

MINUTES

Cascade Charter Township Planning Commission
Monday, February 19, 2008
7:00 p.m.

ARTICLE 1. Chairman McDonald called the meeting to order at 7:00 p.m.
Members Present: Koessel, Logue, McDonald, Richards,
Robinson, Waalkes
Members Absent: Lewis (excused)
Others Present: Planning Director Peterson, Attorney Rice,
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
February 19, 2008 agenda.

**Member Robinson motioned to approve the February 19th
Agenda as presented, supported by Member Richards. All in
favor with none opposed, the motion carried.**

ARTICLE 4. **Approve the Minutes of the January 7, 2008.**

Chairman McDonald opened the meeting for revisions, corrections
or a motion for approval of the January 7th minutes.

**Member Robinson motioned for approval of the January 7,
2008 minutes as presented, supported by Member Waalkes.
All in favor with none opposed: January 7, 2008 Planning
Commission Meeting Minutes were approved as submitted.**

ARTICLE 5. **Case # 07-2914: Jeff Dionne**
Address of Property: 2984 Thornapple River Drive SE
(Tabled at the November 19, 2007 Meeting)
Requested Action: To install a fence in the front yard up to 8-feet
high.

Chairman McDonald requested a motion to remove this case from
the table.

**Member Koessel motioned to remove Case # 07-2914: Jeff
Dionne from the table, supported by Member Logue. All in
favor with none opposed. Case # 07-2914: Jeff Dionne
removed from the table.**

Planning Director Peterson noted that this case was tabled at the
November 19th Planning Commission Meeting for two (2) reasons:

- 1) There is a portion of the Zoning Code that reflects meeting the approval of the neighbors and with the Applicant's neighbors objecting, there was question if this section of the Zoning Code would apply in this case. The Attorney's letter is included within the Commissions' packets and Attorney Rice is also in attendance this evening to address any questions the Commission might have. The Township does believe this section does apply to this case.
- 2) The Planning Commission also tabled the case in hopes the Applicant could provide a rendering showing what the fence would look like and exactly where it would be constructed. Part of the Applicant's request is to have a fence up to 8-feet tall, shown in the Applicant's original plans to be located on the far eastern end of the property.

The Applicant has now submitted a series of pictures that Staff will have the Applicant explain during their presentation. Planning Director Peterson provided a couple of pictures of Thornapple River Drive looking east and showed the three (3) fence posts the Applicant has along the road indicating the fence line. Pictures were also presented indicating the fence to be placed 9-feet off the road edge. Planning Director Peterson referred to the survey and the eastern end indicating that the road right-of-way is approximately 17-feet from the road edge and as you get closer to the driveway it comes to approximately 7-feet from the road edge. If the fence is constructed at 9-feet from the road edge, a large proportion would be within the road right-of-way. Staff did contact the Applicant regarding this and the Applicant did confirm their intent was to put the fence in the right-of-way.

The Township has had a conversation with the Kent County Road Commission (KCRC) and they said they would not allow a new fence to be established within the road right-of-way. The Applicant has provided some pictures of existing fencing that includes small sections of 4-foot chain-link fencing that is within the road right-of-way. The Township views the wooden fence as a new fence and therefore would have to comply.

Given the Applicant's request and the letter from the Township Attorney, Staff recommends the Planning Commission deny the Applicant's request for a Special Use Permit. This denial would not prohibit the Applicant from returning with a different request in the future.

Planning Director Peterson referred to the section within the Township's Zoning Code regarding neighbor's approval, the Township's position is that if the fence were at 6-feet and along the property, we may feel differently about the application, but given

the fence is requested to be in the right-of-way, Staff recommends denial of the Applicant's request.

Chairman McDonald asked Staff that the Applicant would be able to establish a 4-foot fence on their property line without a Special Use Permit, does Staff mean up to the road right-of-way line? Planning Director Peterson confirmed that to be correct, the Applicant could establish a 4-foot fence up to the road right-of-way line without any problems.

Chairman McDonald referred to Section 4.30.3.a noting that it is unlawful to construct any wall or fence in any public right-of-way and if the fence were to be within the right-of-way, according to the Township's Ordinance, that would be unlawful and the Township has no authority since the right-of-way is controlled by KCRC and the Township does not have jurisdiction in the right-of-way and Planning Director Peterson said that is correct.

