

CITY OF CHARLEVOIX
SPECIAL CONCURRENT MEETING
CITY COUNCIL/CITY PLANNING COMMISSION
DOWNTOWN DEVELOPMENT AUTHORITY BOARD

Monday, March 11, 2013 - 6:00 p.m.
210 State Street, City Hall, City Council Chambers, Charlevoix, MI

AGENDA

- I. Roll Call of Members Present**
 - A. City Council
 - B. City Planning Commission
 - C. Downtown Development Authority
- II. Inquiry Regarding Possible Conflicts of Interest**
- III. Requests, Petitions and Communications and Actions Thereon**
 - A. Discussion Regarding Fireplace Proposal in East Park
 - 1. Presentation by Mark Buday and Richard Hitz
 - 2. Public Comment
 - 3. Discussion/Recommendation By Downtown Development Authority
 - 4. Discussion/Recommendation By City Planning Commission
 - 5. City Council Discussion/Next Steps
- IV. Audience - Non-agenda Input (written requests take precedent)**
- VIII. Adjourn**

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Posted: March 7, 2013 5:00 p.m .

SPECIAL CONCURRENT MEETING
CHARLEVOIX CITY COUNCIL/PLANNING COMMISSION/
DOWNTOWN DEVELOPMENT AUTHORITY

AGENDA ITEM

AGENDA ITEM TITLE: Discussion Regarding Fireplace Proposal in East Park

DATE: March 11, 2013

PRESENTED BY: Mayor Carlson
Rob Straebel

ATTACHMENTS: 1. Visual Impact Comparison
2. Oval Fireplace Circulation Study
3. Buday/Hitz Report to Fireplace Steering Committee
4. Memo from Planner Mike Spencer Regarding Fireplace Compliance with City Zoning Regulations
5. February 28, 2013 Memo from Bryan Graham

BACKGROUND INFORMATION: The City Council requested a joint meeting with the DDA and Planning Commission to discuss the fireplace proposal in East Park. The Mayor and City Council would like feedback from these two boards on whether the proposal merits moving forward with construction in the Spring.

A brief history would be helpful. In the summer of 2012, the City hosted three public meetings on the fireplace with very few comments received on the proposal. Soon thereafter, the community voiced opposition to the fireplace idea and on September 12, 2012 City Council halted construction on the fireplace.

Since that time, a Fireplace Design Committee has been established with architect Mark Buday and Richard Hitz volunteering their time to assist with development of the fireplace plans. The Committee is made up of three voting members: Jody Bingham; Pat Miller; and Becky Doan. Non-voting members of the Committee include John Winn and Rob Straebel. The Committee has met three times in well-attended public meetings.

On February 28, 2013 the Committee voted 2-1 in favor of the following motion:

"It has been through much discussion there has been consensus on having the fireplace be built in the existing location, however there are concerns about spacing for people for walkways on the sidewalk, for room for strollers, wheelchairs, and folks that are in

motorized scooters, concerns that the fireplace is too close to the street, those are some concerns that I feel strongly about so that would be my motion.”

During the public approval process, there were various issues that came to light by the public that the Committee has addressed. The following is a summary of issues that were identified by the public and how the Committee and architect propose to mitigate such issues.

1. Location

Mr. Buday and Mr. Hitz did a full review of all possible locations in East Park. They strongly feel, and the Committee agreed, that Plaza B (current location of fireplace) was the best location in the park. This location is highly visible from Bridge Street and has a strong pedestrian connection that would serve as an attraction for downtown visitors. This is also an area that is centrally located and could use some improvement.

2. Design

Original square design called for an 8' x 8' x 20' high fireplace that was out of scale with East Park and blocked views of Round Lake. See “Visual Impact Comparison” showing original design with a preliminary revised sketch showing reduced height. The new design incorporates a much smaller footprint that is oval-shaped with a much lower profile to not compromise viewsheds. Height of the fireplace is proposed to be no more than 3'-4'. The oval-shaped fireplace allows for wider pedestrian walking areas accommodating strollers and handicapped persons. The smaller fireplace footprint would also facilitate installing benches or sitting walls. See attached Oval Fireplace Circulation Study showing 75 people congregating in Plaza B.

