

MINUTES

Cascade Charter Township Planning Commission
Monday, February 01, 2016
7:00 P.M.

ARTICLE 1. Chairman Waalkes called the meeting to order at 7:00 PM.
Members Present: Katsma, Mead, Pennington, Rissi, Sperla, Waalkes Williams
Members Absent: Lewis (Excused) Robinson (Excused)
Others Present: Community Development Director, Steve Peterson, and others listed on the sign in sheet.

ARTICLE 2. Pledge of Allegiance to the flag.

ARTICLE 3. Approve the current Agenda.

Motion by Member Pennington to approve the Agenda. Support by Member Mead. Motion carried 7-0.

ARTICLE 4. Approve the Minutes of the January 11, 2016 meeting.

Motion by Member Sperla to approve the minutes of the January 11, 2016 meeting as written. Support by Member Mead. Motion carried 7-0.

ARTICLE 5. Acknowledge visitors and those wishing to speak to non-agenda items (Comments are limited to five minutes per speaker.)

No one wished to speak on a non-agenda item.

ARTICLE 6. Case #15-3229 RJ Ventures

Property Address: 3000 Thornhills Avenue SE

Requested Action: The Township Board has remanded this project back to the Planning Commission for further review.

Director Peterson presented the case. The Township Board sent this case back to the Planning Commission for clarification on a few points:

- Landscaping around the perimeter of the site
- Storm Water Maintenance Agreement
- Performance Bond during construction

While the Township Board could have made these changes they remanded back to the Planning Commission so that there would not be any surprises by the changes.

The Applicant has provided a Landscaping Plan which includes a buffer around the perimeter of the site. Buffer yards are not required but if we are including one

we should request a Landscaping Bond of \$8,200. The language in the PUD Ordinance states that the landscaping will be completed in accordance with the plan.

Cliff Bloom, Attorney - Law Weathers is representing the Township in this case. He has taken a look at the Storm Water Maintenance Agreement and it has been modified slightly and he has improved the language.

The need for a Performance Bond was discussed for soil erosion control mechanisms and processes. The Road Commission has taken a look at their soil erosion plan. They have not issued a permit yet but they seem agreeable. A Soil Erosion Bond of \$5,000 would be required by the KCRC. Our Township Engineer was asked what the worst case scenario damage would cost to clear the site. They have recommended a \$50,000 Performance Bond. This Bond would be in place just during the construction phase of the project and once the site was stabilized the Bond would be released. It would not be in place during home construction. The county could require individual soil erosion permits for each house.

The Township Board modified the language of the new PUD Ordinance slightly to incorporate a sentence that states the Ordinance incorporates and adopts Staffs comments and the conclusions from the Staff report.

There is communications in the packet from Mr. Rohde and his Attorney requesting that the case be reheard but the purpose of tonight is to look at the three items the Township Board requested. I did also put into the packet a private communication between Mr. Rohde and Member Lewis that we are publicly disclosing.

The Planning Commission has a couple of options before them:

- The recommendation can be sent back as originally presented to the Board.
- The recommendation may be amended to the Board to include all the changes.
- The recommendation may contain a combination.

Staff is comfortable with the new Landscaping Plan, the new Storm Water Maintenance Agreement and the Performance Bond the Township Engineer has recommended.

Member Sperla asked if Mr. Rohde and his counsel had a chance to review the new Storm Water Maintenance Agreement. I saw that there were changes that I have not seen in the past and I really like that the new enforcement provisions are stronger and I would like to see this in future Storm Water Agreements. I

would be interested to know if you have received any feedback from Mr. Rohde on the new language in this Storm Water Agreement. Director Peterson stated that he had not received any feedback. We did not specifically send the new Storm Water Maintenance Agreement to Mr. Rohde but it was available on-line. Member Sperla stated that he liked the provisions, it provides a lot more clout and enforcement rights. I know if I was sitting in Mr. Rohde's shoes, I would feel pretty good about this Agreement.

Member Pennington asked Director Peterson to highlight the changes to the Storm Water Maintenance Agreement. Director Peterson stated that he would defer to Mr. Bloom the Township Attorney.

Cliff Bloom, Township Attorney came forward with comments.

