

West Traverse Township
Planning Commission
Wednesday, June 8, 2022

Chairperson Mooradian called the meeting to order at 7:00 p.m.

Roll Call: Baiardi, Varner, Uutinen, Moore, Wallin, Repasky, Mooradian

Visitors: Eric Blesi, Dave Green, Anna McGlasnen, Kacey Cook

The Pledge of Allegiance was recited by all.

Approve Agenda: Mooradian wants to add the Minutes from the May 25th Special Meeting. Mooradian also had some typo corrections on the first Public Hearing “its PA 230 the Act of 1897”. Mooradian continues with the second Public Hearing case “its 200 Harbor Point Dr.” Under “new business” “a” should be case 02-2022 and “b” should be 03-2022. **Wallin made a motion to approve the agenda as presented with corrections and additions. Baiardi supports the motion. All yes.**

Public Comments:

Approval of May 11, 2022, Regular Meeting Minutes: **Wallin made a motion to approve the minutes as presented. Varner seconded the motion. All yes.**

Approval of May 25, 2022, Special Meeting Minutes: **Wallin made a motion to approve the special meeting minutes as presented. Baiardi seconds the motion. All yes.**

Public Hearing: Case 02-2022 – Harbor Point Association, 200 Harbor Point Drive, Harbor Springs, MI 49740. Application for Zoning Ordinance Text Amendment to create Section 307:04 to adopt a Summer Resort and Park Overlay District to permit association incorporated in PA 230 of 1897 to form and maintain an Architectural Review Committee that would review and approve proposed residential development, excluding special land uses, within the Association’s boundaries. Mooradian states the subject has been announced and both cases have been duly advertised in the Harbor Light. Mooradian asks Jake to summarize the text amendment. Jake states the first Public Hearing is for the request to add a text amendment to the Zoning Ordinance, which would create a special overlay district. Jake states this overlay district would apply only to properties that have a special arrangement. Jake states “this is kind of sited as the PA 230 act of 1897, a summer resort act”. Jake continues that the overlay district would be applied to the Zoning Ordinance to create some separate standards for development for any resort association that is incorporated under this act. Jake states that it could also be applied in lieu of the other overlay district that is currently in effect on that property. Jake continues that it would probably pertain to the second Public Hearing that everyone will hear today with case 03-2022 which has to do with the rezoning. Jake states this case is only for the text amendment and says that everyone should listen to it on those merits alone. *ie:* is this text amendment in line with the intention of the Ordinance and the Master Plan? Mooradian asks Blesi (General Manager for Harbor Point Association) what the desires of the association are.

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Blesi states that their desires are to create a situation where everyone is happy if that is possible. Blesi states that 50 years ago there was not a building committee, and nothing had changed on Harbor Point. Blesi describes the type of people that are on Harbor Point now. Blesi states in 2003 the association created the building and grounds committee and with any other organization you will find that there are people who want change and others that do not want to change anything. Blesi states that the building code is strict, and you would find a lot of the stockholders who would state it is overly strict. Blesi states “our intent is to keep the feel and flavor of Harbor Point.” Blesi explains the process of building requests on Harbor Point which goes from the building and grounds committee and then to the board for approval. Blesi talks about the project they had going on over the winter, which was hit with a stop order from the County. Blesi said he received a call from Jim Bartlett stating that Harbor Point needs to do something to clean the this up so everyone is on the same page. Blesi asked Bartlett what he suggests? The first suggestion Bartlett gave is the text amendment, so Blesi talked to Jim Ramer. Blesi said there was a special meeting scheduled but then was later cancelled, because there was some discussion about whether the text amendment was the appropriate thing to do or the overlay review was the correct way to do it. Blesi states he is at the meeting to answer questions and to assure the Planning Commission that Harbor Point is not trying put anything past them and that is not how they operate. Blesi states he has worked for Harbor Point for 45 years and the residents there are good people. Blesi states the people of Harbor Point want to cooperate and play by the rules.

