

**OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

MINUTES OF A PUBLIC HEARING AND MEETING HELD APRIL 9, 2015

Agenda

PUBLIC HEARING: PLANNING COMMISSION TO REVIEW APPLICATION OF TIM WOODHAMS, ON BEHALF OF MAR-BO INVESTMENTS, INC., FOR TENTATIVE APPROVAL OF A PRELIMINARY SITE CONDOMINIUM PLAN (STEP 1) FOR A 40-UNIT RESIDENTIAL SITE CONDOMINIUM DEVELOPMENT NAMED VAN KAL SITE CONDOMINIUM. THE SUBJECT PROPERTY IS LOCATED AT 3839 SOUTH VAN KAL AVENUE IN THE RR RURAL RESIDENTIAL DISTRICT. (PARCEL #3905-31-155-030).

A meeting of the Oshtemo Charter Township Planning Commission was held on Thursday, April 9, 2015, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Terry Schley, Chairperson
Fred Antosz
Wiley Boulding, Sr.
Dusty Farmer
Millard Loy
Mary Smith

MEMBERS ABSENT: Pam Jackson

Also present were Karen High, Zoning Administrator, James Porter, Attorney, and Martha Coash, Meeting Transcriptionist. Approximately 30 other persons were in attendance.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

The meeting was called to order by Chairperson Schley at approximately 7:00 p.m. and the "Pledge of Allegiance" was recited.

AGENDA

The Chairperson asked for a motion to approve the agenda.

Mr. Loy made a motion to accept the agenda as presented. Mr. Boulding, Sr. seconded the motion. The motion passed unanimously.

PUBLIC COMMENT ON NON-AGENDA ITEMS

Chairperson Schley asked if anyone in attendance wished to comment on non-agenda items.

There were no public comments on non-agenda items. Chairperson Schley moved to the next item on the agenda.

APPROVAL OF THE MINUTES OF MARCH 26, 2015

The Chairperson asked if there were any additions, deletions or corrections to the minutes of the Meeting of March 26, 2015. Hearing none, he asked for a motion to approve the minutes as presented.

Mr. Loy made a motion to approve the minutes of the March 26, 2015 meeting Mr. Antosz seconded the motion. The motion was approved unanimously.

Chairperson Schley moved to the next item on the agenda.

PUBLIC HEARING: STEP 1 SITE CONDOMINIUM REVIEW (VAN KAL SITE CONDOMINIUM. PLANNING COMMISSION TO REVIEW APPLICATION OF TIM WOODHAMS, ON BEHALF OF MAR-BO INVESTMENTS, INC., FOR TENTATIVE APPROVAL OF A PRELIMINARY SITE CONDOMINIUM PLAN (STEP 1) FOR A 40-UNIT RESIDENTIAL SITE CONDOMINIUM DEVELOPMENT NAMED VAN KAL SITE CONDOMINIUM. THE SUBJECT PROPERTY IS LOCATED AT 3839 SOUTH VAN KAL AVENUE IN THE RR RURAL RESIDENTIAL DISTRICT. (PARCEL #3905-31-155-030).

Chairperson Schley said the next item on the agenda was a review of the application for tentative approval of a preliminary site condominium plan (step 1) for a 40-unit residential site condominium development named Van Kal Site Condominium, located at 3839 South Van Kal Avenue in the RR Rural Residential District. He asked Attorney Porter to address procedural issues.

Attorney Porter explained the zoning ordinance regulations for single family dwellings are applicable in this instance. Although referenced in the staff report, site plan review issues are not being addressed at this time. He noted that state law requires that residential site condominiums be considered in the same way that subdivisions are considered.

He said if there is concern about the site itself, including such items as natural features, flooding, habitability, the question is whether those issues have been addressed by ordinance. He noted this is a preliminary design step. Some of the questions people may have are not intended to be answered at this point. They will be answered in a later step when engineered drawings are prepared.

Chairperson Schley asked Ms. High to provide background for consideration.

Ms. High said for the benefit of the large audience in attendance, she would read the memo provided to Commissioners regarding this project. The report is included here by reference. She concluded by showing several slides from the county-wide mapping system that provided an aerial view of the proposed site's topography, soils present on the site, the zoning of the area, the proposed layout of the streets and lots, and a conceptual grading plan showing the impact resulting from grading for the proposed roads.

Chairperson Schley thanked Ms. High and asked if Commissioners had questions.

Mr. Antosz asked whether the applicant was aware of the encouragement from the Township regarding open spaces in developments.

Ms. High said the applicant was made aware of that desire and said it was considered.

