business is near residential property. He also noted some confusing language that will need clarification regarding prohibited uses.

Attorney Porter said that those things will be addressed.

### **New Business**

#### **a. Discussion – Permitted Uses vs. Permitted Uses with Conditions vs. Special Uses**

Ms. Lubbert explained Oshtemo Township's Zoning Code outlines three different types of uses within each Zoning District: Permitted Uses, Permitted Uses with Conditions, and Special Uses. When a site plan for new construction or a significant alteration is submitted within a zoning district it will fall into one of these three categories, each triggering a different level of review. Apart from single-family homes, duplexes, and accessory buildings, all site plans are required to be reviewed by the Planning Commission or the Zoning Board of Appeals. The Township's Site Plan review process is outlined in Article 64 of the Zoning Code. In summary, the Planning Commission reviews all Special Uses, the Zoning Board of Appeals reviews Permitted Uses and Permitted Uses with Conditions, and staff administratively reviews smaller alterations and temporary uses.

She said site plans that fall under review by the Zoning Board of Appeals or the Planning Commission go through a six week or more public review process. She provided a brief summary of the three types of uses requiring this level of review:

- **Permitted Uses:** In every zoning district within the Township there are listed Permitted Uses. These are the uses allowed in a zoning district without contention and often are used to define the character and intensity of that district. For example, in the Township's R-1: Residence Zoning District the listed permitted uses are: private one family dwellings, essential services (excluding buildings and regulatory stations), accessory buildings and uses customary to the foregoing, and family daycare homes. Based on the listed uses it is clear the intent of this district is for low-density single-family development. Submitted site plans that fall under the Permitted Use category can only legally be reviewed on the criteria outlined in the Zoning Ordinance. Often these uses are referred to as

“uses by right”. When a site plan for a Permitted Use is under review and meets the requirements of the Ordinance, it is required by law to be approved. In these cases, the reviewing body is not permitted to request any additional conditions aside from what the Zoning Code requires.

- Permitted Use with Conditions: These types of uses follow the same principles of Permitted Uses except that there are additional conditions that the submitted site plan needs to meet in order to be approved. Similar to Permitted Uses, when a site plan for a Permitted Use with Conditions is under review and meets the requirements of the Ordinance, it is required by law to be approved. In these cases, the reviewing body is not permitted to request any additional conditions aside from what the Zoning Code requires.
- Special Uses: Special Uses are permitted uses identified in a zoning district that may have potentially unique characteristics that could be incompatible with other uses permitted in such zoning district. Unlike the previous two use types, the reviewing body of a site plan that falls into this category is permitted some discretion in their review. This discretion is meant to allow for flexible zoning control and still afford protection of property values and orderly and compatible development. If they find the use not compatible or if other concerns arise, even if the request meets the zoning requirements, they have the authority to deny the request or request modifications.

Ms. Lubbert noted that it is the Township’s practice to take all three of these use types through the Township’s six week or more public review process, which involves staff coordination with the applicant, one or more staff reviews of the submittal to ensure zoning compliance, the creation of a staff report that can be several pages long that outlines compliance or non-compliance of a project, and a presentation and public hearing at the reviewing body.

For site plans that fall into the Permitted Use and Permitted Use with Conditions categories, the Zoning Board of Appeals can only approve or deny an application based on whether the request meets the code or not. As noted, the reviewing body cannot request alterations or deny a request if the requirements of the code are met. Currently, staff determines the compliance of the case through review and outlines that compliance in a staff report for the Zoning Board of Appeals to consider.

She said in many jurisdictions, as there are no considerations beyond what is outlined in the code, reviews of Permitted Uses and Permitted Uses with Conditions are administrative. She requested the Planning Commission discuss and consider the possibility of transferring Permitted Use and Permitted Use with Condition site plan reviews to Township Staff for administrative review and approval. This change would drastically decrease the amount of administrative time needed in these types of reviews and streamline the process for Permitted Use and Permitted Use with Condition site plans, with the overall goal an increase in efficiency.