Kacey Cook works for the Tip of the Mitt Watershed Council and described what the organization does. Cook addresses Blesi with Case 02-2022, and she states the watershed council is concerned with the particular approach in terms of the text amendment. Cook states with the experience of working in the policy and legal realm, they have not seen a model that where a third party, non-governmental organization that would be doing the zoning review. Cook states how it is written in the draft language that says “the zoning administrator shall approve once the materials and the payment is submitted”. Cook continues that they have some concerns about the legality of that approach. Cook states that they would like to encourage the township to look into the specifics that it is within the delegated zoning powers to give that type of authority to a non-governmental group. Cook states the second piece of it that she would like touch on is that there is a number of great internal regulations and agreements that are in the packet she provided. Cook states however those are internal and subject to internal review and what is seen with this draft amendment language without giving into the waterfront overlay district, there is no waterfront protections or natural vegetative protections are written into the amended language. Cook states while there might be some supplemental language that would adopted internally, which would be subject to internal review by the association and any potential changes would be reviewed or approved by township itself. Cook states that those are their major concerns.

Mooradian makes a motion to close case 02-2022 at 7:18pm. Varner seconds the motion. All yes.

Public Hearing Case 03-2022 – Mooradian made a motion to open Case 03-2022 Harbor Point Association 200 Harbor Point Drive, Harbor Springs, MI 49740. Application to rezone Harbor Point Association, Tax Parcel ID #24-16-15-13-376-001, 24-16-15-24-200-001, 24-16-15-13-377-003, 24-16-15-13-377-004, 24-16-15-13-377-005, 24-16-15-13-377-001, and 24-16-15-13-377-002 from R-1-A (Waterfront Overlay District) to R-1-A (Summer Resort and Park Association Overlay District. Wallin seconds the motion. Blesi had nothing

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new to add but did agree with Cook that the language needs to be tweaked as far as the removal of Waterfront Overlay and its control. Blesi states it is important and should be factored into this. Cook reviews the packet with the board. Cook states that the big concern is losing the waterfront protection that come with the Waterfront Overlay Zone. Cook states it sounds like there are some real issues that the association is working through, but their hope is that those can be addressed without losing those real important waterfront protections. Cook states that the standards are so important with consideration of the Waterfront Overlay District being replaced effectively. Cook states that the Watershed Council believes strongly that internal regulation is looking out for the public process and having those standards at the Township wide level for all of the properties within the district.

Mooradian made a motion to close the second hearing at 7:27pm. Wallin seconds the motion. All yes.

Old Business: None

New Business:

- a. Case 02-2022 – Harbor Point Association, Zoning Ordinance Text Amendment – Mooradian reviews the packet with the board. Jake reiterates that this is about the Text Amendment. Utinen asks if it can be done legally? Repasky states that is the question that needs to be answered to move forward. Jake states that the concern the Watershed Council has should be brought up to the Township attorney, because how the language is written would give the Planning Commission standing. Jake states “we only have power delegated to us through the Zoning Enabling Act.” Jake states how the zoning text amendment is written would remove some of the review abilities from the Township. Jake states the way that this is phrased working through this will be the big key. Jake states as it stands right now, there are some potential issues that have been raised, so just keep that in mind. Moore states he has read over the Planning and Zoning Enabling Acts numerous times, and has found no language that would support the Planning Commission having the authority to give that away. Moore states the Planning and Zoning Enabling Acts only talk about the authority of creating the ordinance and creating a planning commission. Moore states it talks about the Board’s ability to hire planning professionals as employees of the Township. Moore states it does not talk about a Zoning Administrator. Moore states nowhere does it give the authority to transfer the duties and authority of the Zoning Administrator to a private third party. Mooradian states we apply the code; we do not interpret it. Moore states he is comfortable making a recommendation based on the reading of the Township Code. Mooradian states the Zoning Ordinance gives us the authority to involve an attorney with a site plan review, a special use, a site condo, or a PUD, but it does not give the authority to engage the attorney. Mooradian states he has talked to the Planner, and she agreed. Mooradian states that authority is with the Township Board, so if legal advice is sought this case would have to be brought to the Township Board. Varner asks if the Planning Commission really wants to get into the discussion if it something they can not do? Mooradian discusses the Zoning Code. Moore asks Blesi “who wrote the actual text amendment?” Mooradian states the actual text amendment that was submitted was drafted by the Township attorney. Moore’s second question is about the architectural review committee and if it just makes a recommendation for approval and then it has to go to the Board for