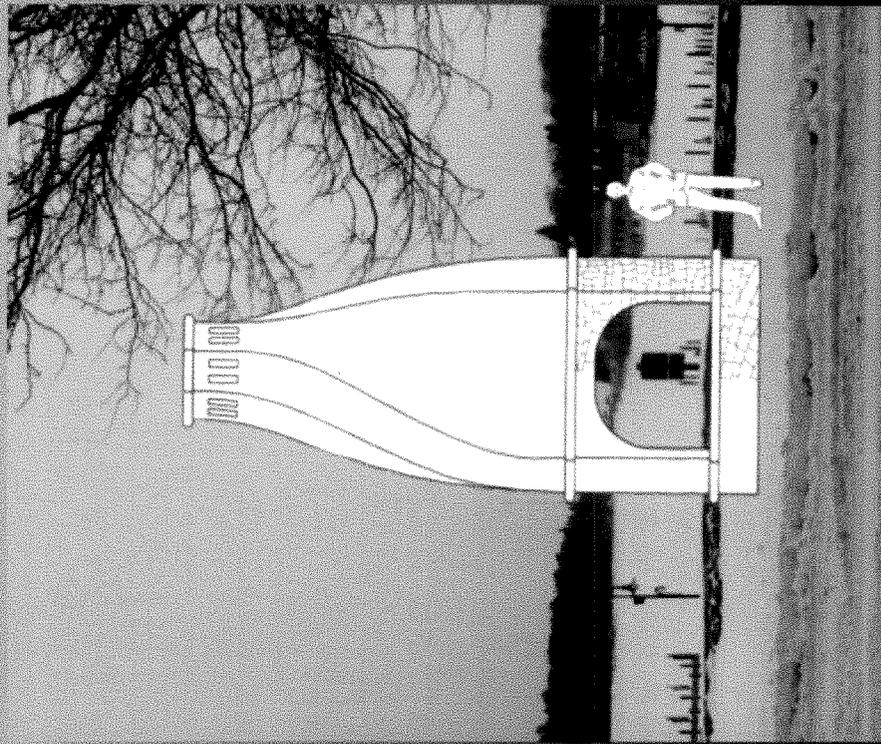
3. Energy Usage

Many residents have commented on the long-term costs of fueling a natural gas fireplace. To create a more energy efficient fireplace the overall natural gas consumption has been reduced by 38%. This is by reducing the BTUs for the fireplace. Overall, estimated annual natural gas costs have been reduced from \$6,700 to \$4,154. This figure is based upon an estimated 1,762 operation hours per year. The amount of hours of operation could certainly be reduced. Costs to install and connect a DTE natural gas line from East Clinton Street to fireplace location are \$300. The natural gas service line has not been installed as of yet.

The fireplace proposal should be based upon its own merits and long-term operating costs should be discussed. Nevertheless, there is a Charlevoix resident who has committed to paying for natural gas costs for at least the next first five years.

RECOMMENDATION: Discussion. If we have quorums for both DDA and Planning Commission, City Council requests that each board vote to recommend to the City Council either to support or oppose construction of fireplace as depicted in the informational packet.

