

CHARTER TOWNSHIP OF CHOCOLAY PLANNING COMMISSION MINUTES

Monday, September 18, 2017

I. MEETING CALLED TO ORDER BY: Tom Mahaney at 7:03 p.m.

ROLL CALL

Members Present: Tom Mahaney (Chair), Eric Meister (Vice Chair), Donna Mullen-Campbell (Secretary), Andy Smith (Vice Secretary), Jon Kangas, Kendell Milton, Judy White (Board)

Members Absent: None

Staff Present: Dale Throenle (Planning Director/Zoning Administrator), Richard Bohjanen (Township Supervisor), Suzanne Sundell (Community Development Coordinator), Lisa Perry (Administrative Assistant), Sgt. Tony Carrick

II. ADDITIONAL AGENDA ITEMS / APPROVAL OF AGENDA

Motion by Meister and seconded by Kangas to approve the agenda as written.

Vote: Ayes: 7 Nays: 0 MOTION CARRIED

III. MINUTES

July 6, 2017

Motion by Kangas, and seconded by Milton, to approve the minutes as written.

Vote: Ayes: 7 Nays: 0 MOTION CARRIED

July 17, 2017

*Motion by Kangas, and seconded by Mullen-Campbell, to approve the minutes as amended (Page 5, Section XII in the vote, the Nay is listed as Mahaney, should be **Nays: 1 (White)**). The tape was reviewed.*

Vote: Ayes: 7 Nays: 0 MOTION CARRIED

IV. PUBLIC COMMENT

Throenle indicated there are two spokespersons that would like to do a presentation on the Short Term Rental issue, and would like additional time to speak. Mahaney questioned how long the presentation will be – it was indicated by spokespersons Jennifer Bruggink and Scott Emerson that it would take approximately 10 minutes. The Planning Commission approved this, and after discussion on where to add this item, it was decided it should be dealt with as a presentation.

Motion by White, and seconded by Meister that the presentation be included as part of agenda under Item VI. Presentations, with a limit of ten minutes.

Vote: Ayes: 7 Nays: 0 MOTION CARRIED

Patrick Dudley, 2413 M-28 East – he is a vacation rental owner who opposes any bans of vacation rentals in Chocolay Township. He appreciates the concerns of the residents of Lakewood Lane, but feels there are other ways to resolve issues rather than outright bans. He has owned his house since 1990, and started doing vacation rentals in 2005 when family circumstances changed. The rental dollars pay for the property taxes and upkeep of the home he plans to retire to. He rents strictly through Airbnb, and has strict rules that the renters must comply with. He knows of no complaints from the neighbors. Many of his renters return every year, and have some type of tie to the area – current and former residents of Marquette County and parents of NMU students. He pays 6% sales tax, along with higher property taxes. When he travels for work, he almost exclusively stays in short term rentals. This allows him a better experience of the community. The issue on Lakewood Lane appears to be a lousy neighbor issue. He feels there are many ways to control this – a permit process, with maximum occupancy, permit fee, number of homes allowed as short term rentals per applicant, renewal process, complaints substantiated. Also, there should be a safety check. He feels banning a single area opens up the issue for a ban Township wide.

Kenlyn Hubbard, 121 Wintergreen – Hubbard’s in-laws live at 739 Lakewood Lane. She supports short term rentals – she feels people take better care of their property. She stated that many people have family-owned camps along Lakewood Lane that they would like to keep in the family and retire to. Short term rentals are a way to provide an income that would allow the taxes and upkeep on the property until the time they can retire. There are other ways to control short term rentals. The Township needs to allow the community to expand.

Hal Pawley, 643 Lakewood Lane – he has lived there for 23 years, and is definitely against short term rentals. He has four places that do short term rentals within 1/4 mile of his house, and they have not done anything to improve their properties. He is against all the disturbances that come with short term rentals – parties, music, fireworks. This is not why he moved to Lakewood Lane. He tried to confront on his own, but now calls the Chocolay Police Department whenever there is a problem. He thinks the Township should take action to put an end to short term rentals.

Ruth Ziel, 734 Lakewood Lane – she is one of seven families that have deeded access to a pathway to the beach. Last year she was told by a renter that she was not allowed on the beach. When everyone left, and the places were closed, there was a lot of garbage. She ended cleaning up after the renters. She feels there should be phone numbers for residents to call if there is a problem. She has used Airbnb and there are always numbers posted. Trash is also put out on Sunday when the renters leave, and not picked up until Wednesday – this creates a nuisance with animals and birds. Has the Planning Commission considered the septic systems and the age of these systems. There is a lot of work to be done.

George Krzysmoski, 741 Lakewood Lane – there are always concerns about trash, septic and water, but he would like to bring up issues such as tax fraud and insurance fraud – when renting out a house, you are not insured with a homeowner’s policy. There

are lots of safety issues. There is a lot of work that needs to be done. We are encouraging tax fraud by allowing the rentals.