Chairman McDonald also noted that Staff is referencing as part of their recommendation for denial Section 4.30.5.a where the Ordinance states that the adjoining property owners approve of the fencing and Staff said that is correct.

Member Robinson asked for Staff's clarification within their recommendations it notes that they would approve a fence up to 6-feet but not the Applicant's current request, correct? Planning Director Peterson clarified that if the fence were at the road right-of-way line, the Township may look more favorably at the fence being 6-feet tall if the Applicant could prove that the fence would meet the other standards for the Special Use Permit.

Chairman McDonald summarized that Staff's recommendation would be to deny the Applicant's request since the Applicant indicates constructing the fence within the right-of-way. Planning Director Peterson said that is correct.

Mr. Jeff and Mrs. Lisa Dionne provided a presentation to the Planning Commission.

Mr. Dionne said they are requesting this fence for safety, security and privacy. They would like to keep trespassers off their property, reduce visibility of their beachfront, and secure their pets and small children and to provide definition between their property and the Leslie E. Tassel Park.

Mr. Dionne showed pictures of the Brinks' property and other neighboring properties to the east that have 6-foot fences.

Mr. Dionne provided photos of the Lawton's view of their property and their fence along Thornapple River Drive.

Mr. Dionne showed pictures of the new fencing that was approved at the November 2007 Commission Meeting along with 4-foot high fencing in the front yard. He noted the property to the east and if a 6-foot fence were installed, with the land's topography, the fence becomes a 4-foot fence. He also noted that the fence does not block any views of the river, just their yard.

Mr. Dionne provided pictures of the road right-of-way that is 7-feet down by their driveway and ending at approximately 17-feet further east. The pictures indicated the preferred fence position by the Dionne's and showed what they would look like.

Pictures of the sections of existing fence were provided along with the Lawton's fence. Mr. Dionne noted that the Lawton's erected their new fence in October 2007 and a portion of the newly erected fence is within the road right-of-way.

More importantly, these photos show more than 500-feet of 6-foot fencing along Thornapple River Drive. Mr. Dionne noted that a snow fence did exist on their property and showed pictures of the existing sections. Pictures also referred to the previous owner's "no trespassing" signs on the property, validating there have been issues in the past.

Mr. Dionne said when he bought the property, he had to resolve many property line issues and obtain surveys, yes, the existing fence line is at 9-feet and other fence lines on the properties from their house to Tassel Park vary from 8-feet to 7-feet and are all within the Kent County road right-of-way.

A picture of the Lawton's home overlooking Mr. Dionne's home was provided. Mr. Dionne noted that the Lawton's would still have a direct view of the river over their fence. They do not feel that they would be restricting the Lawton's view with their fence. The only view that would be restricted of the Lawton's would be to the Dionne's beachfront. Mr. Dionne said the fence would provide them privacy while enjoying the beach.

Mr. Dionne noted they acquired their home this past summer and at that time, the Lawton's did not have a riverfront view from their home since the area was very overgrown and the Dionne's have cleared the property. Both the Lawton's and the Brinks' have only benefited from the Dionne's improvements that they have made to the property.

Mr. Dionne provided aerial views of the property noting how the fencing would screen the beach. They will also have boat docks, boats in the area along with the beach. Mr. Dionne noted the drop-off in the topography of the property directly behind their house and the waterfront is not easily accessed in this area. This is why they are utilizing the current area for the beach and the boats and seek additional privacy in that location.

The survey that is being presented this evening is also the same survey the Lawton's presented in November. The Lawton's failed to mention that the Dionne's trees were painted for their survey purposes. The Lawton's have trespassed on their property without their permission and vandalized their trees. The Dionne's did not commission the survey.

Mr. Dionne noted phone calls with the Township that verified that he could erect a fence if there is an existing fence within the road right-of-way. He presented a 1942 transcript indicating the historical fence in its current configuration. A survey from 1948 was also presented noting the fence's dictation; a historical fence running the property line. To this day, 2007, a survey commissioned by the Lawton's indicating the existing fence. When the Dionne's removed over 80-yards of debris it included over 100-yards of the chain link fence that is being stored on his property. He has offered to show the Township the existing fence he removed but the Township has not followed-up.

