

**OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

MINUTES OF A MEETING HELD JUNE 8, 2017

Agenda

**PUBLIC HEARING: JAKE’S FIREWORKS – TEMPORARY OUTDOOR EVENT
CONSIDERATION OF AN APPLICATION FROM JAKE’S FIREWORKS, INC. FOR A
SPECIAL EXCEPTION USE AND SITE PLAN REVIEW FOR AN OUTDOOR
TEMPORARY SALES EVENT LASTING MORE THAN ONE DAY AS FOLLOWS:**

**FROM JUNE 23, 2017 TO JULY 7, 2017 IN THE HARDING’S MARKET
PARKING LOT AT 6430 STADIUM DRIVE PURSUANT TO SECTION 33.312 OF THE
VC: VILLAGE COMMERCIAL DISTRICT. PARCEL NO. 3905-26-465-022.**

**FROM JUNE 21, 2017 TO JULY 7, 2017 IN THE MENARDS PARKING LOT AT
6800 WEST MAIN STREET PURSUANT TO SECTION 30.415 OF THE C: LOCAL
BUSINESS DISTRICT. PARCEL NO. 3905-14-155-029.**

Old Business

a. Master Plan Update – Consideration of Future Land Use Changes

A meeting of the Oshtemo Charter Township Planning Commission was held on Thursday, June 8, 2017, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

ALL MEMBERS WERE PRESENT: Wiley Boulding Sr., Chairperson
Fred Antosz, Vice Chairperson
Cheri Bell
Ollie Chambers
Dusty Farmer, Secretary
Mary Smith
Bruce VanderWeele

Also present were Julie Johnston, Planning Director, James Porter, Township Attorney, Martha Coash, Meeting Transcriptionist, and approximately nine interested persons.

Call to Order and Pledge of Allegiance

Chairperson Boulding, Sr., called the meeting to order at approximately 7:00 p.m., and the “Pledge of Allegiance” was recited.

Agenda

Chairperson Boulding, Sr. asked if there were any additions, deletions or corrections to the Agenda. Hearing none, he asked for a motion to approve the agenda.

Mr. VanderWeele made a motion to approve the agenda as presented. Mr. Antosz supported the motion. The motion passed unanimously.

Public Comment on Non-Agenda Items

The Chairperson called for public comment on non-agenda items.

Ms. Justine Hertzell, 2484 Harbor Court, told the Board she had been present at the May 25 meeting and had presented the Board with 11 annotated pictures of the Westport Village walking path. She said she and several other residents were in attendance, some to speak to the Board about the walking path and others who would not speak but were there in support of the speakers and that there were others who were not in attendance but were also supportive. She said the Phase I walking trail was never completed as was approved by the Board, that it is not refreshed every year as claimed by the developer and that the photos taken two weeks after the May 25 show a different reality.

Ms. Gera Schoonbeck, 2575 Creek Shire Ct., said she and her husband were the fourth co-owners to move into the Westport Village development 10 years ago. She agreed the path has not been refreshed every year by the developer, and has never had wood chips as prescribed by the Township. Sometimes parts of the path cannot be found, it is mucky and weedy in other areas, with weeds at least a foot tall and covering the path. It was advertised in flyers they received at the time of purchase; that amenities would include a path for walking and biking; to her knowledge is still advertised as such. Also, according to the brochure, the path was to go behind two homes on lots 2460 and 2466 on Harbor Court. If this does not match plans given to Oshtemo Township then this too was false advertising. The brochure also advertised a putting green and home power washing. The putting green is gone and the power washing is done out of pocket by co-owners. She said there are other co-owners who share these concerns but they are reluctant to speak up.

An unidentified co-owner said the original brochure had a path shown on Isle Harbor Ct., behind lots 2460 and 2466, but as it stands now the path are not connected. She wondered if there would be sidewalks to connect the two parts of the path and suggested the Board look into it.

Mr. Ken Schoonbeck, 2575 Creek Shire Ct., stated although the path is advertised as a bicycle/walking path, he would defy anyone to ride their bike through the muck, let alone through wood chips. His idea of a walking path is something you could wheel through, asphalt or some other hard surface, as he has seen in other plats. He said the developers are cutting corners, some at the co-owners' expense.