There were no substantive changes on pages one and two. On page three the important provision is just above B. The Maintenance Agreement as it existed was quite good for most municipalities. As Member Sperla stated, this nails it down more. We wanted to make it clear that the obligation to maintain the storm water retention/detention facility doesn't stop with the developer. It runs with the land. This language makes it clear that not only is the developer responsible while it's involved, but thereafter the Association is responsible and the individual units are also. For if some reason the Association went bankrupt than it would be an obligation of the unit owners and there would be a lien on the property. Member Sperla stated that this would be a recorded instrument for any prospective purchasers within the development. Mr. Bloom concurred stating that this document would be recorded so that everyone will know when they purchase a unit within the condominium. Statement B states that if the Township has to enforce the agreement and prevails in court, it can recover its attorney fees which normally you cannot do in absence of a contract.

In the middle of the Special Assessment District, if for whatever reason the Township wants to clean up the site and doesn't want to go against the unit owners they can agree ahead of time for the creation of a Special Assessment District. The benefit is that it simply goes on the tax rolls automatically and is easier to collect.

A disclosure was added to alert the homeowners that in the event the Association went defunct that they would be held responsible individually.

Number five (5) made it clear that this Agreement does not negate the requirements that they comply with all laws: state, county and federal.

Chairman Waalkes asked anyone with comments to come forward.

Tim Newhouse, Attorney on behalf of Mark Rohde, 3087 Thornapple River Drive came forward with comments. Mr. Newhouse stated that he had the opportunity to review the Storm Water Maintenance Agreement. In the packet is the correspondence from Mr. Rohde stating his objections to the proposed amendment to the PUD, as well as, my outline as to why we feel this amendment does not comply with your Zoning Ordinance. I realize that you have already approved the proposed amendment to the Township Board and they have returned it for three items. The new Landscaping Plan is designed to cover up one of the bigger issues Mr. Rohde believes prevents this plan from being adopted. The other main issue is the retention pond and the Maintenance Agreement. The drainage plan in this proposed amendment diverts most of the water to the retention pond on the SW corner. This parcel is now split into two different parcels with competing interests. By approving this amendment, you are potentially diverting all of the storm water and runoff from the retention pond onto Sentinel Pointe's property. Sentinel Pointe has indicated that they do not approve of this particular amendment. They are part of this PUD. I think the proper approach would be to amend the PUD to remove this 40 acre parcel and then propose their development. In my opinion, they would then have to get an easement for the drainage over the Sentinel Pointe property.

Member Sperla asked if Mr. Newhouse was aware that Mr. Rohde was the original developer of Sentinel Pointe, in two phases, he was not only the Owner but the Engineer as well. It seems a little problematic that somebody that causes the split and sells it to someone else, still wants to retain control over how it is developed. If he wanted that why didn't he just continue to own the property? He sold it to someone and they obviously were going to make some use of it which is contrary to what the Sentinel Pointe original PUD ordinance provided for. Mr. Newhouse states, when he sold the property there were two attempts, as I understand it, to have an elderly facility proposed there that didn't make it past the Planning Commission because of drainage issues. Member Sperla states that seems to me that he turned around and sold the property knowing that some use was going to be made of that property, it was not going to be part of the Sentinel Pointe development in accordance to the approved plan that had a Phase A and Phase B. Mr. Newhouse said that he looked for the original PUD through a FOIA request, but it was not found. Member Sperla reiterates that if he wanted to control how it was developed he should not have sold it. When he sold the property he gave up the right of ownership and control over what could be built on the property. He had to know that the property was going to be developed at some point and most likely not to his liking. If you want to control it, you have to own it. But again, he gave up that control when he sold the property. Mr. Newhouse states that Mr. Rohde would probably agree with that and regrets that decision. Mr. Newhouse says the maintenance agreement with the overflow is not going to happen. Mr. Bloom made a comment that it is going to be stated that the Unit owners will be aware of their requirements to maintain this

retaining pond. The only time anything will happen is if there is an event and then it is too late. There will be no dredging, the home owners association will probably have it in their dues that it be maintained, but nobody will do anything about it. The water will be spilling over into other people's property and because, in our opinion, the storm ordinance is not followed with its borings, there may be potential liability on the Township and we would like to prevent that from happening.

Chairman Waalkes asked anyone with comments to come forward.