Another survey was shown indicating the road right-of-way, the existing fence, and the new fence. The next picture indicated the 75-feet the Dionne's would like to have the fence located within the road right-of-way. They are making this request because there was existing fence in this area that they had cleared and there is an embankment in this area.

In conclusion, why should the Planning Commission approve the fence as submitted? Because of safety, security and privacy. Documentation of an existing fence within the road right-of-way has been presented tonight; the Township Staff has indicated in phone conversations that a fence could be established if replacing an existing fence.

Mr. Dionne also noted that nowhere within the Townships Zoning Ordinance does it state what constitutes an existing fence. It also does not state that if an existing fence were to be replaced that it must be done with the same materials of the original fence. The Dionne's believe they have a right to place their fence within the right-of-way of KCRC as replacement ungoverned within the Zoning Ordinance.

Mr. Dionne also noted that it is evident that the Lawton's have a boundary issue with the Dionne's. The Lawton's have trespassed on their property and damaged their trees. It is apparent that the Lawton's do not know the boundaries and the fence would help establish the boundary.

The Lawton's have also erected fencing within the road right-of-way with portions greater than 4-feet in the fall of 2007. In November 2007 Mr. Lawton and his attorney stated their concerns to the Planning Commission of the Dionne's fence being located within the road right-of-way but they have done the same thing.

The Lawton's also stated at the November 2007 meeting that they have not had any problems with trespassers but in their notes, they defend the new fencing by saying "...to keep trespassers of their property...."

A concern expressed during the November meeting was that if a fence were erected, it would block everyone's view of the river. Mr. Dionne has referenced the Township's zoning bylaws and cannot find anything that references control of view, ownership of view or blockage of view of the Thornapple River. Views are not typically controlled unless governed by a scenic byway status yet undeclared for Thornapple River Drive.

The survey before the Planning Commission was obtained when the Lawton's purchased the riverfront property to the far west that moved a boundary line. The survey indicates the new Lawton fence that was erected within the road right-of-way and there was not an existing fence in this area.

Mr. Dionne noted that he has had numerous phone calls with the Township regarding the 6-foot fence and the Lawton's new fence. The Township is not in pursuit of the Lawton's new fence located within the right-of-way as it still stands today.

The Dionne's were also made aware that homes along the river, the front yard is considered the property's back yard and a 6-foot fence is allowed in the backyard. Mr. Dionne referenced the Brinks' case back in November 2001 that was regarding an accessory building variance. In the minutes of the meeting, Mr. Peterson stated that an accessory building would be allowed in the backyard of the Brinks' property since their front yard is along the river.

The surrounding neighbors have all erected 6-foot fences on their property to keep trespassers off and this is what the Dionne's are also trying to accomplish.

Mr. Dionne stated that their formal request this evening is to erect a 6-foot fence to the east of the driveway, roughly 100-feet long having an estimated 75-feet located within the road right-of-way at approximately 9-feet from the curb. This fence is for the replacement of an existing fence, not a new fence, located within the right-of-way and maintains a height and setback standard consistent with the neighbors having fencing within the KCRC road right-of-way.

If the approval is granted, Mr. Dionne would drop any formal complaints he has filed against the Lawton's fence that is erected within the road right-of-way.

Member Logue asked for a copy of the applicant's survey and asked the Dionne's if they purchased the property without a survey and the Applicant said that he cleaned up the property line conflicts at the time he purchased the property. Mr. Dionne also noted that the Lawton's believed they owned riverfront property and he notified them that his surveys do not show that they do.

Member Logue asked Mr. Dionne where he based the right-of-way line from and what if the road paving does not fall exactly in the middle of the right-of-way. Mr. Dionne noted that the Lawton's survey shows the distance from the curb edge to the right-of-way line. Only 75-feet of their proposed fence would be within the right-of-way and there is nothing within the Township's Ordinances governing this. Mr. Dionne believes the Township's Ordinances should address these issues and what constitutes a front yard from a backyard along the river, etc.

Member Logue asked again about the right-of-way measurements and Mr. Dionne noted that there is an embankment toward the end of the property and if a 6-foot fence were erected in this area, down the embankment, the fence would not be affective in deterring trespassers and therefore want the fence within the right-of-way.

Member Logue questioned what the KCRC says about establishing a fence within the road right-of-way. Mr. Dionne said that he has spoken with contacts in Detroit area that the Township primarily governs the fence and KCRC should not have a problem with it as they focus on road maintenance. The Lawton's fence is still standing within KCRC's right-of-way.