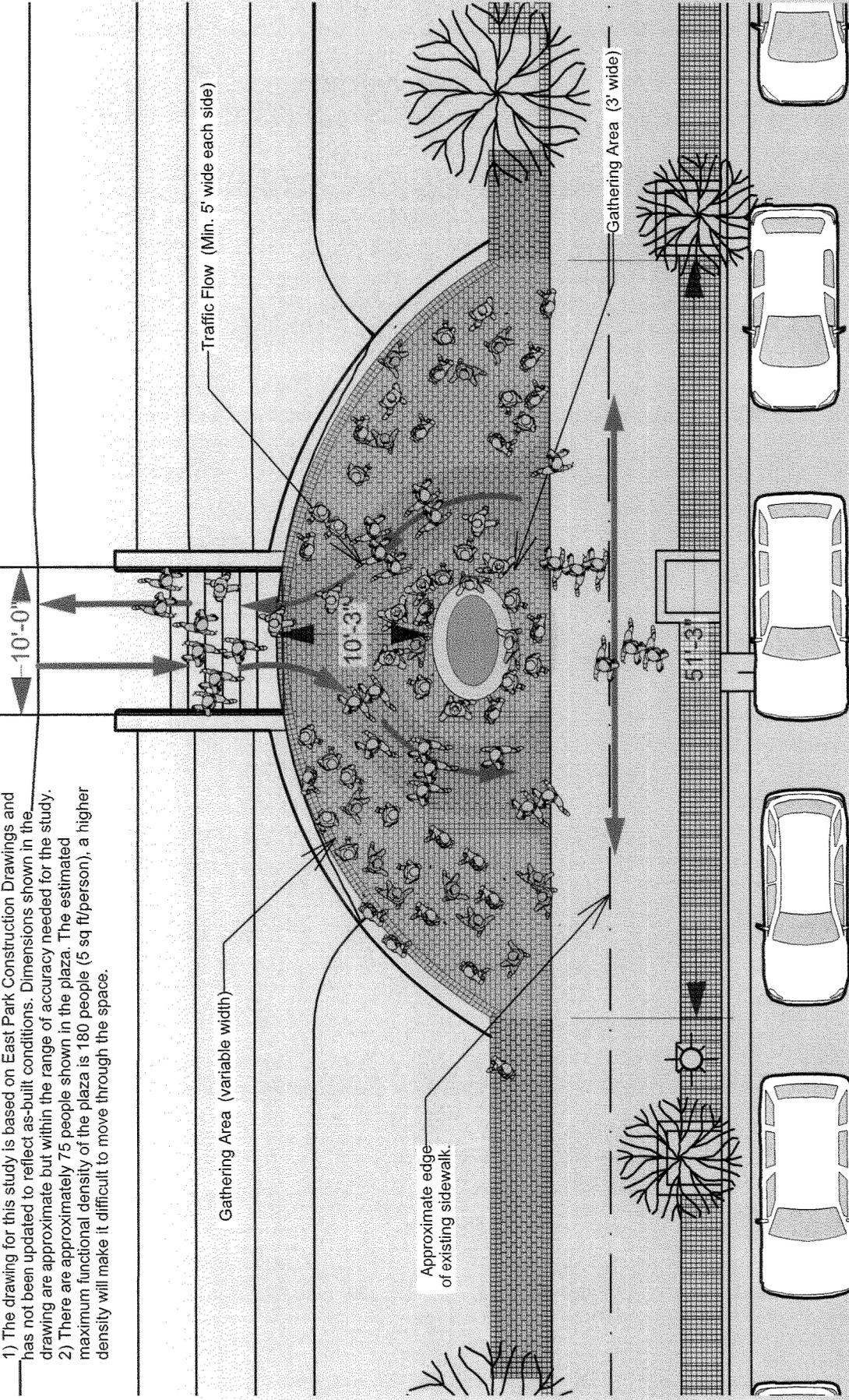
VISUAL IMPACT COMPARISON



OVAL FIREPLACE CIRCULATION STUDY

Notes:

- 1) The drawing for this study is based on East Park Construction Drawings and has not been updated to reflect as-built conditions. Dimensions shown in the drawing are approximate but within the range of accuracy needed for the study.
- 2) There are approximately 75 people shown in the plaza. The estimated maximum functional density of the plaza is 180 people (5 sq ft/person), a higher density will make it difficult to move through the space.



Draft Report to the Fireplace Steering Committee City of Charlevoix

Prepared by:
Mark Buday, AIA
Richard Hitz, ASLA

We have been asked by the City of Charlevoix City Council to assist the Fireplace Steering Committee in evaluation of a proposed fire feature and its location at East Park.

