

MINUTES OF THE COOPER CHARTER TOWNSHIP
PLANNING COMMISSION HELD ELECTRONICALLY
Wednesday, APRIL 21, 2021

A meeting of the Planning Commission of Cooper Charter Township was held on Wednesday, April 21, 2021, electronically pursuant to the Open Meetings Act as amended by Public Act 228 of 2020.

Roll Call:

Present - Comm. Boekhoven attending virtually from Cooper Township;
Present - Comm. Fooy attending virtually from Cooper Township,
Present - Comm. Frederick attending virtually from Cooper Township,
Present - Comm. Feil attending virtually from Cooper Township,
Present - Comm. Corke Attending Virtually from Cooper Township,
Present - Comm. Wiersma Attending Virtually from Cooper Township, and
Present - Chairperson Asselmeier, attending virtually from Cooper Township.

Members Absent: None.

Also Present: Laura Genovich, of Foster, Swift, Collins and Smith, attorneys for Cooper Charter Township; Julie Johnston, Township Planner and Zoning Administrator.

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

Approval of Agenda

A motion was made by Comm. Boekhoven, supported by Comm. Corke, to approve the agenda. Motion carried 7-0.

Review and Approval of Minutes

Members of the Planning Commission reviewed the Minutes of the February 17, 2021 meeting. A motion was made by Comm. Frederick, supported by Comm. Corke, to approve the agenda. Motion carried 7-0.

Citizen Comment

None.

New Business

Planning Commission Bylaws

Township Planner and Zoning Administrator, Julie Johnston, provided updates to the Planning Commission Bylaws. Ms. Johnston explained that the Secretary position is required by state law. Ms. Johnston suggested adding language indicating that outside personnel will help prepare meeting minutes to reflect how the Commission currently operates.

Ms. Johnston also recommended that the first three sections of the bylaws be removed because they were taken from the ordinance that created the Planning Commission and do not need to be repeated in the bylaws. Ms. Johnston suggested that the bylaws begin with the appointments section instead. Ms. Johnston noted that elections of officers will take place yearly and the elected officers will take position immediately following the election for a one-year term in office or until their successors are elected. Additionally, officers may be re-elected to their offices.

Township Attorney, Laura Genovich, agreed that the bylaws should provide that the Secretary or the Secretary's designee will prepare the minutes of the meeting to reflect how the Commission currently operates. Additionally, she clarified that maintaining the public record would still be within the Secretary's role. Attorney Genovich also pointed out that the Township Board ex-officio member cannot serve as Chairperson of the Board, but the statute does not contemplate whether they can serve as Secretary.

Comm. Frederick stated that he likes how the current bylaws preclude the ex-officio board member from holding an officer position within the Planning Commission. Comm. Asselmeier agreed and stated that if the ex-officio Board Member was to hold an officer position, that the public perception of their interactions may not be positive. Ms. Johnston stated that she will leave the portion of the bylaws that preclude the ex-officio Board Member from serving in an elected officer.

Ms. Johnston stated that the term of office for Planning Commission members is three years as currently written in the bylaws. Ms. Johnston also added a section regarding the resignation of a Planning Commission member. A resigning Planning Commission member is required to provide written notice of their resignation to the Township Supervisor. Ms. Johnston also added a section regarding absences from meetings, which require board members to email the Township Supervisor and Clerk to excuse any absence. Members of the Planning Commission can be removed from office by a vote of a majority of the Township Board after a hearing for non-performance of duties. Currently non-performance of duty is defined as two or more unexcused absences, misconduct, or not declaring a conflict of interest.

Attorney Genovich suggested that the Board include language from section 15 of the Zoning Enabling Act, specifically subsection 9, which references removal of a member due to misfeasance, malfeasance, or nonfeasance in office instead of using terms like non-performance or dereliction of duties. Attorney Genovich agreed with Ms. Johnston that it may be helpful to provide examples of misfeasance, malfeasance, and nonfeasance so that the public has a better understanding of what the requirements are. Ms. Johnston will add examples to that section.