Hearing no further comments, Chairperson Boulding, Sr. moved to the next agenda item.

Approval of the Minutes of May 25, 2017

Chairperson Boulding, Sr. asked if there were any additions, deletions or corrections to the Minutes of May 25, 2017.

Hearing none, the Chairperson asked for a motion to approve the minutes as presented.

Ms. Bell made a motion to approve the Minutes of May 25, 2017 as presented. Mr. VanderWeele supported the motion. The motion was approved unanimously.

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BUSINESS DISTRICT. PARCEL NO. 3905-14-155-029.**

Chairperson Boulding, Sr. moved to the next item on the agenda and asked Ms. Johnston for her presentation.

Ms. Johnston said the applicant is seeking to locate a temporary fireworks sales tent in the parking lot of the Harding's grocery store at the corner of 9th Street and Stadium Drive, which is zoned VC: Village Commercial District and the Menards store at the corner of 9th Street and West Main Street, which is zoned C: Local Business District. A temporary outdoor sale for longer than one day is a special exception use in both the VC and C zoning districts. The applicant is seeking to operate during the following dates:

<u>Stadium Drive Location</u>	<u>West Main Location</u>
Tent installation – 6/23	Tent installation – 6/21
Fireworks delivery – 6/25	Fireworks delivery – 6/22
Sale dates – 6/25 through 7/4	Sale dates – 6/22 through 7/4
Fireworks pick-up – 7/5	Fireworks pick-up – 7/5
Tent removal – 7/7	Tent removal – 7/7

Ms. Johnston said the Harding's location is an existing site for this vendor. They have been at this location for five years, with the 2017 application the sixth request. The

Menards location is a new site for Jake's Fireworks. For the past two years, Ka-Boomers has been located within the Menards parking lot but has chosen not to return to this location. Jake's would be located in the same space as Ka-Boomers.

She said the first approval for Jake's Fireworks within the Township was on June 28, 2012. At that meeting, it was noted that the applicant raised their tent prior to receiving Planning Commission approval. There was discussion with the applicant regarding proper application procedures. The minutes of the meeting are attached. Ultimately, the Planning Commission granted approval with a 5 to 2 vote.

Since that time, compliance and enforcement issues have been a consistent concern with this vendor. She provided the following list of approvals and problems Township staff has recorded over the last five years:

- 2012: Planning Commission approved on June 28, 2012.
Tent set-up was completed prior to Planning Commission approval.
Tear-down was not completed on time.
- 2013: Planning Commission approved on May 31, 2013.
Tent tear down was not completed on time.
- 2014: Planning Commission approved on May 22, 2014.
Township required a \$450 escrow because of history of tent tear-down issues.
No issues reported in 2014.
- 2015: Planning Commission approved on May 14, 2015. Administrative approval was granted for future applications.
Tent tear down was not completed on time. A fee of \$75 for late tear down was withdrawn from the escrow account.
- 2016: Township staff granted administrative approval on March 22, 2016.
Two racing stock cars on trailers were parked near the fireworks tent. On June 28th, the Township Ordinance Enforcement Officer informed on-site management that the cars were not approved as part of the site plan for the Special Exception Use permit and would have to be moved. A move-by date of June 29th was provided. The Fire Marshal also had an issue with the placement of a gas can and generator near the tent.

On July 4th, a member of the Planning Commission observed that the stock cars had been returned to the site over the holiday weekend when Township staff was not on duty to enforce the site plan.

Allegations were also made by persons not affiliated with the Township that fireworks staff set off fireworks in the evening in the Harding's parking lot and smoked near the fireworks tent.

A portion of the escrow fee was retained by the Township equal to a first offense civil fraction.

Ms. Johnston said due to the consistent pattern of enforcement concerns with this vendor, Staff was recommending denial of both the historic 6430 Stadium Drive site and the newly requested 6800 West Main Street location. The Township has hosted three other vendors during this same five-year period with no enforcement actions. Jake's has had enforcement concerns four out of the five years they have been a vendor in Oshtemo Township.