Based upon two public meeting with comments from the General Public and assistance of the steering committee we have found the following:

- 1) The fireplace as proposed (8' wide and 20' tall) is out of scale with the context of the mid-park plaza where it is to be located.
- 2) After evaluating many alternative sites we have determined that the mid-park plaza location is the best choice to locate a fire feature because it meets all of the following requirements:
 - a. Visible from Bridge Street
 - b. Does not block view of East Park and Round Lake from Bridge Street
 - c. Strong pedestrian connection to Bridge Street
 - d. Has a direct connection to all-season Park events
- 3) The fire feature should be modified from its current form to meet the following requirements:
 - a. Not greater than 8' in height at its highest point
 - b. It should have a seat wall surround or associated benches
 - c. It must be dynamic and sculptural when the fire is both lit and unlit—we recommend exploring the use of LED lighting to illuminate the sculpture, especially when it is not lit
 - d. It should not impede the flow of pedestrian traffic in the plaza—we suggest an oval shape as shown in our process presentation documents
 - e. It shall be designed in such a way as to minimize the chance of accidental injury from the fire
 - f. It shall be simple to operate and maintain
 - g. Energy consumption shall not exceed 300,000 Btu/hr
 - h. It should be warming on cool days and have year round use

General Notes and Discussion

After listening to many comments, reviewing both the original park drawings and current as-built conditions we have come to realize that the area we are calling Mid-Park Plaza is broken. After concerns of blocking the view of the lake the second most

frequently heard complaint people raised was the issue of the plaza being overcrowded and difficult to move through on event days.

We believe the problems with the plaza stem from a combination of two factors:

- 1) The lack of a consistent paved surface—the planted groundcover had no chance to survive the heavy use and has been replaced with woodchips
- 2) Vendor stalls placed in the middle of the plaza area.

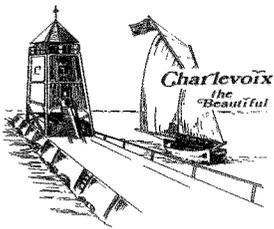
The plaza was originally designed to have full, hard surface paving but due to project budget cuts only a peripheral pathway was installed. The heavy use of the area as the entry point from Bridge Street to the Park requires a fully paved area. We recommend installing brick pavers in the currently unpaved portion of the plaza.

The vendor stalls placed in the middle of the plaza disrupt the pedestrian flow in the plaza and along the Bridge Street sidewalk. People who are purchasing items at the stalls and who are waiting in line to purchase items are forced to stand in the flow of pedestrian traffic, causing disruptions.

We recommend at a minimum moving the vendors to the edge of the seat wall area and reducing their size and number. The plaza will function best without the vendors and that is our preferred recommendation.

Finally, we believe the fire feature will be a good asset to the plaza, especially during those many days of the year when a large event is not taking place in the Park. It will become a gathering point and a dynamic entry sculpture to the Park while making the plaza more human-scaled and comfortable for individuals and small groups of people. Our process presentation documents graphically demonstrate these points.

end



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MEMORANDUM

TO: Planning Commission Members
DATE: March 7, 2013
SUBJECT: Review of the proposed Community Fireplace
ATTACHMENTS: Memo to City Council
Legal Opinion from Bryan Graham

BACKGROUND INFORMATION:

As you are aware, the proposed community fireplace has generated a significant amount of controversy, which resulted in Council's decision to halt construction. Since that time the fireplace steering committee was formed, met three times, and you will be presented with their findings on Monday night. City Council was also provided a copy of a planning commission resolution from 2006, which prompted a legal opinion that is included in this packet. This was discussed at the City Council meeting on Monday night and Staff has been given direction to draft a new resolution that will be reviewed by the planning commission and forwarded to City Council for their review and adoption. The purpose of this resolution will be to clarify the public process that should be followed and specifically define which capital improvements trigger planning commission review city under zoning and/or the Planning Enabling Act. Presently there is no well-defined process, policy, law or consistently followed practice to go by.

The controversy has raised all sorts of questions and contention about park amenities, donation policies, capital improvements, zoning, public review processes, environmental protection, ongoing maintenance, and public safety. This is not just about a fireplace. I think we have all learned a lot from this process and we need move forward based on what is in the best interests of the community. I will attempt to focus on the facts and stay as brief as possible. There are two options for motions at the end to choose from, or amended at the discretion of the planning commission.

