

MINUTES

Cascade Charter Township Planning Commission
Monday, December 1, 2008
7:00 p.m.

- ARTICLE 1.** Chairman McDonald called the meeting to order at 7:01 p.m.
Members Present: Hammond, Koessel, Logue, McDonald, Pennington, Robinson, Sperla, Waalkes
Members Absent: None
Others Present: Township Attorney Cliff Bloom, Township Consultant Andy Felde, Planning Director Peterson, Recording Secretary Hern, and Members of the Public.
- ARTICLE 2.** Chairman McDonald led the Pledge of Allegiance to the Flag.
- ARTICLE 3.** Chairman McDonald requested a motion for the approval of the December 1, 2008 agenda.

Member Robinson motioned to approve the December 1st Agenda as presented, supported by Member Pennington. All in favor with none opposed, the motion carried.
- ARTICLE 4.** **Approve the Minutes of the October 6, 2008.**
Chairman McDonald opened the meeting for revisions, corrections or a motion for approval of the October 6th minutes.

Member Robinson motioned for approval of the October 6, 2008 minutes as presented, supported by Member Sperla. All in favor with none opposed: October 6, 2008 Planning Commission Meeting Minutes were approved as submitted.
- ARTICLE 5.** **Case # 08-2932: Goodwood Plat Owners Association**
Address of Property: 3598 Goodwood SE
(PUBLIC HEARING)
Requested Action: The Applicant is requesting Special Use approval consideration for the boat launch/boat ramp and improvements on the subject property under subsection 4.33.

Planning Director Peterson said this case was before the Planning Commission in 2005 and was recommended for approval by the Commission and approved by the Township Board. The boat ramp has been constructed and there was some litigation by one of the neighbors. Since that time, an amendment was done to the Keyhole Ordinance, Section 4.33, and due to the litigation process, the Township's Attorney thought it would be best to have the Applicant reapply under the amended ordinance provision.

This matter was most recently before the Zoning Board of Appeals (ZBA) for two (2) items: one was an appeal of Staff's interpretation of the Zoning Ordinance and the other for a variance. In both cases, the ZBA upheld the right of the Association to apply for the Special Use Permit.

This Special Use Permit would allow the members of the Goodwood Plat Owners (GPO), consisting of approximately forty-three (43) lots, to keep and use the boat ramp and appurtenances and give all its members access to the Thornapple River. This lot was already dedicated, prior to the ordinance being written, to allow for the boat launch/boat ramp use. The ordinance was written in 1995 and this plat was approved in 1950. This Special Use Permit would allow the GPO to use this lot for river access.

Staff recommends that the Planning Commission approve the Site Plan and forward a recommendation to the Township Board to approve the Type II Special Use Permit with the three (3) conditions listed in Staff's report.

Member Sperla asked for a summary of the litigation process that has gone through the courts. Township Attorney Bloom said initially, the Association applied for the Special Use for the boat ramp and Staff made an interpretation under the original anti-funneling regulations and the Association could do this as an expansion as a non-conforming use with Special Use approval. The Planning Commission at the time recommended approval and the Township Board approved the Special Use. The Association built the boat ramp. Several neighbors filed a lawsuit claiming the ordinance provisions did not allow this expansion of the lawful non-conforming use of the boat ramp. That went to the Kent County Circuit Court and the circuit court did not deal with the ordinance and the special use expansion but held that building a boat ramp was not an expansion of non-conforming use and the Township won at the circuit court level. The case went to the Court of Appeals. The Supreme Court agreed to hear limited issues and upheld the Court of Appeal's decision but sent the case back to the circuit court with a recommendation to go back before the Township Board. Prior to the litigation commencing back in 2005, the Zoning Ordinance was reviewed and amendments were recommended for a clearer understanding that when a situation involving an existing lawful non-conforming "common area" that it could be expanded with Special Use but only if the Township approves it as a Special Use. In essence, this case is before the Commission to determine if a Special Use should be granted and this case is a new application.

Member Sperla asked what else is on the site besides the boat launch and Planning Director Peterson noted the actual ramp, a retaining wall and some fencing; there are no physical structures (i.e. picnic tables, gazebo, etc.) on the site. The Association also saved the majority of the trees on the site and has not done any new landscaping. Member Sperla asked if there was any lighting on the site and Planning Director Peterson said no. Chairman McDonald noted the lot is very deep and the fencing is by the road and asked how wide the lot is and Planning Director Peterson said approximately 75-feet.

President of the Goodwood Plat Owners Association, Tim Dieffenbach, of 7190 Burger Drive SE, noted this has been a long process and their plans were to add landscaping but due to the costs of the attorney fees, they are unable to do so at this time. There will not be any buildings on the site or lighting on the site. The site is for members only and there are rules for the launch site and the only additional condition is if the GPO were to add or change a rule, they need to notify the Township Board of any proposed rule changes to the use and restriction of the launch site.

GPO has installed a new key locking system so the locks do not need to be changed annually and keys have been supplied to the members along with the Township's Fire Department.