Attorney Porter referenced the ordinance itself regarding how open space is encouraged and said there are "carrots" to that effect in the ordinance.

Mr. Antosz asked whether each unit would have its own septic tank, drain field and well and if so, what size they would be, and whether Township Engineer Mark Elliott had seen the plans.

Ms. High confirmed that each unit would have its own tank, field and well and that according to the Health Department a working figure to use for the size of a drain field is 6,000 square feet, but the actual size would depend on the size of the residence and number of bedrooms of each house. She said she also learned that the 6,000 square feet drain field must be as close to absolutely level as possible.

Attorney Porter noted that is not a criterion for Step I of the project.

Ms. High said Mr. Elliott has seen the plans but relies on the Health Department in regards to approval of septic systems.

Mr. Antosz asked about the length of the streets and how they are measured.

Ms. High said the maximum length of a block, considering intersecting streets on either sides of the street, is 1000 feet. The plan has a street that is 1372 feet in length but it is interrupted by a cross street, so it does not exceed the maximum.

Mr. Boulding, Sr. asked about specifics for Steps II and III of the review and how they would be monitored.

Chairperson Schley indicated the Planning Commission would not have a role in Steps II or III, that the Township has other mechanisms to follow through on those steps. The County Road Commission and other entities as well as Township staff come into play.

Ms. High and Attorney Porter concurred there is monitoring by Township staff at both Steps II and III.

The Chairperson confirmed with Ms. High that relative to density issues, 40 units is the maximum allowed for 40 acres because there will be no public water or sewer available. Ms. High explained that if there were public water and sewer available, the maximum allowed would be one and one half units per acre.

Chairperson Schley noted the standards are proportional to the service at the site. He asked Ms. High for other examples of plats/condo sites in RR zoned areas of the Township.

Ms. High noted Pondview Estates, to the north of the proposed site, has both half acre and one acre lots, but does not have the topography of the proposed site. She said the Tuscany subdivision, which is of a similar size to the proposed site, has lots averaging three quarters of an acre. The proposed Van Kal Site Condominium has half and three quarter acre units and two that are over an acre.

Chairperson Schley asked whether other plats with topography similar to the property in question have designs similar to the rather regimented design being proposed.

Ms. High said they did not; that when staff saw the proposed layout they thought the land involved must be rather flat because the roads are so straight and rectilinear, and the units are evenly sized. She added that the roads did not appear to follow the contour of the land. Some subdivisions in the area have open space that was preserved where the topography is steep.

The Chairperson asked Attorney Porter to clarify whether Section 82 Site Plan Review standards should be judged appropriate for this application.

Attorney Porter confirmed that this Section does not apply to residential Site Condominiums, it applies to commercial, industrial or multi-family dwellings.

The Chair asked if the general standards in Section 78.520 which speak to storm water management standards are applicable.

Attorney Porter said it would be applicable when we get to Step II to address road run-off and large drainage basins. It would not be applicable for single family lots. It is directed to larger developments, not to the lots themselves.

The Chair asked whether this section of the ordinance shouldn't be applicable in this scenario if it speaks to all land uses.

Attorney Porter said from a specific design point, no, but from the general meaning of the ordinance, yes. In that case the applicant needs to be told our understanding is the general plan for roads and drainage basins do not meet the ordinance and the applicant should be asked how they are handling a change to "x or y" but not get into specific design. We would need to give a general indication if the plan does not meet the conceptual idea in the ordinance.

Chairperson Schley noted the proposed project is in an RR zoned area and said each individual zone in the ordinance has a statement of purpose. He wondered if the application could be looked at in that context regarding character issues.

Attorney Porter said it could be if the use is questionable. In looking at the statement of purpose, intents and desires are referenced, but if the ordinance does not provide requirements for general purpose, it does not control.

Chairperson Schley asked how the Township's tree clearing policy applies.

Ms. High said a clear cutting permit was adopted over a year ago. It applies to properties not going through a site condominium or subdivision review process, or not going through site plan review. The goal was to require clear cutting permits for those project that did not have to come before the Planning Commission. It was understood that tree preservation needs to be addressed, but the specific ordinance did not apply so that the Planning Commission could address the issue more comprehensively.

Chairperson Schley asked the applicant to speak since there were no further questions from Commissioners.

Mr. Tim Woodhams of Civica Engineering, 1503 East Centre Street, spoke to the Board and said the proposal as presented is a permitted use in the Township's RR zone. He said he understood and appreciated the desire from those in the community for open space in the development, but that it was not a cost feasible option. In order to build 40 units and get everything to meet Health Department requirements, the trees had to go.