ZONING

As you know there are numerous entities that are exempt from local zoning including government organizations, churches and schools. Numerous capital improvement projects have been done in the city and none have gone before the planning commission in the past for zoning approval. There is no precedent for this. Nor have school buildings or church projects. We

have a legal opinion stating city projects are not subject to zoning, there is no history of planning commission review with other park projects, and the other communities I researched do not require zoning review for capital improvements in city parks. Another important point is that this project is proposed in East Park, which is zoned “public reserve.” There are no setback requirements, height limits, lot coverage requirements, or any other standard to compare this against. Even if the project did go to the planning commission for development plan review there would be no justification for denial.

Finally, I know there have been some questions regarding a resolution that the planning commission passed in 2006. I became aware of this resolution after the joint Planning Commission/City Council meeting on September 12, 2012. Attached to this memo is the cover page from March 4 that addresses that Resolution, in addition to Mr. Graham’s legal opinion from February 28, 2012. I would be happy to address any questions on this at Monday’s meeting.

SECTION 125.3861 OF THE PLANNING ENABLING ACT

125.3861. Construction of certain projects in area covered by municipal master plan; approval; initiation of work on project; requirements; report and advice.

Sec. 61. (1) A street; square, park, playground, public way, ground, or other open space; or public building or other structure shall not be constructed or authorized for construction in an area covered by a municipal master plan unless the location, character, and extent of the street, public way, open space, structure, or utility have been submitted to the planning commission by the legislative body or other body having jurisdiction over the authorization or financing of the project and has been approved by the planning commission. The planning commission shall submit its reasons for approval or disapproval to the body having jurisdiction.

This section of the Planning Enabling Act is intended to ensure that capital improvements such as parks, buildings, roads, etc. are consistent with the City’s master plan. We have researched this topic with the Land Use Educators from Michigan State Extension and have also checked with our planning consultants who work with hundreds of other communities. They indicated that this section is really intended for new or major capital improvements, but they also acknowledge that someone could argue that a fireplace could be interpreted as an “other structure.” There is no case law on this, nor is there a definition of structure in the statute. There is also no precedent of this being followed by the City both before and after my employment. Numerous park projects in Petoskey, Boyne City, Charlevoix (art sculptures in parks, kiosks, flag poles, benches, etc) and even the fireplace in Holland were not taken to the planning commission for review under this statute.

Rather than argue and speculate whether this fireplace would qualify for review under this section, our recommendation is to have the planning commission provide a recommendation on whether the fireplace conforms to the provisions of the City of Charlevoix Master Plan and the Parks and Recreation Master Plan. I have reviewed both master plans and I suggest the planning commission do the same. The following options may be accepted, changed or modified by the planning commission.

OPTIONS FOR MOTIONS:

Option 1: The Planning Commission finds that in accordance with Section 125.3861 of the Planning Enabling Act, the proposed community fireplace is in accordance with the City Master Plan and the Parks and Recreation Master Plan. The plans do not specifically address what features or amenities should go in East Park, nor do they prohibit new features or structures from being erected in East Park. The planning commission feels that the revised fireplace height will protect the scenic beauty of East Park and will enhance Charlevoix's downtown by providing a gathering place in the shoulder seasons. (Objective 1.2 and Objective 1.3 of City Master Plan. Page 31)

Option 2: The Planning Commission finds that in accordance with Section 125.3861 of the Planning Enabling Act, the proposed community fireplace is not in accordance with the City Master Plan and the Parks and Recreation Master Plan. Although the fireplace proposal is not specifically addressed in either plan, the fireplace requires the use of natural gas and therefore does not conform to the goal of high environmental standards in the design of municipal facilities and utilities. (Goal on page 34) The fireplace will also require annual operating costs that do not conform to the goal of providing high quality public services and infrastructure at a lower cost to the taxpayers. (Objective 4.1 on page 34)

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussion on Planning Commission Resolution from 2006 concerning review of City projects.