Member Koessel asked if there is a regular neighborhood association for the 43-lots that are eligible to utilize the site and Mr. Dieffenbach said there is. Member Koessel asked if there is dues charged to belong to the Owners Association and Mr. Dieffenbach said the launch site has a cost of \$150 for use but if the resident does service work, and helps contribute to the betterment of the property, then the \$150 is reduced. Member Koessel asked if a property owner who chooses not to launch a boat on the site pays anything and Mr. Dieffenbach said they do not have to. They do encourage all homeowners eligible to use site to pay a minimum but not all participate. Member Koessel said that he suspects that those who do not submit dues would advertise their home for sale with river access, along with paying insurance and taxes for the lot and asked how the Association is handling this with those that do not participate and Mr. Dieffenbach said they are currently holding discussions regarding this matter. The fees collected, to date, have always covered the Association's costs and they hope to foster more excitement and participation within if the Special Use is approved this evening.

Member Koessel asked if the gated access is to keep the other owners, outside of the Association, off the site and Mr. Dieffenbach said that is correct. He also noted that they have not

had any complaints. Mr. Dieffenbach noted that what benefits the Association this evening is there is a history of use of this ramp and that all the initial concerns that were voiced by many neighbors regarding noise and excessive use have not come to light.

Member Koessel asked, after launching their boat; do they move their truck and trailer off the site? Mr. Dieffenbach said he is one of the day-users and does not have riverfront property. When he launches his Jet Ski or boat, the rules state he has to take his trailer and vehicle off the property and he parks it at home, then returns to the site.

Member Koessel motioned to open the Public Hearing, supported by Member Robinson. All in favor with none opposed, the Public Hearing for Case # 08-2932, Goodwood Plat Owners Association was opened.

Chairman McDonald asked Staff if any phone calls or letters were received regarding the case and Planning Director Peterson said nothing new has been received.

Member Sperla asked Planning Director Peterson if there was any resistance at the ZBA regarding the interpretation and variance? Planning Director Peterson said no, there were good discussions but no resistance to upholding the interpretation or granting the variance.

Member Koessel motioned to close the Public Hearing, supported by Member Sperla. All in favor with none opposed, the Public Hearing for Case # 08-2932, Goodwood Plat Owners Association was closed.

Attorney Bloom addressed a procedural issue, given the history of this case, the Commission may want to recommend some significant conditions and recommended that the Planning Commission make a tentative decision this evening approval or denial of the Special Use request by Goodwood Plat Owners Association for a boat ramp and appurtances to the Township Board contingent upon a final resolution being drafted by Township Staff and attorneys and that resolution being adopted at the next Planning Commission meeting.

Member Koessel motioned to tentatively recommend approval for the Special Use request by Goodwood Plat Owners Association for a boat ramp and appurtances to the Township Board contingent upon a final resolution being drafted by Township Staff and the Attorneys and that resolution being

adopted at the next Planning Commission meeting also subject to the Staff's three (3) conditions:

- 1. The Goodwood Plat Owners Association add a rule that would require the Association to notify the Township Board of any proposed changes to the use and restriction for the launch site.**
- 2. Full compliance with the Site Plan.**
- 3. Member use only.**

Member Logue supported the motion.

Member Sperla noted that the rules seem to be outdated already and referred to the copy provided within his packet, noting the change in the gated entry locks. Mr. Dieffenbach noted this would be taken care of at the Association's next board meeting. Member Sperla asked the Association to provide an updated copy of their rules when the Township's Attorney has provided the resolution at the next Planning Commission meeting. Mr. Dieffenbach said the copy would be available by December 15th's meeting.

Member Koessel asked Township Attorney Bloom regarding the by-laws that are adopted by associations, has he found in the past it being typical that these come before a governing body or is it because of the Special Use? Township Attorney Bloom said this is typical is the Township deals with this a lot, particularly with site condominiums in particular. Quite often a township board would approve a P.U.D. (Planned Unit Development) contingent upon Staff and the attorneys reviewing the condominium documents and by-laws, there are certain things they look for. In this case, the Association has offered to do this and the Commission will need to establish sign-off permission, whether it is the Township Board or zoning administrator when changes come through should be noted in the resolution.

Member Koessel asked if had the developer of this plat put in the boat ramp when he developed the plat, the Township would not be dealing with whatever rules the Association wanted to set up, is that correct? Attorney Bloom said that is correct.

Chairman McDonald called the motion to question. All in favor with none opposed. Motion carried.

ARTICLE 6.

Case # 08-2956: Metro PC

Address of Property: 4700 Quiggle Ave.

(From the Table of October 6, 2008)

Requested Action: The Applicant is requesting a Type I Special Use Permit to collocate an antenna on the existing tower.

Member Robinson motioned to remove Case # 08-2956: Metro PCS from the table, supported by Member Koessel. All in favor with none opposed. Case # 08-2956 was removed from the table of October 6, 2008.

Planning Director Peterson said that at the last meeting, the Planning Commission requested additional information from the Applicant who has now provided that information.