He walked through 18 items listed in Section 290.005 of the General Ordinance that are required for tentative approval and explained how they have met or plan to meet them. He said if the project is tentatively approved, the Road and Drain Commission would closely review drainage and grading and that the Township Engineer would review the Drain Commissioner's review.

He also indicated items addressed in the Kalamazoo County Road Commission letter and the list of Township Staff concerns would be addressed in Step II drawings. He discussed the centerline survey of Van Kal, noting the way they plan to address

sight distance with a “flat both ways profile” and a deceleration lane would be OK with the Road Commission.

Mr. Woodhams said the grading and storm water issues would be part of other agency’s reviews and noted quite a bit of cutting and filling will be required to achieve a max. 7% grade. Section 78.500, Stormwater Management, will be in the Road and Drain Commissioners’ hands.

He noted the Township Staff report, since the Site Plan Review issues did not apply, recommended approval of the proposal. He added that it should receive the Commission’s approval since, if followed to the letter, the proposal complies with zoning requirements.

As far as tree removal, he said they tried to minimize it in the plan; they showed a standard template as to how they expect trees would be removed from individual lots, but it will be up to each prospective home owner to decide how they build on the lots.

Attorney Porter disagreed that “other agencies” would be the sole authority to decide on grading and storm water issues; Township ordinances would need to be addressed.

Ms. High emphasized that the Staff Report did not recommend approval of the proposal. It notes that the plan does not address existing natural features and topography.

Attorney Porter said although the 18 criteria were addressed by the applicant, those are items to be shown on the plan. Section D addresses the criteria to analyze features of the plan once received and said the design, as proposed, could be laid out on a corn field.

Chairperson Schley said that as the Commission moves forward it will make various judgments.

Mr. Woodhams said the attractiveness of the development would be similar to those in Texas Township where homes are selling in the \$500,000 range.

Attorney Porter asked how the applicant will attempt to preserve natural features.

Mr. Woodhams said that will be a struggle. The developer will need to remove many trees, but would like to develop a plan with the Township’s input.

Chairperson Schley asked if alternative concepts to the regimented plan proposed had been evaluated.

Mr. Woodhams said alternative layouts had been done, but they couldn't accommodate enough lots in order to recover the value of the property. The challenge is finding enough room for tile fields and wells on 40 units.

Chairperson Schley asked Mr. Woodhams if he agreed that Step I under general provisions speaks to the preservation of natural features.

Mr. Woodhams agreed that is the case. He said the existing Mystic development is similar in topography to the 40 acres being proposed for development.

Chairperson Schley asked how much attention was paid to the statement of purpose for the RR zone in development of the proposal and whether Mr. Woodhams agreed the concept proposed is a non-traditional subdivision.

Mr. Woodhams replied that the proposal conforms to the ordinance as written.

The Chairperson said he disagreed with Mr. Woodhams' assertion that the Mystic development is similar in topography to the proposed development site.

Mr. Woodhams said the topography does not preclude designing roads to meet Road Commission standards. It does not feel like you are walking up a steep hill, it is a reasonable slope.

Chairperson Schley noted the applicant proposal is generic with respect to tree preservation and again asked how much consideration was given to natural features.

Mr. Woodhams explained a certain swath of trees must be cut down to accommodate roads and sidewalks, utilities, tile field and house. He added that it doesn't matter what it looks like, the trees will all have to be cut. He said he would want to work with the Township on enforceable tree preservation after input from his client and noted again that builders will clear lots for each of the homes.

Attorney Porter clarified again the difference between a subdivision and site condominiums: a site condo looks just like a subdivision, it is just developed under a different statute.

Ms. Smith asked if there is a minimum square footage required for homes in the development.

Mr. Woodhams said there is no requirement, but the likely builder will probably build homes similar to ones in another plat they built in Texas Heights #9, mostly 3500-4000 square feet. There is no actual minimum at this time. He anticipated it would be around 2400 square feet.

Ms. High noted homes, by statute, must be no smaller than 1,000 square feet.

There were no further questions from the Board. Chairperson Schley opened the meeting to Public Comments, requesting that remarks be limited to four minutes from each speaker.

Ted Boyer, 45732 Van Kal (22nd St.), had both a complaint and concerns. He said the proposed plat driveway will be located directly across from his property and although public hearing notices, by statute, are to be sent to all parties within 300 feet of proposed development, he did not receive a notice – that apparently notices were not sent to residents of Almena Township in Van Buren County even though they live within 300 feet of what is being proposed. He considered that both negligent and thoughtless. He felt there would have been a larger turnout of concerned neighbors if all who should have received notices had gotten them.