DATE: March 4, 2013

PRESENTED BY: Mike Spencer, City Planner

ATTACHMENTS: Planning Commission resolution from 2006
Legal Opinion from Bryan Graham dated February 28, 2013

BACKGROUND INFORMATION:

As you are aware Mary Eveleigh submitted documentation to City Council concerning a Planning Commission resolution from back in 2006. This documentation was included in the February 18th meeting packet, which prompted a request for a legal opinion from a member of City Council. The purpose of this agenda item is to address that Resolution that was recommended to City Council on June 12, 2006 by the Planning Commission. We are also seeking direction from Council for future policies on capital projects.

Planning Commission Resolution from 2006

The first time I became aware of this resolution was after the joint City Council-Planning Commission meeting regarding the fireplace on September 12, 2012. After Sherm Chamberlain stated that he thought the fireplace proposal should have gone to the Planning Commission I asked him why. He stated he remembered a resolution that was passed before when he was on City Council but did not know exactly when. The next day I had the City Clerk search the archives and she found the attached resolution. This resolution was reviewed and accepted, not adopted, by City Council on June 19, 2006. An adopted City Council resolution has a specific reference number, such as 2012-02-06. This resolution did not have any reference number and did not have any of the required dates, or signatures from the Clerk or Mayor. As you are aware my employment began in late 2007 and I had no idea this resolution existed. After speaking with John Hess, he stated that the resolution was in reaction to the East Park renovation project not going to the Planning Commission for review. I have spoken to colleagues at the Michigan State Extension Office, and LSL Planning Inc. who work with hundreds of other communities on planning and zoning issues. Based on that research and review of the Planning Commission resolution I would like to offer the following points:

- Planning Commission review of park features or “structures” as capital improvements within parks is not common unless it is a new park, building, or major capital improvement. Even then most communities still do not require Planning Commission review. When Planning Commissions do review new parks, buildings, roads, and other capital improvements they only look at the project to determine whether it conforms to the City’s Master Plan as required by MCL 125.3861. No City that we are aware of requires their own municipal projects to get a zoning permit or development plan approval. They may seek input from the Planning Commission, but not specific zoning approval.
- Other capital improvements in city parks have occurred and no one had mentioned this Planning Commission resolution until now. These projects include a 100 foot flag pole at Michigan Beach, two kiosks in East Park, 7 or so statues in various parks (minus one red ram), and a large “Welcome to Charlevoix” sign adjacent to the channel. The fireplace in Holland did not go through Planning Commission review, nor did any other park features in existing parks in numerous other communities I spoke with.
- Based on the language of the resolution every park bench, fire hydrant, stone wall, playground equipment, or similar “structure” would have to go through development plan review and get a zoning permit. I do not think this was the intent of the Planning Commission resolution and I do not think this practice is common or efficient government. Most City projects are in a zoning district called Public Reserve, which has no structure height, setback, lot coverage, or lot size requirements. There would be no standard for the Planning Commission to review the project against.

RECOMMENDATION:

I will certainly take any municipal project, regardless of size and location, to the Planning Commission for review provided that I am aware of such requirement, the types of projects are clearly defined, and standards are clear and measurable.

- What is the goal of Planning Commission review? Is it only to provide another round of public input before Council review? Is it to protect views in parks? Is it to meant to reduce or prevent ongoing maintenance costs? Ensure high environmental standards? Do we need to require review of any new park bench or fire hydrant, or should these items be excluded? Etc.

These are the questions that we need to have answered in order to come up with an appropriate City policy. Staff is seeking approval from Council to work with the Planning Commission create an clear, well defined Resolution which would be reviewed and adopted by City Council, that clarifies the specific size and scope of capital improvement projects that warrant Planning Commission review.

2. Consideration of the proposed "Whereas" statement

Motion by Hodgson

Supported by Kusina

To send the proposed "whereas" statement to City Council for approval.

Ayes: Hess, Cross, Cole, Kusina, Rankl, Hodgson

Nays: None

Motion Carried

WHEREAS: It has come to the attention of the City of Charlevoix Planning Commission that the City of Charlevoix does not apply for or receive zoning permits or site plan approvals for any of its projects within the City.

WHEREAS: The City of Charlevoix expects all private citizens, other governmental units and quasi-governmental units to apply for and receive zoning permits and site plan approval for their projects.

WHEREAS: The City of Charlevoix Planning Commission understands that legal staff have informed the City that they do not have to comply with their own ordinance.

WHEREAS: The City of Charlevoix should be in the forefront of zoning and planning and put its best foot forward. ("What's good for the Goose is Good for the Gander").

AND WHEREAS: It is just good policy to follow ones own rules.

THEREFORE BE IT RESOLVED THAT: The Charlevoix City Planning Commission recommends that all city projects required by the zoning ordinance to obtain a zoning permit or site plan approval shall apply for and receive the same. If ZBA approval is required then the City shall apply for and receive the same.

BE IT FURTHER RESOLVED THAT: This policy should not preclude work on structures or other projects of an emergency nature.

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ATTACHMENT

Bryan E. Graham
Peter R. Wendling

Eugene W. ...

James G. Young, *Of Counsel*

MEMORANDUM

TO: Mayor Norman L. Carlson, Jr.
and City Council Members **VIA EMAIL**

FROM: James G. Young and
Bryan E. Graham

DATE: February 28, 2013

SUBJECT: City projects and city zoning requirements

At the last city council meeting we were requested to address documents provided by Mary Eveleigh concerning city projects complying with city zoning ordinance requirements. In June, 2006 the city planning commission adopted a resolution recommending to the city council that "all city projects required by the zoning ordinance to obtain a zoning permit or site plan approval shall apply for and receive the same." In response to this planning commission resolution, then city planner Gerry Harsch wrote a memo outlining the reasons why city projects should not seek or obtain zoning approval under the city zoning ordinance. However, when the planning commission recommendation was submitted to the city council on June 19, 2006, the council passed the following motion: "Motion by Councilmember Gabe Campbell, seconded by Councilmember Bill Haggard, to accept the Planning Commission's motion regarding City project administration compliance as printed on p. 27 [of the packet]."

It is important to note at the outset that the above city council motion was adopted in June, 2006. Since that time there has been a complete change in the membership of the city council and a change of city manager and city planner. As a result, it is understandable that current city staff was not aware of this prior city council motion. It is also important to note that the 2006 motion reflects the policy decision of the then city council. Because the membership on the city council has completely changed since the 2006 motion was adopted, the current city council has not expressed its policy decision on this question. Finally, it is important to note that because the 2006 motion was not included in a city ordinance, it does not have the force of law, but merely reflects the policy choice of the then city council.

Because the current city council has not addressed this policy question, let us begin with an explanation of Michigan law concerning whether a city project is required to

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comply with the city's zoning ordinance. Michigan courts have clearly ruled that a municipal project completed in furtherance of a governmental function is exempt from that municipality's zoning ordinance requirements. *Morrison v City of E. Lansing*, 255 Mich App 505 (2003); *Keiswetter v Petoskey*, 124 Mich App 590 (1983). A governmental function is an activity authorized by law. For example, a home rule city, such as the City of Charlevoix, is authorized to establish parks pursuant to MCL 141.322(3). There are many other statutes authorizing various city functions.

In the context of a park project, because the city is authorized by statute to establish parks, the projects developed within a city park are in furtherance of a governmental function and therefore exempt from the city's zoning ordinance requirements, including obtaining zoning permits and site plan approval.

Now that the current city council is aware of the 2006 motion, it should express its policy choice on this question. There are various options for the city council:

1. It can elect to follow Michigan law, which exempts city projects completed in furtherance of a governmental function from city zoning ordinance requirements. As the memo from Mr. Harsch makes clear, exempting such a city project from city zoning requirements does not mean that the public will not have an opportunity to have input on that city project. Because the city project must be approved by the city council, and in some instances by the DDA, at a public meeting, the public will have ample opportunities to address the project before final approval.
2. It can elect to implement the 2006 policy and require that all city projects comply with city zoning ordinance requirements, even when such compliance is not required under Michigan law.
3. It can adopt a revised policy, such as not only requiring that city projects follow Michigan law, but also that such projects should be consistent with the city master plan.

If there are questions concerning the legal issues involved in this manner or questions involving the options for city council, please contact either of us.

BEG

cc: Rob Straebel, City Manager (via email)
Michael Spencer, City Planner (via email)