If the Planning Commission would like to consider approval, she said Planning Staff prepared the following information for consideration:

The applicant is proposing a 1,600-square foot (40' x 40') tent for the sale and display of fireworks at the Harding's location. The tent will be located in the southern portion of the parking lot between the retail structure that contains Subway and the driveway to Stadium Drive at the Parkview Drive intersection. The tent will be located in approximately the same location as it was located last year, and is the same size as last year. As with previous years, the tent will need to be set back 10 feet from the edge of the parking lot pavement to satisfy separation requirements.

The tent at the Menards location is proposed to be 1,500 square feet (50' x 30') and will be located at the southern end of the parking lot, just north of the drive aisle that separates Menards from the retail uses that front West Main Street. This is the same location approved in 2016 for Ka-Boomers fireworks sales.

Ms. Johnston said should the Planning Commission be inclined to approve the request; the following conditions were recommended by Staff:

1. The tent at the Harding's site shall be permitted from June 23rd through July 7th and the tent at the Menards location shall be permitted from June 21st through July 7th. Sale of fireworks shall not occur at the Harding's site until June 25th and sale of fireworks shall not occur at the Menards site until June 22nd.
2. The hours of operation are limited to 9am to 9pm from June 21-28 and 8am to 11pm from June 29 to July 4.
3. All signs shall satisfy the requirements of the Township Zoning Ordinance.
4. At least one person from Jake's Fireworks staff shall be onsite 24-hours a day.
5. Compliance with all comments or issues raised by the Fire Department during the course of their review and/or any subsequent inspections.
6. A compliance deposit in the amount of \$400 shall be paid to the Township for each site approved as prior to setting up the tent. The deposit will be refunded to the

applicant in full provided that all conditions are met. If any of the approved conditions are not met, a fine equal to \$75 for each day that any infractions take place shall be retained by the Township.

She noted the recommended dates are what the applicant asked for on the application form.

Chairperson Boulding, Sr. thanked Ms. Johnston for her comments and asked if there were questions from the Board.

In response to a question from Mr. Antosz, Ms. Johnston said this is the fourth fireworks vendor to operate in the Township; there have been no issues with the others. They have received full refund of their escrowed funds.

Ms. Bell wondered how long tents were in place after the approved dates.

Ms. Johnston said one day in 1015; she did not have the dates for 2013 or 2014. \$75 was charged in 2015 because that is the enforcement fee for one day.

The Chair noted the lease between Jake's and Harding's as to the date for the tent to be gone, says "a reasonable amount of time."

Ms. Johnston explained regardless of what the lease says, the Township expects the tent will be down on July 7.

There were no further questions from the Board. The Chair asked whether the applicant wished to speak.

Mr. Greg Claussen, S.E. Kansas, represented Jake's Fireworks and said he understood the issues of late takedown and explained he received a call last year on the 7th and the tent was removed a day later. He hadn't been aware the date for removal of the tent was July 7. He apologized for the issues, but noted that set up and take down of tents is done by the tent company and that they are aware of the requirements for this year.

He said Staff on site last year called about fireworks being shot off on site and were told to call the police. They have posted signs on all four sides of the tent stating that no fireworks are to be lit within 300 feet of the tents.

Chairperson Boulding, Sr. asked if there were questions from the Board for Mr. Claussen.

Ms. Bell asked about his history with the company.

Mr. Claussen said he had been with the company for eight years, but this will be his third year in his current position working in Michigan.

Ms. Bell noted late tent removal has been an issue since 2012.

Chairperson Boulding, Sr. wanted to be sure the hours of operation are spelled out and honored.

Mr. Claussen said he would be happy to comply with the Staff recommendation regarding hours as listed in the conditions for approval.

There were no further comments; the Chairperson asked if there was anyone from the public who wished to speak.

Mr. Theme Corakis, 6416 Stadium Drive and owner of Ted & Marie's Restaurant just east of the fireworks site, said he has been there all the years the fireworks stand has been in Harding's parking lot and felt it is nice to have something going on there. He and the Harding's manager were there when the fireworks were going off last year and it wasn't determined if they were lit by Jake's staff or customers. He noted surrounding small businesses have increased business because the stand is there and was in support of approving the request; the more business the better.