Member Koessel asked Staff that the reference was made to the Brinks' fence as well as the approved 6-foot fence on the Dionne's property are within the road right-of-way, is that correct? Planning Director Peterson clarified the fence is not within the right-of-

way. Member Koessel asked if the Brinks' fence is within the right-of-way and Planning Director Peterson said it may be as the right-of-way does change along this stretch of road. This Applicant has the benefit that less of their property is affected by the right-of-way than some of the others further west.

Member Koessel's understanding is that the Township does not have the right to approve the new fence since there is a portion within the KCRC road right-of-way; it is not within the Township's jurisdiction? Attorney Rice said that is correct. Planning Director Peterson also noted that he did contact the Lawton's attorney regarding their portion of the new fence within the right-of-way that was constructed and they are willing to remove that portion of the fence, though it has not been done yet, they have agreed to do so.

Member Koessel noted that the Township does not have the authority in this case regardless of what exists today. Mr. Dionne referenced what is not within the Township's Ordinances and maybe that information is not included because the Township does not have the authority to grant fencing within road right-of-ways. Member Koessel does not know if the KCRC would allow the erection of the fence but the Township does not have jurisdiction in this matter.

Mr. Dionne said he does not see this as erecting a new fence; he is replacing an existing fence that has been documented. Member Koessel noted that what the Dionne's are proposing going from one type of fencing to another and what is there today and whether it could be replaced is a different question that the Planning Commission of Cascade Township does not have the authority to deal with. Member Koessel noted that speaking with a representative in Detroit would not help with KCRC and the Dionne's may want to contact KCRC for their input. Member Koessel noted that if the Dionne's obtain written approval from KCRC to erect the fence within the right-of-way, then the Planning Commission could handle the other issues regarding the fence height, etc.

Chairman McDonald supported Member Koessel's comments and noted that the KCRC is very comprehensive and thorough. He referenced his personal experience regarding a tree that had branches in the right-of-way that were trimmed by the KCRC.

Chairman McDonald referenced the ordinance regarding the Township has no control of public road right-of-ways and if the Commission did approve the fence, the KCRC could still ask for it to be removed.

Member Koessel also asked the Applicant's what the fence they would like would look like if it were off the road right-of-way. If the Dionne's were requesting the fencing on their property, out of the right-of-way, the Planning Commission could review the case but they cannot make decisions regarding fencing within the right-of-way.

Member Waalkes stated that because the Applicant is proposing new materials and changing the height then that is considered new fencing and Planning Director Peterson said that is how the Township perceives it.

Member Richards noted that the Commission couldn't grant approval since the fence is within the right-of-way. If the Township cannot grant approval, then can we even deny the case? Planning Director Peterson said he would rather have the Commission take action on the application instead of leaving it in limbo. The Planning Commission could deny the application based on not having jurisdiction.

Mrs. Dionne asked what is considered their front yard and their back yard. Planning Director Peterson noted the front s the area between the road and the home. The section Mr. Dionne noted earlier only applies to accessory buildings, not fencing.

Chairman McDonald invited the Lawton's to add their comments. The Lawton's attorney said that his client has owned property for 13 years and has never seen a fence there.

The Lawton's do not object to a fence on the right-of-way line, the problem is some of the right-of-way lines go down hill. At the driveway, the right-of-way is level with the road but at the east end, it is approximately 6 to 8-feet below the road level. The Lawton's would like to see pictures depicting the fencing and the view of the river and until the Lawton's are able to review the fencing and its height, they are not in a position to consent to the fencing at any increased height above 4-feet on the Dionne's property. He noted that the pictures presented this evening do not provide the actual height of the fence.

The Lawton's are willing to compromise if it makes sense and they are not willing to consent to a fence placed within the road right-of-way.

He believes the small fence along the side of the property line was erected by the Lawton's and is 5-feet in height. A small portion of this fence did replace an old portion of fencing that adjoins to other

properties. The old fence was that of snow fencing with wiring and the Lawton's have replaced it with a more substantial chain fence with a portion in the road right-of-way and this is the portion the Lawton's have agreed to remove this portion if the KCRC wants it removed.

The attorney noted there are three (3) properties between the Dionne's property and Tassel Park. Trespassers may come down from the road and the Lawton's do not begrudge the Dionne's for wanting property. They are not opposed to fencing that is located outside of the road right-of-way.