His concerns were: 1) he and his wife are concerned about road safety and feasibility and wondered if a study had been done, including the number of cars that travel Van Kal now. 40 condos will have a major traffic impact; widened turn lanes will be needed. It is his understanding there is a requirement to notify the state for a safety and feasibility study. 2) He asked whether an environmental impact study regarding harmful chemicals was planned; he also wondered where the sewage would go.

Attorney Porter said the mailing list will be looked at to determine any problems with notification and thanked Mr. Boyer for informing the Board.

Mr. Art Diani, 4115 Van Kal (22nd St.), spoke on behalf of him and his wife Judy. He had nine points of concern with the proposed development: 1) the impact of individual septic systems; 2) drinking water and individual wells; 3) traffic increase on Van Kal, particularly with the rise in the road that interferes with visibility; 4) problems resulting from clear cut erosion of the 40 acres known as “Snake Hill”; 5) the necessity of two large drainage ditches and possible resulting impending trouble; 6) substantial streetlights and resulting magnetic fields; 7) a bad precedent since there is currently no subdivision from Stadium Drive to M-43; 8) negative impact on endangered lupines, pine and hardwood trees, and the natural wildlife corridor; and; 9) a negative impact on the quality of life for residents. He concluded by saying this would not be a good fit for the neighborhood and that there are numerous other subdivisions for people to live in if that is their desire.

Ms. Chris Dinkins, 13393 Honeysuckle, said her aunt and uncle, Tim and Sue Gordon, passed away several years ago and entrusted her to keep the 40 acre property undeveloped. They were the parents of her cousin Tim Gordon, the child who was killed by a vehicle at the rise on Van Kal some years ago, near the proposed entrance to the development. When she sold the property it was with the understanding that it would be a horse farm. If she had known this would happen she would never have sold the property. She apologized to the neighbors and said she hoped the application would not be approved.

Mr. Derrick Millard, 22192 Salisbury Drive, said he and his wife live close to the property and are totally opposed to its development. He believes there will be a water shortage in the near future. There is already plain, visible evidence it is occurring. He cited the drop in water level in ponds over the last 10 years, particularly one on 44th St. near Van Kal, which used to support ducks, geese and herons, that has all but dried up. 40 new homes will affect the water level and contamination. He is also concerned about increased traffic and noted the dangerous junction. He wondered if that had been considered and suggested a small roundabout be installed for even current traffic levels. Van Kal is narrow in places and more homes will mean less visibility. He proposed that any sizable developments should be hooked up to city water and sewers so as not to use natural resources of the countryside.

Mr. Wade Lawrence, who owns property on the north side of the proposed development, said he was concerned about water and agreed with the earlier speaker regarding the pond that is no longer a pond on M avenue. The water table is down and he thinks there is a correlation with the fact that it was necessary to install a new well on his property recently. He commented there is only one road provided in the plan for ingress and egress and said better emergency vehicle access is needed. He noted there is a stand of lupine that is the only food source for the Karner Blue butterfly, which is an endangered species. He concluded by saying he is concerned with fielding lifestyle complaints from people who move to the country but do not want the sounds and smells of the country. For example he has horses that produce manure which will smell in the summer and roosters that crow at dawn. Historically, this type of conflict has been a problem with new country developments.

Mr. William Nederhoed, 45960 Van Kal (22nd St.), told the Board there are two graves with 3-foot tall gravestones on the site that date back to the 1800s and shouldn't be disturbed. He said he had been an electrical inspector for a long time, including for years in Oshtemo Township, and he is unsure whether Midwest Energies has an adequate line to add the 40 200-amp services that would be required. This area is at the end of Midwest's line and he foresees low voltage and other service problems.

Mr. Al Geresy objected to the time limit for citizens to speak, and believed Mr. Woodhams should be held to the same limit. He also commented the Board says it wants to save trees, but seems willing to forgo that goal if more dollars come to the Township through development.

Mr. Larry Westrate, 22055 Salisbury Drive, said he and his wife live east of the property on Van Kal and are opposed to this development. He asked for a show of hands from attendees who did not receive the public hearing notification letter. Approximately five people raised their hands. He said he had been a witness to the accident scene when Tim Gordon was killed and noted traffic is a major problem in that area. More police presence is needed and noted that whenever he does see an officer there, a motorist is being pulled over. The traffic there is loud and will only increase with the addition of 40 units, which will be very detrimental. He said there is no street light at

Salisbury and Van Kal. He also said when he had to replace his well recently, they had to go 50 feet down rather than the previous well's depth of 23 feet.