Staff understands certain types of Permitted Uses or Permitted Uses with Conditions can be controversial and the Township may still wish to have certain requests be considered by a reviewing body as well as allow public comment. However, under the current set up, even if the public is against a specific proposal, the reviewing body cannot react to the public's concern as they are required by law to approve a request of this nature if the plan meets zoning standards. She proposed moving these controversial types of uses from Permitted Uses or Permitted Uses with Conditions to Special Uses. Not only would this allow for the continuance of public comment, it would also allow the Township the ability to respond to public concern and place conditions on these types of requests.

Ms. Lubbert said staff first presented this idea to the Zoning Board of Appeals for discussion at their special meeting on December 17<sup>th</sup>. The Board was unanimously supportive of exploring this option. If consensus is reached by the Planning Commission in support of these changes, staff would work with the reviewing bodies to determine which Permitted Uses and Permitted Uses with Conditions in each zoning district should be converted into Special Uses and then move to make the review of the remaining Permitted Uses and Permitted uses with Conditions administrative. This process would be phased and involve review from the Zoning Board of Appeals, the Planning Commission, and the Township Board.

Attorney Porter added almost everything that comes forward currently has to be considered through the entire process. This proposal would streamline the process by providing perfunctory approval without review by a reviewing body. The current process exceeds what is required by state law and adds not only time but cost.

Ms. Lubbert noted under the proposed changes the Zoning Board of Appeals would only consider variances and contended interpretations of the code, which would considerably lighten the Board's workload, likely allowing them to reduce their number of meetings a year. Currently, about 90% of site plans go through the public review process. Streamlining the process will reduce time for staff and the Zoning Board of Appeals. She added that this change to the approval process would also reduce the application review and approval time for many applicants by several months. Ms. Farmer noted that this proposed change would also reduce costs as the required public notice for public meetings in the Kalamazoo Gazette costs the Township tens of thousands of dollars each year. Eliminating much of that cost will result in being more fiscally responsible to residents.

Chairperson VanderWeele said he was personally in favor of this proposal and asked how it should be moved forward.

Ms. Lubbert said the endorsement received from the Zoning Board of Appeals was the first step. After gaining approval from the Planning Commission, she would take the proposal to the Township Board. If endorsed there, she would work first with the Zoning Board of Appeals, then the Planning Commission to review changes proposed, section by section, to develop a list of recommendations which would ultimately be

taken to the Township Board for approval. Working on developing and implementing changes in the process will take more work up front, but will save work in the long term.

Ms. Farmer said she agreed this was a positive move and would lessen the overall workload for Planning Staff but would like to see the Township develop a plan for marijuana businesses first.

Ms. Versalle commented the proposed process would provide a better channel for public comment for those things that need public comment.

Chairperson VanderWeele determined Commission support for this change and asked Ms. Lubbert to move forward with the development and approval process.

### **Any Other Business**

Ms. Lubbert invited Commission members to attend a “Planning on Essentials” workshop and noted she ordered additional Planning Commission toolkits from the Michigan Planning Association so all members can take advantage of that resource.

### **PLANNING COMMISSIONER COMMENTS**

Chairperson VanderWeele acknowledged and welcomed new Commission members Anna Versalle and Chetan Vyas.

Ms. Farmer expanded on her comment that it is important to timely work on ordinance regarding marijuana. She has received many inquiries since voters passed legalization legislation. Consideration and decisions regarding where marijuana business is appropriate, need to be addressed as soon as possible.

Ms. Lubbert indicated she would bring forward a list of requested and needed code amendments to the next meeting to set priorities.

In answer to a question regarding changes to the ordinance for marijuana from Mr. Commissaris, Ms. Lubbert said public hearings would be held as part of the process.

Attorney Porter recommended that decisions be center on selecting appropriate areas, not the number of licenses for commercial businesses such as growers, processors, retail and medical sales. He felt an overlay zone with setbacks would need to be created.

Ms. Lubbert added that there are currently no “best practices” regarding this issue yet; it makes sense to approach the issue tentatively, with the ability to add more rights in the future.



## **ADJOURNMENT**

With there being no further business to consider, Chairperson VanderWeele adjourned the meeting at approximately 7:15 p.m.

Minutes prepared:  
January 11, 2020

Minutes approved:  
January 30, 2020