Additionally, Ms. Johnston stated that she removed the compensation section in the bylaws because that was something that the Township Board decides, not the Planning Commission. Ms.

Johnston also outlined minor changes to the duties section to eliminate redundant wording and make the bylaws more concise. In the meeting section of the bylaws, Ms. Johnston added that any meeting that a quorum of the members cannot be present must be rescheduled as a special meeting without an additional public notice being required provided that the date, time, and place for the rescheduled meeting is announced.

Attorney Genovich remarked that there was a Court of Appeals case that just recently came out regarding mailing notice to people interested in a public hearing, and that if the Planning Commission was rescheduling a Public Hearing, she may advise that the Commission still mail notice to the interested parties.

Ms. Johnston asked the board for input regarding the timeline to call a special meeting. Typically, a special meeting is allowed to be called within 18 hours of notice being given. Comm. Asselmeier stated that he thought that 18 hours was an extremely tight turn around. Ms. Johnston stated that she thought a week to two weeks would be a more appropriate turnaround time for a special meeting. Comm. Asselmeier stated that he thought one week timeline would be appropriate. Comm. Cork, Wiersma, and Frederick also agreed with the one-week timeline for special meetings.

Ms. Johnston mentioned that she made edits to the public comment section of the bylaws to provide appropriate limits, including the amount of time for comment, and ways to deal with disorderly public comments. Comm. Federick asked if outlining what was considered unacceptable during public comments was necessary considering how well the Chairperson has dealt with difficult citizens in the past. Attorney Genovich stated that it may be helpful to include public comment standards to guide future Planning Commission members. Ms. Genovich stated that some limits to consider would be if an individual was being disruptive to the point of needing to be removed from the meeting. Additionally, Attorney Genovich suggested that the terms “boisterous” and “repetitive” be removed from prohibited public comments because citizens can be loud or repetitive while making a comment and not rise to the level of being disruptive. Attorney Genovich felt that removing the terms boisterous and repetitive would reduce liability the Township could face if they removed a citizen for those reasons and that citizen then pursued an Open Meetings Act violation.

Moving on, Ms. Johnston stated that the rest of the bylaws are new including how motions are made and votes are to be taken. Conflicts of interest are also defined. The Board discussed section 7 under “meeting minutes” and agreed to remove the section since the Open Meetings Act already dictates what must be included in the minutes.

Medical Marijuana Zoning

Ms. Johnston stated that the Michigan Supreme Court has ruled that local jurisdictions may regulate where primary caregivers of medical marijuana may operate. Township Attorney Mike Homier previously brought this to the attention of the Planning Commission and suggested they decide if they would like to take any action in regard to zoning. Ms. Johnston asked the Commission if they thought it would be best to zone where medical marijuana caregivers of may

operate by zoning district, or geographical area. Additionally she asked the board to consider how the Township should deal with legal non-conforming properties, and an approval process.

Attorney Genovich clarified that the Planning Commission is discussing zoning primary caregivers of medical marijuana only. She was noted that if the Township allowed primary caregivers to operate within a zoning district as a permitted use, then no review would be necessary by the Township. Attorney Genovich explained that the Township cannot use the fact that someone is a medical marijuana caregiver as a reason to inspect their property due to the language in the Medical Marijuana Act, making regulating any zoning difficult to implement. Additionally, Attorney Genovich stated that there are also some confidentiality considerations when it comes to information obtained in regard to marijuana caregivers that the Township would need to be aware of.

Comm. Asselmeier asked the board what their feelings were in regard to moving forward with zoning primary caregivers of medical marijuana.

Comm. Boekhoven stated that felt it was best to leave the situation alone for now due to the Township not having any issues with providers and the hurdles that the Township would face if they choose to move forward with zoning primary caregivers. Comm. Wiersma agreed with Comm. Boekhoven's assessment of the situation and would prefer to leave the situation alone.

Comm. Fooy stated that he would be in favor of knowing who the primary caregivers were and where they were located within the Township.