There were no further comments from the public; Chairperson Boulding, Sr. moved to Board Discussion.

Mr. Antosz said based on the numerous complaints about the applicant he was against approving the request. The compliance deposit was required in the hope that it would help, but it has not seemed to play a role.

Mr. VanderWeele was supportive of giving Jake's one more year with the Staff conditions.

Ms. Bell was also willing to support the application with the Staff conditions. She also felt there should be an additional condition stating there will be no letting off of fireworks by Jake's Staff.

Ms. Johnston said it is state law that no fireworks be set off within 300 feet of tents and that it is a policing/enforcement issue. The fees for a special exception use allows the Planning Commission to apply conditions they feel are needed. The fees could be increased. If the Commission feels due to the history on non-compliance warrants it, the compliance deposit could be increased.

Attorney Porter suggested \$500 total, or \$100 a day might be appropriate.

Mr. Chambers said he could support approving the application but needs a commitment to follow the requirements.

Ms. Farmer noted the process created to require a compliance deposit was created because of this company. She has been on the Commission for all but one of

the years Jake's has been in the Township and there was a commitment every single time by a representative of Jake's. She indicated the Planning Commission has been lenient and supported the business, but noted the wasted Township resources by the Enforcement Officer, Planning Staff, her personal staff to handle the money, the Fire Marshal and police. She appreciates a fresh perspective from new Commissioners, but does not want to see a second location. She feels the Township should support business when business supports the Township and has not seen that in five years with Jake's.

Ms. Johnston said if Jake's is allowed to operate in the Township this year it should be with the understanding that any enforcement actions taken this year will cause the Township to not entertain any future application for all the reasons stated by Ms. Farmer.

Ms. Smith said although Jake's has had several chances, she was not against one more and agreed with upping the amount of the compliance deposit.

Attorney Porter noted if there is rationale, an applicant for special exception can be treated differently.

Ms. Farmer said she could support approving the application if it is for one location only, the compliance deposit amount is doubled and that this year will be the last chance.

Chairperson Boulding, Sr. asked for a motion.

Ms. Farmer made a motion to approve Jake's application for one fireworks stand at the Stadium Drive, Harding's parking lot location, under the Staff conditions listed, and with the two additions below:

#6 changed to read: A compliance deposit in the amount of \$800 shall be paid to the Township for the Stadium Drive site prior to setting up the tent. The deposit will be refunded to the applicant in full provided that all conditions are met. If any of the approved conditions are not met, a fine equal to \$150 for each day that any infractions take place shall be retained by the Township

#9 added to say that if there is any violation this year, no application from Jake's Fireworks will be entertained in the future.

Mr. VanderWeele supported the motion. The motion was approved 6 – 1, with Mr. Antosz dissenting.

OLD BUSINESS

a. Master Plan Update – Consideration of Future Land Use Changes

Ms. Johnston said she would like to defer this item to the next meeting which would be held as a work session from 6 – 8 p.m.

The Chair asked for a motion to table the item.

Mr. Chambers made a motion to table consideration of the Master Plan Update to a June 22 work session of the Planning Commission scheduled for 6 – 8 p.m. Mr. VanderWeele supported the motion. The motion was approved unanimously.

ANY OTHER BUSINESS

There was no other business to consider.

PLANNING COMMISSIONER COMMENTS

In answer to a question from Mr. Chambers regarding the responsibilities of the Board, Attorney Porter indicated the Commission is not an enforcement body, but gives the public a place to speak about issues.

Ms. Smith wondered how the Rotary Festival went and noted the parking lot was left very clean.

Ms. Johnston said it was a wonderful success and Rotary received more than \$20,000 in proceeds. No complaints were received.

Hearing no further comments, the Chairperson asked for a motion to adjourn.

ADJOURNMENT

Ms. Smith made a motion to adjourn the meeting. Mr. VanderWeele supported the motion. The motion passed unanimously.

The Planning Commission meeting was adjourned at approximately 7:55 p.m.

Minutes prepared:
June 10, 2017

Minutes approved:
July 13, 2017