One of the issues was providing the data regarding what is actually on the tower currently and that information is included within the Commissions' packets and Township Consultant Andy Felde is available to answer any questions from the Commission.

The Commissions' packets also include the analysis of the tower and if it is in good condition.

Staff recommends approval of the co-location request.

Member Koessel believes the usage is currently at 88%, and as he understands the relevance of the report is that based on the structural analysis is that the structure meets the requirements of the existing and proposed antennas. Does this mean all that is approved but not currently co-located and Planning Director Peterson said that everything that is on it with the addition of what is being requested tonight by Metro PCS. Member Koessel noted there could potentially be a problem down the road if other antennas are later added? Planning Director Peterson said that any request in the future could bring the tower over capacity but the request would come before the Planning Commission first.

Member Sperla referred to Staff's memo noting that the Township's Attorney has confirmed that because not all of the antennas were installed as originally planned, any new antennas beyond what is physically there would be required to come back through the Planning Commission for approval and suggested this be made a condition so that the Commission does not have to rely on the Township Attorney's opinion and Township Attorney Bloom agreed with Member Sperla's assessment.

Member Robinson expressed his concern with not having all the calculations. A summary is provided within the Commissions' packets and referred to Page 5 of the calculations regarding the wind load at ninety (90) miles per hour at 33-feet, etc. is that in conformance with the requirements? As you go higher on the tower you are supposed to factor that and asked Township Consultant Felde if the adjustment factor of 1.266 and it should be, according to the latest engineering standards, 1.45 but he does not

understand where this came from and this is a concern of his. Township Consultant Felde believes this has to do with the newer revisions and formulas that are just now being utilized. He said he would look into the matter to find better resolution on the tables provided. Township Consultant Felde said that with the equipment currently on the tower plus the three (3) additions, the tower is currently at 88%. When the tower reaches 100% or more, structural enhancements would need to be done to give it more strength.

Member Koessel motioned to approve the Applicant's request for a Type I Special Use Permit to co-locate an antenna on the existing tower at 4700 Quiggle Avenue. Member Sperla supported the motion with an amendment that included the conditions:

- 1. That if any additional antennas are added to this tower, the request must come before the Planning Commission.**
- 2. That the two (2) deficiencies noted in the report, a lighting rod and a missing RF-exposure sign at the base of the tower be corrected.**

Township Consultant Felde noted that the exposure sign is required but the lighting rod is not.

Member Robinson noted that the engineer who supported the report is located in Texas and asked if he has personally inspected the tower and Township Consultant Felde said that per the Commissions' request, the tower was surveyed and inspected and the data was sent to the structural engineer, he has not personally inspected the tower.

Member Logue questioned if the first condition is applied to the owner of the tower or to the user. Attorney Bloom said the condition to come before the Planning Commission is prudent but the condition should be applied to the owner of the tower, not Metro PCS and an amendment should state that this approval is also contingent upon the owner, whether it be written, saying that the owner agrees that any additions come before the Planning Commission. Planning Director Peterson noted that the owner of the tower has approved the request and are the official signer of the application.

Member Koessel amended his motion to include better define the first condition:

- 1. That the owner agrees in writing that additional co-locations would require coming before the Township's Planning Commission.**

Member Sperla supported the third condition.

Member Pennington asked if the lighting rod would add to the tower's capacity and Township Consultant Felde said it would not and the lighting rod does not add lighting protection since the tower and antennas are well grounded but adding one is minor.

Member Robinson referred to Page 2 of the structural analysis report regarding "Additional exit and/or entry ports may be required to accommodate the running of the proposed lines to the proposed antennas. These additional ports may not be installed without installation of drawings providing the location, size and welding requirements of each port" and Township Consultant Felde noted that this is in reference to not needing to cut a hole in the tower to feed the coaxial out. In this particular case, there are enough openings for the coaxial to come out.

Chairman McDonald called the motion to question. **All in favor with none opposed, motion carried.**

ARTICLE 7.

Any Other Business

Chairman McDonald opened the meeting for any other business. There was no other business of the Planning Commission.

Planning Director Peterson said one item not on tonight's agenda is the booklet from the Metro Council and their form based code study. He is not asking for any action from the Planning Commission but they are offering workshops and asked the members to review the information to see if they would like to pursue a workshop.

Master Plan Advisory Committee: Schedule for remaining tasks. Planning Director Peterson said the Draft Plan will be distributed to committee members in November and an Open House is scheduled for December. A summary of final tasks and approximate dates for meetings with the Advisory Committee, Planning Commission and Township Board are included within the Commissions' packets. He noted the special Planning Commission meeting scheduled for March 23, 2009 at 7:00 p.m. regarding the adoption of the Master Plan that will include a Public Hearing.

Kent County Road Commission: Five-year Road Improvement Plans are also included in the Commissions' packets and their future plans for the roads in the Township.

ARTICLE 8.

Adjournment

Chairman McDonald requested a motion for adjournment.

Member Sperla supported by Member Pennington moved to adjourn. The motion carried and the meeting was adjourned at 8:14 p.m.

Respectfully submitted,

Lisa Hern, Recording Secretary