Comm. Frederick asked Attorney Genovich about the Township opting out of marijuana and what that covered. Attorney Genovich stated that the Township opted out of medical marijuana facilities and adult-use marijuana establishments, which includes commercial grow operations, retailers, and similar businesses.

Ms. Johnston added that another thing the Township cannot regulate is private citizens growing limited amounts of marijuana for their personal use. Attorney Genovich agreed.

Comm. Frederick asked Attorney Genovich what would prevent a person from being a caregiver in a neighborhood like an R-1 district. Attorney Genovich responded that you could exclude caregivers in R-1 through zoning, but if there are already lawfully operating caregivers in R-1, they could be considered a prior lawful non-conforming use. Additionally, tracking who was a caregiver prior to any zoning may present challenges.

Comm. Boekhoven asked who would enforce any zoning action they took considering that enforcement officers are not allowed to inspect properties. Comm. Corke asked who would be in charge of counting plants to ensure compliance, to which Attorney Genovich stated that the Township would not be in charge of enforcing compliance with the state law, just the zoning ordinance.

Comm. Frederick asked Attorney Genovich if the State of Michigan was inspecting medical caregivers. Attorney Genovich responded that the State of Michigan has the authority to inspect,

but she is not aware of a regular inspection program for caregivers. Comm. Frederick added that he was in favor of leaving the zoning the way it is currently due to the fact that the Township would have very little ability to regulate or enforce the use.

Comm. Feil agreed that the best thing to do would be to leave the zoning alone due to the inability to enforce any new zoning regulations in a productive way given the limitations by the State. Additionally, Comm. Feil stated that he believes this will become less of an issue over time since recreational marijuana is available without needing a caregiver license. Attorney Genovich confirmed that the number of medical marijuana licenses are dropping due to recreational marijuana.

Comm. Corke stated that he has a caregiver that is operating right behind his house, which raises concerns about inspections. He would prefer anyone who is operating as a caregiver to inform the Township to their whereabouts.

Comm. Fooy stated that he would like to know who is operating and where they are located. Attorney Genovich stated that the Township could require some kind of registry, but reiterated that the Township could not inspect properties solely on the basis of an individual's caregiver license, and that compliance and confidentiality with a registry may become issues.

Comm. Wiersma stated again that he would not pursue the subject. Comm. Feil agreed.

Comm. Corke stated that he would like to move forward with regulating it in specific areas.

Comm. Frederick stated that he was not in favor of pursuing zoning for medical marijuana caregivers at this time.

Comm. Fooy stated that since there is not a good way to register or regulate caregivers at the Township level, then it would probably be best not to pursue it any further.

Comm. Boekhoven stated that he was in agreement with not pursuing this any further, but wanted to make sure the public had an opportunity to chime in on the matter before the Planning Commission made a determination.

Attorney Genovich indicated that there were members of the public who had joined the Zoom meeting since the close of public comment.

Chairperson Asselmeier asked if any member of the public wished to make a comment on the marijuana issue, but no comments were given.

Chairperson Asselmeier advised Ms. Johnston that after hearing the feedback from the Planning Commission, they do not wish to pursue zoning regulations for medical marijuana caregivers at this time.

Commissioner Comments

None.

Citizen Comment

Ms. Johnston stated they Chairperson Asselmeier is not required to open the meeting to additional citizen comments, but she is aware of several citizens that are attending the meeting that have concerns about the Livestock Ordinance, and they may want to comment at this time. Ms. Johnston added that the Township Board has stopped any enforcement activities related to small animals while they reconsider that section of the Ordinance.

Chairperson Asselmeier agreed to allow citizens to comment on the Livestock Ordinance, and asked anyone who desired to comment to direct their comments to him as well as provide their name and address.

Township Supervisor, Jeff Sorensen voiced his appreciation for all of the hard work the Planning Commission did on the Livestock Ordinance regardless of any public opposition.

No additional public comments were received.

Adjournment

There being no further business before the Commission, a motion was made by Comm. Boekhoven, supported by Wiersma, to adjourn the meeting. Motion carried 7-0.