Mr. Michael Foley, 4000 S. 1st Street, said he felt a lot of time was spent on adhering to the Ordinance and little time on the Master Plan. He is concerned about a high density project being placed in a low density area. The project was designed to maximize the number of units to be built. 40 wells and septic systems will cause problems. The Master Plan talks about protecting ground water sources by connecting to public utilities – he doesn't understand where this seems to be going. Lights and noise from 40 homes will have a negative impact, inconsistent with a rural area. He referred to the area as currently having 7.1 acres per home on a total of 360 acres. He noted the development would have 40 lots with less than an acre each and that this is inconsistent with the Master Plan.

Mr. Chris Tiller, 3776 S. 1st St., agreed with Mr. Foley, saying the slopes and grades on the 40 acre property are huge and he doesn't see how the plan presented will fit into the property.

Mr. Kevin VanDyk, 3795 Van Kal Avenue, said the 40 acre piece borders his property on two sides and he agrees with most of what was said by previous speakers, especially Mr. Foley. He bought his property for the peace and serenity it offers and this development will devalue his property and other property in the area. He asked Commissioners to please consider the intent of the law.

Mr. John Robyn, 3517 Van Kal, indicated his property is immediately northwest of the proposed development which cannot be called RR. To build as proposed the land will have to be butchered. He challenged the figures used in the proposal. Such a development was not what those as a community were looking for when they moved there and he said he was vehemently opposed to the proposal.

Mr. Chad Hughson, 18 N. Van Kal, said he owns 35 acres and considers himself a community representative. The grading and removal of forest on land formed by glaciation, once removed, will be gone forever. Major tracts of forest are being lost in Oshtemo Township. He talked about hydrological impacts and asked how it could be shown that the change in flow won't negatively impact the ponds. He said water flowing from that area to the south is a unique feature and is the start of the watershed for the Paw Paw River. He asked that the Commission consider doing an environmental impact study of all areas and noted the Drain Commissioner would not consider the impact of the project on the entire region. He also cited the endangered Carner Blue Butterfly and the lupine in the area that is its only food source. He also mentioned the state-threatened Blue Curly plant, which also grows in the affected area. The pristine corridor along the Kalamazoo/Van Buren County line should be considered.

Ms. Chris Dinkins, 13393 Honeysuckle, spoke again to say this is country land and the proposed development does not belong there.

Ms. Jan Thomas, 45537 Winchester Circle, thanked everyone for coming to the meeting to save the land. She lives across the street and fears water run-off and contamination from concentrated development. She said it is a terrible thing to disturb the land and that there are already water problems. It looks like the development does not belong there.

Hearing no further public comment, Chairperson Schley said the Planning Commission would deliberate.

Attorney Porter said he was concerned about the public hearing notice distribution and felt the due process issue needs to be looked at. He apologized for not providing notice as required and said the Township would need to incur the expense of re-noticing. It was agreed notice of a public hearing to offer the opportunity for input would be sent to all who were missed in the first notice as well as all those who did receive notice.

Mr. Woodhams suggested tabling the item to determine who was missed, so re-noticing could be done as appropriate.

Chairperson Schley said that although he would like the Board to talk about the issue while information is fresh, citizens not present are of great concern, and asked for a motion to table to a date certain.

Ms. Farmer made a motion to table further consideration of this item until the regularly scheduled meeting of May 14, 2015. Mr. Loy supported the motion. The motion carried unanimously.

Ms. High offered to accompany Commissioners on a site visit prior to May 14.

Attorney Porter cautioned that only one Commissioner at a time should make such visits and that they should not talk to each other, neighbors or property owners about this issue; it needs to be talked about as a group.

Chairperson Schley assured the audience and the applicant that the Board wants to deliberate with them and that they will follow the required process.

OLD BUSINESS/OTHER BUSINESS

Chairperson Schley asked if there was old business or other business to come before the Commission. There was none, so the Chairperson moved to the next item.

PLANNING COMMISSIONER COMMENTS

Ms. Farmer said one of her goals from the beginning of her term was that the Ordinances reflect the Master Plan. She now realizes they also need to reflect the statement of purpose. She urged this be completed as quickly as possible.

Mr. Loy noted he would be absent from the April 23 meeting.

Chairperson Schley appreciated everyone's patience with a long meeting. Good work was done in allowing the process to occur as defined. Hearing public comment is important.

ADJOURNMENT

Having exhausted the agenda, and with there being no further business to discuss, Chairperson Schley asked for a motion to adjourn.

Mr. Loy made a motion to adjourn. Ms. Farmer seconded the motion. The motion carried unanimously.

Chairperson Schley adjourned the Planning Commission meeting at approximately 9:22 p.m.

Minutes prepared:
April 10, 2015

Minutes approved:
April 23, 2015