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a final approval? Blesi states the buildings and grounds committee can approve or deny a project. Moore states the application talks about an architectural review committee and asks Blesi for clarification. Blesi states that the architectural review committee is the buildings and grounds committee. Blesi states if they get into a project that they have questions about they use Jessica Moore who is a local architect. Blesi states Jessica Moore has done a couple of projects on the Point for various stockholders. Moore asks Blesi who has the final say? Blesi states the board has final say. He also states that the architectural review committee does have the power to deny a project. Blesi states the stockholder has the right to appeal the decision directly to the Board. Wallin states he has heard layers of bureaucracy, all of the committees and he wonders who is in charge. Wallin states he wants to know what the definition of a summer resort is, because there are people living on the Point full time. Mooradian reviews the text amendment draft with the board. Mooradian asks Blesi if Bartlett provided him with the text amendment draft in March? Blesi states not that he recalls. Mooradian states we need to decide on how to take action on this. Mooradian asks Blesi how many dwellings are on the Point? Blesi states 80 dwellings. Mooradian then asks how many vacant lots? Blesi states there are 4. Moore asks Blesi if the architectural review committee meetings are open to the public. Blesi states no, that it is in house. Moore asks if the architectural review committee documents are subject to FOIA? Blesi states no. Moore asks if the Harbor Point Association construction and landscaping policy is available to the public. Blesi states no, but he does not know why it wouldn't be. Moore asks if those policies can be amended at any time by the Harbor Point Association board? Blesi states yes. Moore asks if the architectural review committee members are qualified electors of the West Traverse Township? Blesi states no. Moore states he has a number of findings of fact he would like to read and propose to the Commission to include into a possible motion. Moore states he does believe a decision can be made on this case with some of the items discussed. Moore has some concerns because the West Traverse Township Supervisor was involved in drafting this application in March. Moore reviews the Zoning Ordinance and his findings of fact with the PC. Blesi states he is not at the meeting looking for a yes or no answer tonight. Blesi states he would rather have it done right and correct any issues.

Moore made a motion to recommend denial to the West Traverse Township Board pending review by Emmet County Planning and Zoning, of the proposed Zoning Ordinance Text Amendment by Harbor Point Association to establish a summer resort and park association Overlay District with the accompanying regulations and proposed Zoning Amendment to replace the Harbor Point Association current Waterfront Overlay with the proposed Summer Resort and Park Association Overlay Case 02-2022 at 200 Harbor Point Drive, Harbor Springs, MI 49740 based on the following findings of fact and Planning Commission discussion. The following document, in its entirety, was read into the motion at this point.

“West Traverse Township Zoning Ordinance Sections

102 Authority This Ordinance is enacted into law pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, as amended, MCL 125.3101 et. seq. This enabling act is

hereby made a part of this Ordinance just as if said Act were repeated word for word herein.

Michigan Zoning Enabling Act Sections

Sec. 201. (2) Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.

Commissioner Moore Notes: Applicant's proposed Zoning Ordinance text amendment attempts to create an overlay district within the regulations of the existing R-1 District. This creates different regulations within a single district, which Sec. 201. (2) of the Michigan Zoning Enabling Act expressly forbids. Furthermore, even if the proposed Summer Resorts Overlay was properly separated into its own district, the fact that the proposed language contains no development standards of any kind, means it would be impossible to ensure all regulations are uniform within that district.

Michigan Zoning Enabling Act Sections

Sec. 210. Except as otherwise provided under this act, an ordinance adopted under this act shall be controlling in the case of any inconsistencies between the ordinance and an ordinance adopted under any other law.

Michigan Compiled Laws

455.12 By-laws and rules; amendment. The stockholders shall have the power to make such reasonable by-laws not inconsistent with the laws of this state...

Commissioner Moore Notes: The applicant has not shown how their organization under the Summer Resorts and Park Association Act, 1897 PA 230, as amended, would allow their by-laws to supersede the West Traverse Township Zoning Ordinance. The applicant cites an incorrect chapter number of the Michigan Compiled Law within their proposed text amendment.