Tom Giusti, representing RJ Ventures the proposed developer. Mr. Giusti states that the comments regarding trees being cleared and moving forward developing the property is not correct, we will not touch the property until we get the proper permitting and approval from the Township. Secondly, as Director Peterson mentioned, the Kent County Road Commission suggested that on top of their Bond, we have provided a landscape plan with screening. Each of the Units will be required to have a soil erosion permit at the time of construction, so there will be two layers of protection. The landscape plan shows all the deciduous and evergreen trees around the whole perimeter. We also have shrubs protecting the retaining wall on the south and north side. We also do not need permission from any of the adjoining neighbors because we will not be on any of their properties for these retaining walls.

Cherie Grunske, 3056 Thornapple River Dr., our property is downstream from the property in question. Our concern with this is that there will now be hard surfaces and possibly sand and could cause a problem with this coming downstream.

Chairman Waalkes stated that all the hard surface paving is draining directly to that pond, as it is a retention pond. It is a 100 percent infiltration. This could be an improvement to the problem.

Mr. Giusti states that it seems there has been negligence in prior developments, there are safety valves put in and are stringent on what we are going to be required to do, to not allow any erosion and sedimentation into the river. We are doing everything possible to not disturb the people downstream or anyone around this particular piece of property. Nederveld has taken their time and done their due diligence on the retention pond and complied with the Township and Fishbeck's requirements on what they need to have.

Ron McCollum, 3010 Thornapple River Dr., the one thing that I am concerned about is this is not a 100 percent retention pond, as it does have an emergency spill way. Mr. Giusti said they did everything that Nederveld and Fishbeck asked as far as the retention pond, but the two soil borings weren't done as demanded

to be done by Fishbeck. I am also concerned that this pond doesn't drain properly and is a spill way, when you have a hundred year rain it may spill over. If it is sand and can handle it, that's great. But if it does go over, it will dump sand and erosion in the Cascade Bayou. We have a petition to look into dredging the Bayou and would like to look into plunge pits. Down by the river ideally there could be a plunge pit that could be dug out. We just don't want any more sediment coming down on our properties.

Kenneth Carey, 2929 Thornapple River Dr., it is quite humorous how they think they can catch all this water, but nobody knows more than I do the things that can go wrong. Over the past 5 years I have dealt with problems from the Summit. Attorney's fees and Engineering Fees and everything else that has gone along with this excluding Attorney and Engineering Fees from the Township, have easily exceeded \$100,000.00. Mr. Bloom has said, so eloquently at the last meeting, that if things go wrong there is a civil remedy. And by a civil remedy it means that you are going to have to get an Attorney and sue. You are going to have to go through the same five years that my wife and I have gone through, along with tens of thousands of dollars' worth of damage. If you lay the Summit over the drawing, my home is directly down from the homes here. All the drainage from the non-porous structures, including the driveways in front of the homes and all roof structures. The driveways were all angled and dumped off the back of the hill, focus drainage. I know how Mr. Bloom feels about focus drainage, he is well published and I had a conversation over the phone with him. He told me he solved this problem, and I believe he was upset when another home was built and allowed to dump off the back of the property. This has cost me tens of thousands of dollars in damages and I have had a law suit going for a year and a half. You tell me there is going to be no problems here, but I know differently. The civil remedy that Mr. Bloom talks about is devastating to the people involved. The people that live in the Bayou and below now is the time to settle this. Not years from now when everyone is going to have to pay up. The only reason this came to a forefront is because I had Legal and engineering coverages for this lawsuit otherwise this would never have happened. They know this. They count on the fact that people do not have the resolve or the financial reserves to fight this. They counted wrong on my part when it came to me. This is what you are dealing with here. It all looks fine and dandy when it's presented to you but the plans will not be followed. Now Mr. Peterson at the last meeting January 13, 2016, indicated that there were a lot of problems here and that's not going to happen again. Well, when the trees came down in this area for that latest home that was built in the Summit, I raised the concerns early, and I was always assured that things were going to be done properly. Even though at the time he knew they would not be and that is where I am right now, I had to settle for reduced damages. The man who built the home is ready to tear his hair out. He trusted people and he trusted the wrong people. I warned him that if you pursue you will be in court. This is what you guys have to decide. I did not deserve this. We

voiced our concerns early and they said nothing was going to go wrong, but it did. It went terribly wrong. Good luck to the residents because they are not going to have the financial reserves to fight this and you guys are all counting on that.

Tom Giusti stated that he feels bad for this gentleman for what he has gone through and I am not minimizing it and it is unfortunate. We have to take what we have here and do the best we can with engineers and the process to capture rain water, roof water, driveway and street water and put it all in retention and do the best we can to make this the best solution. It is unfortunate that someone's negligence in the past has caused hardship. We are trying not to do that and to do our best to make everything the best that we can to do this right.