Virginia Decue-Lawton, 2975 Thornapple River Drive, clarified the fence within the road right-of-way runs along the two (2) adjoining lots and they repaired the portion. The fence connects three (3) properties and if the KCRC asked them to remove their portion, it could collapse the other two but they are willing to do so if KCRC requests it.

Chairman McDonald thanked both parties for their excellent comments and the Planning Commission needs to review what they have control over from an ordinance standpoint.

He referred to Section 4.30.3.a that says it is unlawful to construct any wall or fence in a public right-of-way and since this is in the right-of-way this may be a KCRC issue and if there was a letter from them supporting the fencing, the Planning Commission could control the height issue. Planning Director Peterson also added that it is staff's position that even if approved by the KCRC the applicant would need a variance from the ZBA for a fence in the right-of-way.

Chairman McDonald opened the meeting for a motion regarding the case clarifying that if the case were denied, the Applicant could submit different request at another time. The request would have to be substantially different, possibly including a letter of approval from the KCRC for a fence within the right of way or the application could be for a fence outside of the right-of-way higher than 4-feet, Planning Director Peterson confirmed this to be correct. Chairman McDonald referred to section 4.3.2 regarding the clauses for re-applications.

Member Robinson asked if the Planning Commission should deny the request or state that they do not have jurisdiction with the request and asked for legal consult. Attorney Rice advised that the Planning Commission could reject the request based on the fact that they Commission does not have jurisdiction. There should be

an action on the application and a denial based on no jurisdiction would be appropriate.

Member Waalkes motioned to deny the Applicant's request presented this evening based on the fact that the Planning Commission does not have jurisdiction in placing fences within in public right-of-way, supported by Member Robinson.

Chairman McDonald called to question the motion.

Member Logue noted that if the KCRC were to fill the embankment to the level of the road grade up to the right-of-way line and then the Applicants were to erect a 4-foot high fence, would that fall within the Township's ordinances? Planning Director Peterson noted it is not about the grade but where the fence falls within the right-of-way. If the area were filled in, the Applicant could have a 4 foot tall fence on the right-of-way line with no need for a special use permit for additional height.

Member Koessel also suggested that maybe if the fence at the east end were 4-feet in height, and because of the topography, and maybe at the drop-off on the property, that fence is 6 or 8-feet. He was hoping to view pictures of the fencing on the property line. Mr. Dionne noted that if this were to happen, the fencing would not be consistent with what is along Thornapple River Drive. Member Koessel noted that if the Applicant wants fencing above 4-feet, the Planning Commission is willing to review what the fencing would look like as long as the fencing is not within the road right-of-way.

Chairman McDonald asked if there was any more discussion regarding the motion that has been made. Being none, Chairman McDonald requested a roll call vote, in favor of the motion say "Aye" and opposed "Nay":

Member Koessel: Aye
Member Richards: Aye
Member Robinson: Aye
Member McDonald: Aye
Member Waalkes: Aye
Member Logue: Aye

All in favor of the denial of the application based on no jurisdiction within a public right-of-way with none opposed. Motion carried.

Chairman McDonald encouraged the Dionne's to speak with the KCRC.

ARTICLE 6.

Annual Report

Planning Director Peterson noted this is not an action item for the Planning Commission. It is a summary of last year's activities. He noted that the Planning Department had a small increase in projects in 2007. The report also included information regarding the wrap-up of the Centennial Park Plan, starting the Township's Master Plan as well as wrapping up the Parks' Master Plan.

Planning Director Peterson will provide electronic copies of the Annual Report to the Commission.

ARTICLE 7.

Any Other Business

Chairman McDonald opened the meeting for any other business.

Member Koessel said that the Township Board did hold their goal setting meeting. The complete list of goals will be published in the Township's newsletter but one thing the Board agreed to continue is the Community Nights. These are events where the various board/commission members hold an open house with the public to know them better. More of the open houses will be planned for 2008.

ARTICLE 7.

Adjournment

Chairman McDonald requested a motion for adjournment.

Member Robinson supported by Member Logue moved to adjourn. The motion carried and the meeting was adjourned at 8:19 p.m.

Respectfully submitted,

Jack Lewis, Secretary

Lisa Hern, Recording Secretary