West Traverse Township Zoning Ordinance Sections

501 Purpose The purpose of this Article is to specify the documents and/or drawings required for plot plans and site plan review so as to ensure that a proposed land use or development activity is in compliance with this Ordinance, other local ordinances, and State and Federal statutes and regulations. Furthermore, its purpose is to ensure that development taking place within the Township is orderly, properly designed, safe, efficient, environmentally sound and designed in such manner as to protect adjacent properties from substantial adverse impacts.

Commissioner Moore Notes: The applicant has not shown how their Architectural Review Committee would ensure compliance with this Ordinance, other local ordinances, and State and Federal statutes and regulations.

502:2 Plot Plan Data Required. A plot plan shall be drawn to scale and show the following in sufficient detail to enable the Zoning Administrator to ascertain whether the proposed work or use is in conformance with the provisions of this Ordinance.

502:3 Plot Plan Administrative Procedure.

Uses - Single-Family and Two-Family Dwelling Units

Reviewing Official/Body - Plot plan is reviewed and approved by the Zoning Administrator (review may be sub-contracted to another agency).

Commissioner Moore Notes: The above expressly assigns the duties of Plot Plan review to the Zoning Administrator. There does not appear to be any language that supports transferring these duties to an uncontracted private third party. The proposed text amendment does not address this section of our Zoning Ordinance and would therefore create inconsistencies within our zoning ordinance.

901 Administrator and Enforcement The provisions of this Ordinance shall be administered in accordance with the Michigan Zoning Enabling Act, 2006 PA 110, as amended, M.C.L. 125.3101, et. seq.

A. The Township Board shall appoint a Zoning Administrator...

B. The provisions of this Ordinance shall be administered and enforced by the Zoning Administrator...

903 Duties and Limitations of the Zoning Administrator

903:1 Powers of the Zoning Administrator. The Zoning Administrator shall have the power to grant permits, to conduct final inspection and to make inspections of buildings or premises necessary to carry out his duties in the enforcement of this Ordinance.

903:2 Application. A zoning permit shall be required for excavation, construction, moving, alteration or change in type of use or type of occupancy. Every application for a zoning permit shall be accompanied by a Plot Plan or Site Plan in sufficient detail to enable the Zoning Administrator to ascertain whether the proposed work or use is in conformance with the provisions of this Ordinance. Site Plan and Plot Plan requirements are listed in Article 5.

903:3 Permits to be Issued. If the proposed excavation, construction, moving, alteration or use of land as set forth in the application are in conformity with the provisions of this Ordinance, the Zoning Administrator shall issue a permit. However:

- A. Issuance of a permit shall in no case be construed as waiving any provisions of this Ordinance.**
- B. The Zoning Administrator, under no circumstances, is permitted to grant exceptions to the actual meaning of any clause, order or regulation contained in this Ordinance to any person making application to excavate, construct, move, alter or use either buildings, structures or land.**
- C. The Zoning Administrator, under no circumstances, is permitted to make changes in this Ordinance or to vary the terms of this Ordinance in carrying out his duties as Zoning Administrator.**
- D. The Zoning Administrator shall issue a permit when the imposed conditions of this Ordinance are complied with by the applicant regardless of the effect of such a permit on contracts, such as deed covenants or private agreements.**

Commissioner Moore Notes: The above expressly assigns the duties of Plot Plan review to the Zoning Administrator. There does not appear to be any language that supports transferring these duties to an uncontracted private third party. The proposed text amendment does not address this section of our Zoning Ordinance and would therefore create inconsistencies within our zoning ordinance.

Commissioner Moore Notes: There appears to be no precedent, guidance, or authority for West Traverse Township to transfer the duties and authority of our Zoning Administrator to an uncontracted private third party. The Planning Commission might therefore attempt to hold the proposed Architectural Review Committee to similar standards of the most closely analogous township positions or bodies, those being the Zoning Administrator, planning employees, and Planning Commission. The following sections of text from the West Traverse Township Zoning Ordinance, Michigan Zoning Enabling Act, and Michigan Planning Enabling Act provide useful context.

