

CITY OF CHARLEVOIX
PLANNING COMMISSION MEETING MINUTES
Monday, November 11, 2013 - 7:00 p.m.
210 State Street, City Hall, Council Chambers, Charlevoix, MI

A. Call to Order/Pledge of Allegiance

The meeting was called to order at 7:12 p.m. by Vice Chair Sherm Chamberlain.

B. Roll Call

Vice Chair: Sherm Chamberlain

Members Present: Judy Clock, John Elzinga, and Keith Sherwood

Members Absent: Toni Felter, David Novotny, RJ Waddell, Adam Whitley, and John Hess (arrived 7:15 p.m.)

City Planner: Michael Spencer

The Commission does not have a quorum and may not make any decisions; however, as the meeting was properly noticed under the OMA, members chose to discuss agenda items.

C. Inquiry Into Potential Conflicts of Interest

None.

D. Call for Public Comment not Related to Agenda Item

Vice Chair Chamberlain opened the meeting to public comment.

Jeff Porter asked the Planning Commission to consider including architectural review in the Code. He reminded the Commission that Council would have to approve any changes, but he would like a motion from the Planning Commission recommending that the City Council include architectural review in the Zoning Code. He believed that the latest project on Pine River Lane was "the poster child for architectural review", and that architectural review would benefit the City in the long term and benefit taxpayers by increasing the value of property in the City.

Chair Hess arrived at 7:15, creating a quorum. The Commission resumed the meeting with normal business.

E. Approval of Agenda

No changes to the agenda.

F. Approval of October 28, 2013 Minutes

Motion by Member Elzinga, second by Member Clock, to approve the October 28, 2013 minutes as presented. Motion passed by unanimous voice vote.

G. Call for Public Comment not Related to Agenda Item

Chair Hess re-opened the meeting to public comment. There was no further public comment, and the item was closed.

H. New Business

1. Discussion on Protection of City Parks – conservation easement at Mt. McSauba requested by John Campbell.

a) Presentation by John Campbell.

Planner Spencer stated that the City had been approached many times by John Campbell with regard to forming a conservation easement at Mt. McSauba and the Lake Michigan Park area including the forested area, the dunes, and the beach. Originally City Council voted not to pursue a conservation easement as Members believed that there were already adequate protections in place. Planner Spencer stated that the parks are highly treasured by residents and people who visit here and have second homes here, and there was no question that the parks should be protected. People have different opinions on how the parks should be protected such as: a conservation easement, deed restrictions, City policy, through Zoning, or a combination of factors. City staff fully supports conservation easements, but such easements "have more teeth" on private property and rural areas that have higher recreational and environmental value.

Planner Spencer stated that staff has pulled the deeds on all of the parks and they would like to amend the Parks & Recreation Master Plan to reflect the research and current restrictions on the parks.

John Campbell, 309 E. Dixon Avenue, began his presentation and stated that in July 2013 he had presented a proposal to create conservation easements for Mt. McSauba and Lake Michigan Park to City Council. The Mt. McSauba property is owned by the City of Charlevoix but located in Charlevoix Township and falls under their

zoning restrictions as scenic reserve. Mr. Campbell believes that a third party is needed to oversee the protection of the property. Per the City Charter, the property cannot be sold without a vote of the people; however, that is the only protection besides zoning.

Tom Bailey, Director of Little Traverse Conservancy, stated that there are a variety of programs at the federal, state and local level that involve conservation easements on public property. He reported that the reasons for placing conservation easements on public property are the same as for private property, which is to have a third party to look after the restrictions as they are intended. He noted that, after time, deed restrictions do not hold up in court and are not perpetual. Conservation easements are perpetual. He stated that the best known easement restricted property in this region would be the Headlands in Emmet County which was a joint project between the Conservancy and the Village of Mackinaw City, whereby the Village purchased the property with funds that were raised by the Conservancy along with a grant from the Michigan Department of Natural Resources (DNR) Trust Fund. It is now an Emmet County park and has been designated as an international dark sky park. It is receiving world-wide attention and has turned out to be the principle driver of economic development in the northern part of Emmet County.

Mr. Bailey stated that conservation easements need not be held by a Land Conservancy. The Michigan Department of Environmental Quality (DEQ) and Townships hold conservation easements. Peninsula Township in Grand Traverse County has the best known and highly developed conservation easement program in the State. He stated that such easements were one more tool of public policy for insuring perpetual availability of land and protection of natural resources.

Upon questioning about the procedure the public would follow to allow different uses in the future, Mr. Bailey stated that changes to future uses of the property would depend on the easement and the proposed changes. Federal and State laws provide that conservation easements can be made more restrictive without amendment, but they cannot be reversed the other way. For example, if an area were dedicated as natural land, future development to home sites or other developed use would not be allowed. Areas that were developed or proposed for future development would not be included in the easement. Mr. Bailey explained prohibited and permitted uses that could be included in a conservation easement.

Planner Spencer, Mr. Bailey and Mr. Campbell responded to questions from the Planning Commission members. Planner Spencer indicated that the North Point Reserve is owned by the Township, and Mr. Bailey reported that the North Point property is currently restricted by a contractual agreement with the DNR that limits its use to those purposes that were outlined in the application for funding.

Mr. Bailey noted that planning is key, and the City would need to have a good plan for the area in place before moving forward with a conservation easement.

b) Planning Commission Discussion.

Member Chamberlain stated that the City needs a plan for the area and that the City needs to know what the public wants, while ensuring that nothing infringes upon the critical dunes in that area.

Member Sherwood believes that the North Point property appears to be well protected; however, additional restrictions on the Mt. McSauba property would be hazardous until the City has a definite long-range plan for the area. He believes that the area has adequate protection already in place.

Member Elzinga also stated that there is adequate protection in place

Member Clock noted that, 25 years ago, no one would have thought of disc golf. An easement would really lock in what's there and, at this point, the property is protected.

Chair Hess stated that he is very reluctant to restrict the ability of future Planners and City Councils to make any decisions. He also referenced the City Charter provision that would not allow the sale of any portion of the property without a vote of the residents; he does not see a need for a conservation easement on the property.

Mr. Campbell listed items that would be prohibited in a proposed conservation easement, including: division of the property, commercial activities except where the ski hill is located, construction of buildings/structures/roads/

parking lots, cutting of vegetation without specific needs for that cutting, land surface alteration, dumping, changing water courses, off road vehicles, and signs and billboards. Mr. Campbell then listed permitted uses, including: the right to convey, the right to maintain and replace existing structures, the right to add designated structures or uses, the right to have disc golf, the right to cut trees or other vegetation that are diseased or a hindrance, and the right to enter. Mr. Campbell distributed a proposed resolution to the Planning Commission members. He stated that he wanted this to be a positive meeting and he asked that a public hearing be set to get input from the public.

Mr. Campbell also discussed Lake Michigan Beach Park: there was a deed restriction on the property that no buildings were to be built within the area, but in 1985-1986 the City built the water treatment plant there.

Planner Spencer noted that, from a planning perspective and in reviewing an aerial photo of the area, the area of the Charlevoix Country Club is four times as big as the Mt. McSauba area. He asked why there was not similar concern when the golf course property was developed, and believes it is a case of misplaced priorities to ignore areas that are ripe for development such as Oyster Bay on Lake Charlevoix. Mr. McSauba is a piece of property owned by the City that has never been developed, that has protections on it, but suddenly needs protection with a conservation easement. Mr. Campbell stated that over 325 acres of the Oyster Bay area were protected from development.

c) Next steps.

Motion by Member Chamberlain to set a public hearing to hear from the public regarding the future of the Mt. McSauba property. Motion died for lack of a second.

Member Chamberlain stated he would like staff to finish their history of Lake Michigan Park and Mt. McSauba to find out what kind of restrictions are on the property.

Motion by Member Chamberlain to direct staff to finish the historical background of the restrictions on the property and then schedule a public hearing.

Planner Spencer stated that it would be good to have a draft easement agreement ready for public comment where it would include allowable and prohibited uses. He will provide an update at the December meeting on the status of the research. The Commission can then consider scheduling a public hearing in January.

Motion by Member Sherwood, seconded by Member Chamberlain, to amend the pending motion to include that the public hearing can only happen when the Planning Commission feels prepared to present facts, so that an unemotional discussion take place and a correct decision can be made. Motion to amend passed by unanimous voice vote.

Member Clock seconded the primary motion, as amended. Motion passed by a unanimous voice vote.

Planner Spencer stated that he has a legal opinion from the City Attorney that, if the City does want to establish a conservation easement on either Lake Michigan Park or Mt. McSauba, it will need to be voted on and approved by the electors at an election.

2. Introduction to New Draft Planning Commission Bylaws.

Planner Spencer stated that the current Bylaws were passed in 2007. The Planning Enabling Act changed in 2008 and there are some areas in the Bylaws that need revision. He stated that the Michigan State University (MSU) Extension puts out a sample set of Bylaws which are extremely detailed. Staff scaled them back but wants the Commission to decide what needs to be taken out or modified. He noted that the Zoning Board of Appeals adopted new Bylaws in 2012 after forming a sub-committee to work with staff to review and make changes to the Bylaws. He stated that the Planning Commission could use a similar process or go through the document page by page at a public meeting. Chair Hess stated that he would like to do it at a public meeting, and suggested looking at the Bylaws in parts, such as in ten-page segments. The Commission generally agreed.

I. **Old Business**

None.

J. Staff Updates

1. Planner Spencer reported that the Council did agree with a proposed amendment to the City's Zoning Ordinance which would allow up to two non-qualified electors to serve on the Planning Commission. This item will go before Council in December.
2. Planner Spencer reported that City Council approved the Charlevoix Pointe Development project. He has had some brief discussions with the developer and a date to break ground has not yet been set. There are a couple of items that need to be completed prior to starting development, but the developer wants to have two or three of the units completed no later than June 1, 2014.
3. Planner Spencer stated there were a couple of other small projects going on:
 - a new home at the corner of Alice and East Upright,
 - a substantial addition to a home on the alley, doubling the size of the house [at 203 May Street],
 - a property division into two lots on West Upright,
 - a front porch for a house on West Upright.

K. Request for Next Month's Agenda or Research Items

None.

L. Adjournment

Motion by Clock, second by Elzinga, to adjourn. Motion passed by unanimous voice vote.
Meeting adjourned at 8:19 p.m.

Stephanie C. Brown/fgm

Deputy City Clerk

John Hess

Chair