Member Williams asked if the borings had been done as suggested. Mr. Guisti stated that Nederveld had confirmed with Fishbeck that we had performed the appropriate tests and in line with the Township requires for a retention basin.

Member Pennington asked the Board to focus on the three items the Planning Commission was asked to review and not the drainage aspect as this had been approved at the last meeting.

Member Mead asked if the Storm Water Maintenance Agreement and adding additional language to it, I question the ability to further enforce this down the road. I continue to hear that we are adding to a problem that is existing, do we have an existing Storm Water Agreement that covers this PUD as a whole and is it being fully enforced today? Director Peterson stated that we do not have such an Agreement. The Storm Water Maintenance Agreement is a relatively newer tool that we use. The Storm Water Ordinance is new as well and was not in effect when the original Sentinel Pointe was built. The Storm Water Maintenance Agreement only addresses the property that is under development. Some of the issues that people are speaking about and the problems around it are really separate. Some of the work that is planned to be done are not really coming from areas here but rather west of Thornhills. That is what the Township has been studying with the Township Engineer to see what can be done for a long term fix. Our engineer pointed out that they are quite confident in this site meeting the current standards for our Storm Water Ordinance which are much more stringent than any of the sites around it.

Member Mead stated if it is safe to say that by this proposed development we are taking the water runoff that is freely running as of today and trying to capture it and divert it to the infiltration basin. Director Peterson stated that this was correct. The water would now seep into the ground rather than running down the hill. Member Mead stated that in theory this development could alleviate some of the problems this PUD is having on the surrounding environment. Director Peterson stated that little things can contribute a great deal to water

runoff, such as tree growth or reshaping a yard can have a significant impact over time on how water reacts on site. Certainly the intent of a Storm Water Ordinance is to minimize the impact from the water runoff created by a development. Our standards are not getting easier but rather tougher. This developer is meeting and exceeding our requirements.

Member Sperla stated that we can't hold a developer on a defined piece of property to correct every problem that exists coming from other parcels. All they can do is put before us what their proposed plan is, the detention ponds. The Storm Water Ordinance came into existence in 2005 and I have had my own issues in the past and have looked at it quite extensively. You cannot impose newly adopted Ordinances on developments that took place 15-20 years ago. Nor can you ask a developer or an owner of another piece of property to correct problems in other parts of the Township unless it's part of the original plan. I don't believe this was. I believe part of the problem they have created themselves. I do believe that this is in an area where it has the most stringent requirements, it says when possible they require 100% infiltration. That does not mean there can't be a spillway. There is a big hill and it goes into the river but the design of this pond is 100% infiltration. The Engineer has stated that this will occur and we have to be careful of trying to impose burdens on other parties that really did not create the pre-existing problems that existed prior to the Storm Water Ordinance being adopted in 2005.

Chairman Waalkes stated for clarification, we are reviewing the Landscaping Plan with its associated Landscape Bond, the slight revision in the PUD that references the Landscape Plan, the revised Storm Water Maintenance Agreement and the \$50,000 Performance Bond during construction.

Member Rissi asked if it was typical to see a Landscaping Plan that shows the landscape around the perimeter but not around the individual units. Director Peterson stated that it would be unusual to see the landscaping around the homes. The borings that were requested at the last meeting the developer addressed and was it satisfactory to our Ordinance.

Member Pennington stated that typically we do not require a landscape buffer for residential builds and I am fine with what we previously approved but if the Planning Commission wanted to include these requirements, I would support that too.

Chairman Waalkes stated that he is in agreement with Member Pennington but he is willing to support the additional requirements.

Member Sperla made a motion to approve the changes that have been outlined in the Staff report and to forward a positive recommendation to the Township Board to include the following:

- Landscaping around the perimeter of the site
- Landscaping Bond of \$8,200
- Updated Storm Water Maintenance Agreement
- Performance Bond during construction of \$50,000

Support by Member Mead. Motion carried 7-0.

ARTICLE 7. Case #16-3293 John Slagboom

Property Address: 5210 52nd Street

Requested Action: The Applicant is requesting site plan approval for a 4,800 sq. ft. warehouse addition.

Director Peterson presented the case. South side of 52nd Street with existing warehouse. When we approved this Special Use, approximately 10 years ago, they had several other buildings planned as well as outdoor storage. They have only built the few buildings up front and a few smaller buildings than originally planned. In reference to Storm Water, the site was designed and constructed to accommodate much more construction. We have approved a few smaller building administratively but we are to the point where any further additions must come before the Planning Commission. The Applicant has indicated that the addition will be used for storage and light maintenance and repair. It fits within the purview of the industrial zoning and their Special Use Permit for their project. The Township Engineer looked at the plans and the site can already accommodate the addition. The Township Fire Department did not have any issues or comments. This is pretty straightforward and I am recommending approval of their site plan. They will have to do a Storm Water Maintenance Agreement that essentially would be agreeing to what they have already done.

Member Pennington asked if the original proposal requesting more singular buildings or one large building. Director Peterson stated that the original plan was to continue the larger buildings and it has evolved as they have used the site.

Chairman Waalkes asked the Applicant to come forward with comments.

John Slagboom, 5210 52nd Street came forward as the Applicant.

The Applicant stated that the original plan was for nine (9) buildings similar to the first three buildings.

Member Sperla asked if there was going to be water and electric to the building. The Applicant stated that there would be electrical for lights only.

Member Rissi made a motion for Site Plan Approval on Case #16-3293- John Slagboom for a 4,800 sq. ft. warehouse addition with the condition that they sign the Storm Water Maintenance Agreement. Support by Member Williams. Motion carried 7-0.

**ARTICLE 8. Case #15-3295 Cascade Township
Accessory Building Zoning Requirements Discussion**

Director Peterson presented the case. I have provided a summary of accessory buildings from 2010-2015. This gives a sense of the size of the buildings that have come before the Board. What is important to remember is that the accessory buildings that we are seeing are much larger than 832 sq. ft. on average. The 832 sq. ft. correlates to the size of the attached garage that you are allowed. That size can then increase based on the size of your house. Director Peterson stated that he is comfortable with the 832 sq. ft. and that if we raise the allowed square footage too much it could cause a few issues in some of our neighborhoods if we were permitting larger buildings with just a staff review. It seems we would open up a whole new set of issues. After reviewing the data I really like what we have.

Member Sperla stated that we have a unique position in Cascade having the airport, industrial parks around the airport, we have agricultural areas, high-end neighborhoods and some older neighborhoods. We have a real conglomeration of underlying uses. I have been thinking about building an accessory building and I think 832 sq. ft. is reasonable. If you need a bigger building it makes sense that you apply for a Special Use Permit given the challenges that are unique to the Township. Director Peterson concurred that we have some neighborhoods that are completely different from one another and we have some very unique areas in the Township. We are one of the very few Townships that do not arbitrarily limit the size of an accessory building. We have a threshold that once you go over the limit you apply for a Special Use Permit.

Member Pennington stated that when he built his accessory building he built it right to 832 sq. ft. and if he had been allowed to build it bigger he would have. In retrospect he realizes that the building would not have fit into his neighborhood and would potentially have caused problems with his neighbors.

Member Rissi stated that he had studied the summary and feels that 832 sq. ft. is a good number. The only possible way of changing it in my mind, is that in the agricultural/conservation zoned district you have an arrangement that you can go up to 50% of the size of the home on a multiple acre site. You start to get into charts and may open a large can of worms.

Member Sperla stated it gets complex and you can't look at the circumstances surrounding you. You have to have enough authority to take into consideration the property owners adjacent to the property. Member Rissi stated we are not doing an extreme amount of them.

Member Mead stated that the requests we had in 2015 were substantially larger than the 832 sq. ft. allowed. At least half of these cases would have had to come before the Planning Commission even if we allowed a 1,500 sq. ft. building.

Member Katsma stated that we need to have some level of protection to be able to hear neighbor's concerns in the situation where one neighbor has no consideration of his neighbor's concerns. This gives us a level of protection while still approving larger accessory buildings where they fit into the neighborhood.

Chairman Waalkes stated that it sounds like everyone feels that the data supports our current accessory building requirements. All Members were in agreement.

ARTICLE 9. Any other business

There was no new business.

ARTICLE 10. Adjournment

Motion made by Member Sperla to Adjourn. Support by Member Mead. Motion carried 7-0. Meeting adjourned at 8:14 PM.

Respectfully submitted,
Aaron Mead, Secretary
Ann Seykora/Julie Kutchins – Planning Administrative Assistant