West Traverse Township Zoning Ordinance

902 The West Traverse Township Planning Commission was created by West Traverse Township Ordinance 1 of 2010 pursuant to the authority granted the Township Board under the Michigan Planning Enabling Act, 2008 PA 33, M.C.L. 125.3801 et. seq. to establish a Planning Commission. The Planning Commission shall perform the duties provided by the Michigan Planning Enabling Act, 2008 PA 33, as amended, M.C.L. 125.3801 et. seq. and the Michigan Zoning Enabling Act, 2006 PA 110, as amended, M.C.L. 125.3101, et. seq. including authority to act on all matters requiring the approval or recommendation of such Planning Commission.

Michigan Planning Enabling Act Sections

Sec. 15. (1) In a municipality, the chief elected official shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving...

(2) A city, village, or township planning commission shall consist of 5, 7, or 9 members...

(3) The membership of a planning commission shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the local unit of government, in accordance with the major interests as they exist in the local unit of government, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire geography of the local unit of government to the extent practicable.

(4) Members of a planning commission shall be qualified electors of the local unit of government...

Sec. 19. (1) A planning commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings, and determinations.

Sec. 21. (2) The business that a planning commission may perform shall be conducted at a public meeting of the planning commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.

(3) A writing prepared, owned, used, in the possession of, or retained by a planning commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Commissioner Moore Notes: The following questions were discussed:

Are Architectural Review Committee meetings open to the public? Answer: No.

Are Architectural Review Committee documents subject to FOIA? Answer: No.

Is the Harbor Point Association Construction & Landscaping Policy available for public viewing? Answer: No

Can the Harbor Point Association Construction & Landscaping Policy be amended at any time without West Traverse Township approval? Answer: Yes

The proposed review process appears to offer no protections of the intent of the Michigan Planning Enabling Act to ensure an open, transparent, and fair permit review process.

Michigan Planning Enabling Act Sections

Sec. 25. (1) A local unit of government may employ a Planning Director and other personnel as it considers necessary, contract for the services of planning and other technicians, and incur other expenses, within a budget authorized by the legislative body. This authority shall be exercised by the legislative body, unless a charter provision or ordinance delegates this authority to the planning commission or another body or official. The appointment of employees is subject to the same provisions of law as govern other corresponding civil employees of the local unit of government.

Commissioner Moore Notes: The applicant has not shown how the Architectural Review Committee would be subject to the same provisions of law as govern other corresponding civil employees of the local unit of government.”

Concerns of Tip of the Mitt Watershed Council dated June 8, 2022 were also cited as reason to deny. Baiardi seconds the motion.

Roll Call: Repasky – yes, Wallin – yes, Moore – yes, Uutinen – yes, Varner – yes, Baiardi – yes, Mooradian – yes.

- b. Case 03-2022 - Harbor Point Association, Zoning Map Amendment – Mooradian states this is about the removal of the Waterfront Overlay. Mooradian reviews Cline’s report with the Planning Commission. Mooradian asks Cook if there is anything she would like to add to this case. Cook appreciates the PC raising the setback. Cook states that she would like to add to the comments that what is being seen with climate change, the extreme highs, and lows of water levels, they are encouraging the greater the setback the better, especially on the Great Lakes. Cook would just like to highlight that move towards 60’, though it creates challenges for existing properties, it is an important climate resilience step that they are encouraging local governments to take with the provision within the Ordinance. Mooradian states that the Overlay was put there for a reason, and maybe it needs to be revisited in the future. Wallin states that in their rules and regulations, a lack of waterfront protection, front and rear setbacks are not addressed, and he has a big concern for that. **Wallin made a motion to recommend denial to the West Traverse Township Board of case 03-2022 Harbor Point Association Zoning Map Amendment for the reasons stated in our Planners Report. Varner seconds the motion.**

Roll Call: Uutinen – yes, Varner – yes, Baiardi – yes, Moore – yes, Wallin – yes, Repasky – yes, Mooradian - yes

Other:

- a. Zoning Administrators Reports: Zoning administrator gave his report.
- b. Township Board Representative Report: None
- c. Correspondence: Jake handed out an article for the board to read through.

Planning Commissioner Comments: None

Public Comments:

Next Regular Scheduled Meeting: Planning Commission Regular Meeting, July 13, 2022 7:00pm

Adjournment: Wallin makes a motion to adjourn the meeting at 8:50pm.

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Approved:

Respectfully Submitted by:

Dawson Moore, Secretary

Transcribed by:
Paige Fisher

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Approved: