

MINUTES OF THE COOPER CHARTER TOWNSHIP
PLANNING COMMISSION HELD ON TUESDAY, SEPTEMBER 13, 2016

A meeting of the Planning Commission of Cooper Charter Township was held on Tuesday, September 13, 2016, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Asselmeier, Boekhoven, Corke, Frederick, Janssen, Reynolds, Stehouwer.

Members Absent:

Also Present: Michael Homier of Foster, Swift, Collins & Smith, attorneys for Cooper Charter Township; Russ Wicklund, Township Planning Consultant, Denise Glas, Applicant; Dan Burns, Attorney for Jacqueline and William Moran; William Moran, Applicant.

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

Agenda Item

A motion to accept the Agenda as printed was made by Comm. Frederick and supported by Comm. Janssen. Motion carried 7-0.

Review and Approval of Minutes

A motion to approve the Minutes of the July 12, 2016, was made by Comm. Janssen, supported by Comm. Corke. Motion carried 7-0.

Citizen Comment

Vince Carahaly, 9137 W. Gull Lake Drive, Richland, Michigan, is on the County Planning Commission and the Richland Zoning Board of Appeals. Richland received an application for a gravel pit and the haul route is going to be going right by Cooper Township. He urged Cooper residents to write the Richland Planning Commission and request they deny the application based on very serious consequences to Cooper Township.

Citizen Comments closed.

Public Hearing on Proposed Amendments to Zoning Ordinance

Public hearing opened.

Denise Glas, 1418 West F Avenue, (Parcel No. 28-355-010). She and her husband, Richard, would like the property split into two parcels. One parcel with the commercial building on it would remain C-1 and the other parcel with the house on it rezoned from C-1 to R-3. This division is necessary in order for them to get a loan to purchase the property.

No members of the public appeared.

Public Hearing Closed.

Russ Wicklund stated a formal review wasn't done; however, the Master Plan supports the request for rezoning to R-3. The applicant is preserving a slightly larger than one acre parcel that has a former business on it in the C-1 zone. This is a request to rezone the balance of the property. The applicant provided a survey and the land division has been approved. The request is consistent with the Master Plan and surrounding land use and zoning.

A motion to recommend approval to the Township Board to rezone the property at 1418 West F. Avenue, parcel 28-355-010, from C-1 to R-3 was made by Comm. Stehouwer, supported by Comm. Corke. A roll call vote was taken. Motion carried 7-0.

Site Plan Review for Property located at 9489 Douglas Avenue, (Parcel No. 08-426-016).

Dan Burns, attorney for the Jacqueline and William Moran, stated that they have provided a site plan for a proposed liquor store. He referred to a Memo dated September 2, 2016, provided by Russ Wicklund. He disputed the reference that there was a stipulation that the use for this space was limited to a Stretch-A-Dollar store. He stated that it was never going to be used for a Stretch-A-Dollar store. There is no documentation to support that. He did confirm that if the use was going to change in the future, a site plan should be submitted.

Mr. Burns confirmed that there must be 18 parking spaces for the amount of square footage, not 9 spaces as reported by his client. With respect to the original parking spaces now being covered in grass, Mr. Burns stated they would remove the grass, if necessary, and continue to use the parking spaces they have used in the past. Mr. Burns claims that the parking spaces are not in the road right-of-way; that a full-size pick-up truck can pull in and back out without touching the roadway. The location of the parking spaces is something his client knew nothing about; these spaces were approved to begin with. Even though this is Road Commission property, the Road Commission has taken no issue with it. The parking for the liquor store is considered "in and out". The liquor license presented to the Commissioners shows that it is for packaged liquor, not bar sales. Mr. Burns stated he believes the parking is adequate and will not be paved.

Mr. Burns stated that there is a delineation on the plan for stormwater runoff. His client is not in a position to pave this area. They would put a basin in the back, only if necessary.

Mr. Burns stated that this is the first time anyone has brought up the commercial entrance and a required access easement. This has never been an issue before and doesn't believe this should be a requirement to approve the site plan.

Chairman Asselmeier asked Mr. Wicklund for his comments. Mr. Wicklund stated that Tom Wheat, the Township Engineer, prepared a letter dated August 16, 2016, and followed the Township's checklist items under site plan review and found a number of deficiencies. The applicant did submit a revised site plan, provided more detail as requested, but there are still a number of items which are not consistent with the site plan review requirements. With respect to the 33 feet, there is a 66 foot right-of-way. The 33 feet is the half-width as indicated in his Memorandum. The 33 feet as shown, as was determined by a visit to the site and measured, is where the lines show through the parking in front. Roughly one half of the spaces in front of the

building are located in the road right-of-way. He stated that back in 2006, the zoning administrator asked for comments from the Road Commission. A part of the original site plan request had three points; (1) the existing entrance on the north side of the building is acceptable for a driveway. This was for the adjoining property – not on the subject property. The Road Commission said it must be paved to the road right-of-way, a reconstruction permit would be required; (2) the parking area in front of the building must be eliminated as it has no defined ingress and egress area and does not meet Road Commission standards for access; and (3) the large rock in front of the business must be removed as it is a potential traffic hazard. He said he reiterated these comments in his memo. Applicant is proposing new parking on the north side of the building. That parking configuration generally has a sufficient number of spaces; however, it doesn't have any easement for access to these parking spaces. That still needs to be looked at. With new parking for commercial uses, the township requires it to be paved and drained and part of that would require stormwater retention. The township requested more detailed topography. The revised plan has topo lines which have no relationship to the new parking area or where the proposed stormwater would be. The applicant showed some additional lighting on the building; however, the township is unable to determine if the lighting proposed is sufficient for the parking lot. The new site plan did address some of the issues that Mr. Wheat brought up but it is certainly not the level of detail that is needed to address this as a site plan.

Comm. Frederick asked Mr. Wicklund to confirm that if there are no parking spots in front of the building and there is no easement on the north side for ingress and egress, this negates any parking on that side. Mr. Wicklund said they would need an easement for access on the adjoining property to access this parking.

Comm. Stehouwer stated he feels the new site plan is lacking in detail and has several inaccuracies and inconsistencies. It is just a sketch of the site; not a site plan.

Comm. Reynolds agreed with Comm. Stehouwer's assessment of the site plan and comments made by the other Commissioners.

Mr. Burns addressed their concerns. He stated that there has not been a change of use or expansion of use, so the Township cannot require them to come up to code. The parking was approved in the past, was used in the past and will continue to be used in the future. Until the use is expanded beyond their grandfathered clause, non-conforming use, which is acceptable at this point, the applicant will not have to comply with the zoning ordinance requirements. Paving one entrance and receiving an easement from the neighbors are non-starters for this project and the building. The building will be razed before anyone would put that kind of money into this property. The applicant has given the Township all they asked for in the site plan. The applicant has not received anything from the Road Commission taking issue with the parking spaces. These spaces are existing, acceptable, non-conforming parking spaces that exist outside the roadway, outside the shoulders of the roadway, with plenty of room for people to park in that area and they should continue to be able to park in this area. His client has the right to continue his business use and switch it over to another acceptable business use. His client cannot afford an engineer to put together a formal site plan. He will make any changes to the site plan himself. Chairman Asselmeier asked Attorney Homier if he had anything to add at this point. Attorney Homies does not agree with Mr. Burns' recitation of the change of use of the property. The

property has been vacant for at least six years. No commercial use has existed there for at least six years. Mr. Burns said that the property has not been abandoned. Mr. Homier said that it was the County Road Commission who had an issue with the parking even when it was being considered for the Stretch-A-Dollar store. It is an inaccurate statement to say the County Road Commission has never had a problem with the parking. The parking and the location of the parking is an issue. With respect to access on the north side, with the relocated parking spaces, there is no access to those spaces. Mr. Burns stated that the rock that was referred to earlier is still there. This is not a change of use that would require that to be changed. Mr. Homier asked Mr. Burns about his statement that getting an easement on the north side is a non-starter. He asked if that was because the applicant can't acquire an easement or hasn't tried to acquire an easement. Mr. Moran stated that the driveway was being used from before he bought the building in 1991, 1992. It is still being used that way. Mr. Moran believes that his property goes somewhat into the driveway. The previous owner and the present owner never had a problem with the driveway being used that way. Mr. Burns stated that the property owners have openly used that driveway without any formal permission or consent of the neighboring property owner since the 1990's and that it is a prescriptive easement. Mr. Homier asked Mr. Burns if he is asking the Planning Commission to rely on his assertion that Mr. Moran has a prescriptive easement as a basis for access over someone else's property. Mr. Burns replied "no", that is the use of the property the way it is listed on the site plan and it is without objection. Mr. Homier stated that the neighboring property owner might have an objection. Mr. Burns stated that the neighboring property owner has been notified of each meeting. Mr. Homier asked if Mr. Moran could acquire an easement over that portion of the driveway. If Mr. Moran's response is that they have always used it and there has been no objection, then an easement should be easy to obtain. If the neighbor doesn't grant an easement, then Mr. Moran could file an action to quiet title on a prescriptive easement theory to gain legal access. Mr. Burns stated that they have the same property they had in 2007 and 1992. They don't need to get a prescriptive easement. The persons who owned the property are now deceased. The current owner bought the property through a bankruptcy action. Mr. Moran has not approached the current owner about an easement.

Chairman Asselmeier asked the Commissioners if they had any questions for Mr. Homier. Comm. Frederick reviewed the parking situation and commented that there had been very little traffic when the Stretch-A-Dollar store was there. It certainly did not have the volume of traffic that a liquor store will have. The Road Commission will definitely have an issue with the parking in front of the store. It hasn't been an issue recently because it is not an ongoing business and there has been no traffic going in and out. Comm. Frederick stated he believes there is a difference in use between a liquor store and a Stretch-A-Dollar store.

Comm. Stehouwer stated that pages 1 and 2 of the site plan are different. The cross-hatch is to indicate retail space. He finds the plans incomprehensible because they conflict with each other. The applicant could explain the plans to the Planning Commission but until it is drawn correctly, these plans are of no use to the Planning Commission. Mr. Moran tried to explain his drawings. Mr. Moran was questioned about drainage on the property. He showed Comm. Stehouwer the drainage route. When questioned about the drainage on the north side of the property, he said the water is absorbed into the ground. Comm. Stehouwer pointed out that the ordinances say that any runoff cannot drain onto your neighbor's property. Mr. Burns stated again that nothing has

changed. The change in use will not change the drainage. Comm. Stehouwer stated that without a drainage plan or a concept here, there is no proof that the applicant is retaining water on-site. The plan doesn't include building elevations relative to parking. Mr. Moran stated he cannot do a lot of what the Planning Commission would like because he can't get the building rented and he is not making any money. Comm. Stehouwer said that the plans are incomplete; he has concerns about the footprint of the building and what is being used for retail; the road right-of-way problems; the whole survey around the perimeter, whether it properly reflects the location relative to the building.

Comm. Reynolds stated that although he can understand the applicant's frustration, as a public servant, he is responsible for the health, safety and welfare of the Township's citizens and must rely upon the ordinances, check-list items for properties, and paid professionals such as engineers, attorneys, and consultants for guidance. When he looks at the check-list items enumerated by Thomas Wheat, eight of the ten items have not been addressed. At this point he believes the applicant's site plan is incomplete.

Comm. Janssen stated that she is confused by the applicant's statement that everything is grandfathered in and everything should be fine and the Planning Commission says it is not. If the applicant has been given a list of what is needed and he hasn't supplied those items, then why is the Planning Commission having them come back?

Mr. Burns asked how is this submission deficient and in what ways did it not meet the requirements for just a submission. He asked the Planning Commission to tell him tonight what items they still need.

Chairman Asselmeier asked Mr. Burns if he had received a checklist of items the Planning Commission needed to see on a site plan, which have not been addressed. Mr. Burns confirmed that Mr. Moran had a list and he had done his best to comply with that list. Chairman Asselmeier stated that there is still a lot of missing information that the Planning Commission needs in order to make a determination. Mr. Burns asked what specific items they want. Chairman Asselmeier referred him to the checklist. Mr. Moran stated he has no idea how the Planning Commission wants him to draw on the site plan all the things they want. Attorney Homier stated that the plans need to be done by a professional so that all the items are addressed and completed. The items needed are dictated by the ordinance to which the Planning Commission must adhere. Mr. Burns stated that if the information provided is still insufficient to make a decision, then the Planning Commission should not accept the site plan and the matter should be tabled at this time. Chairman Asselmeier asked Mr. Wicklund if the plan submitted by Mr. Moran is still insufficient. Mr. Wicklund stated that it is insufficient; specifically, it does not address items 6, 7, 8 or 9 on Mr. Wheat's site plan review. Mr. Wicklund stated that when a site plan is submitted to the Township, before a business gets occupancy, that site plan is going to be checked to make sure that that plan has been implemented. An applicant cannot submit a site plan saying that this is what we'll do, and then not do it. This has been the case with this property since 2006. There have been no approvals of the site plan since 2006. Site plan review is a Planning Commission determination. The site plan submitted does not meet the checklist items. The applicant then went to the ZBA to ask for a variance, which was not approved. Mr.

Wheat prepared the checklist; however, the applicant submitted a plan which does not address the items on the checklist.

Comm. Frederick expressed his frustration at having to expend township time and money on this application because the applicant's site plan is deficient and he is not doing what needs to be done in order to get the site plan approved.

Chairman Asselmeier stated that at this time, the Planning Commission has three options. The site plan can be approved, disapproved or tabled.

Comm. Frederick confirmed that the applicant had been given the checklist, has known about what needs to be completed, revised their plan to supposedly update their plan pursuant to the checklist items and the site plan still does not meet the requirements. He believes the Township has done its due diligence and does not want to incur any more time and expense, knowing that the applicant is not going to do what needs to be done.

Attorney Homier asked Mr. Burns if it is the applicant's intention to have the site plan done by a professional. Mr. Burns stated that Mr. Moran does not know how much that will cost. After some discussion, Mr. Burns stated Mr. Moran would have a set of plans done by a professional.

Comm. Corke said he would approve tabling the matter on the condition that the applicant get a site plan prepared by a professional.

Comm. Janssen stated she felt the parking is still going to be an issue. Chairman Asselmeier stated that it may be an issue; however, the Planning Commission needs a professional set of plans in order to address that issue.

Comm. Boekhoven asked when the applicant submits the new site plan, is there a chance that it will get kicked back again? Mr. Wicklund stated that when the site plan is submitted, it will be reviewed by the Township Engineer and then a checklist of deficiencies will be provided to the applicant.

Comm. Frederick stated that he hopes that if Mr. Moran goes to the expense of having a site plan prepared by a professional, he will be willing to abide by the zoning ordinances in this Township and what is expected by this Commission.

Mr. Burns stated they would abide by the law.

A motion to table this application was made by Comm. Boekhoven, supported by Comm. Corke. A roll call vote was taken. Motion carried 7-0.

Master Plan Use

The Planning Commission was given a history of the Township. The Township was founded in 1834 and named after James Fenimore Cooper. Items included are the different architectural styles of housing, planning and zoning, and plat maps from 1873, 1913, and 1925. Comm.

Janssen stated she would like to see included how some of the current properties (the Homestead, the Nature Center, and the walking/bike paths) came to be. Their research identified a plank road still in existence in the Township. It was suggested that a section covering the economic factors in the Township (i.e., crops grown/prices for those crops) be included. They would also like to recognize new types of businesses coming into the Township. Chairman Asselmeier stated that between 2000 and 2010, the Township saw an almost 10% growth in population.

Comm. Reynolds went through the project plan he prepared. He used the survey results, the new Master Plan outline and workbook, the Michigan Zoning Enabling Act and the Michigan Planning Enabling Act for his references. He also included completion dates which are tied into the fiscal year.

The question was raised regarding the total cost of the Master Plan. Mr. Wicklund stated that using Comm. Reynold's timetable, the cost can be spread out over the timeline suggested. The total cost may approach \$25,000, but this will depend on the amount of information included.

New Business

None.

Old Business

None.

Commission Comments

Comm. Corke commented about some storage units which have different vehicles sitting out front, which is a clear violation of the ordinance. Mr. Wicklund said that the ordinance officer should be notified and a violation written.

Adjournment

A motion to adjourn the meeting was made by Comm. Reynolds, supported by Comm. Janssen. Motion carried 7-0.

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