Peter Ollila, 633 Lakewood Lane – opposed to short term rentals. The Planning Commission needs to reflect on what has been going on since 2011. The former supervisor, Gary Walker, and the current supervisor, Richard Bohjanen, have both stated on record at Township meetings “short term rentals are not illegal because they are not prohibited in the waterfront district”. The only thing that is permitted in the Waterfront Residential is a single family dwelling. Zoning laws throughout the state are written to show what is permitted. He went on to cite a Supreme Court decision from 2003. Some of his neighbors have been getting questionnaires from their insurance companies concerning number of people in house and if they are related. This triggered him to call his insurance company – he has a residential policy that runs less than \$1,000 per year. In questioning his insurance company, a long term rental policy would cost approximately 2 – 2 1/2 times the residential amount, and his company would not offer a policy on short term rentals. This would be under a resort / commercial basis and would cost 4 – 5 times the amount.

Stephanie Gencheff, 597 Lakewood Lane – Lakewood Lane lots are sometimes only 50 feet wide. Some homes are 20 feet away from the next home. She likes knowing who is sleeping 20 feet away from her, and does not feel this makes her selfish. The difference between a hotel and short term rental is that you can call the front desk of a hotel and have the problem taken care of. After the Township Board meeting the previous Monday, where M-28 short term rentals showed support, she went to the neighbors of the short-term rentals that were at the meeting. There was mixed feelings. She is having trouble understanding why the Township Board and Planning Commission feel so compelled to ignore Lakewood Lane residents who have gone on record stating their opposition to short term rentals.

Richard Bohjanen, 140 Edgewood Drive – (Township Supervisor) He made a couple points. (1) Definitions must be concise, clear and true; (2) Most resorts are rentals, but not all rentals are resorts; (3) Some hotels are short term rentals, but not all residences are hotels; (4) It may be more appropriate to define the term vacation rentals; (5) It appears that we deal with long term rentals in the same way as short term rentals, that is, they are not delineated in the ordinance, (6) In order to be understood by all, the ordinance needs to be amended; and he finished with (7) “Not everything stated as fact is factual, some are opinions. These are my opinions.”

Marla Buckmaster, 519 Lakewood Lane – has lived at this address for 22 years and prior to that she lived in the 600 block of Lakewood Lane – has lived on Lakewood Lane since 1971. She loves Lakewood Lane, loves the diversity of Lakewood Lane. She loves walking the beach and meeting the people that live there – sometimes as many as 20 miles per day. Up until three years ago, when she had to stop walking, she knew almost everyone on the beach. There were no complaints on short term rentals. She received a phone call a couple weeks ago in regards to the petition that was being circulated in opposition to short term rentals. Her response to the caller was that short rentals have

always been a part of Lakewood Lane, that she loves the eclectic nature of Lakewood Lane, and that she does not believe laws should be based on one bad experience of one person. They should be based on the negative experience of a broader population. Observations were that stories seemed to grow (climbing an apple tree to cutting down an apple tree) and that people who signed the petition may not have had an understanding of what they were signing. She also stated that people that signed the petition received notice of the last Township Board meeting, and those that were unwilling to sign the petition were not notified, so the deck was stacked in opposition to short term rentals. She feels there is a “mass hysteria” on Lakewood Lane based on some untruths, some exaggerated events, and a lack of factual information.

Kim Parker, has short term rental on 483 Lakewood Lane – he would like to comment on the trash, disorderly conduct, and other things. People, whether they are residents, short term renters, or long term renters, can be bad. He has been renting for ten years with no complaints. He also does not understand the magic number of 30 days – a person can be a bad renter no matter what the time frame. Short term renters are good for the economy. He works with Airbnb who is very good at vetting.

Deborah Mulcahey, 633 Lakewood Lane – the magic of 30 days is based on the ordinance. She is concerned about the short term rental definitions. She is totally opposed to short term rentals on Lakewood Lane. She would like to know what the Planning Commission vision is. If the plan is to allow short term rentals along Lakewood Lane, she would ask that the Planning Commission remove Lakewood Lane from the WFR zoning district and make a separate zoning district for the properties that are abutted by Lake Superior and a county road, which would include north side of Lakewood Lane along with the properties on Shot Point. If short term rentals go forward, she would ask that they be a conditional use as opposed to permitted use. The Master Plan before 2015 did not include anything on short term rentals. The current zoning ordinance does not list vacation rentals or short term rentals as either a permitted use or a conditional use. In 2008, her property was converted to WFR from R1, and now the Township is looking to allow commercial operations. The Township should take into consideration everyone’s property rights. In the Master Plan, volunteers are discussed. Short term renters typically do not volunteer. There is also the issue of availability of affordable housing.

Public comment closed at 7:52 pm.

V. PUBLIC HEARINGS

None

VI. PRESENTATIONS

Jennifer Briggink, 673 Lakewood Lane – she questioned if the members of the Planning Commission would like to have their neighbors changing on a regular basis. There was an overlay district to protect lakefront. Then Lakewood Lane was changed to WFR. She wants a sense of community and neighborhood that comes from having long term neighbors. This provides stability. She wants to be able to tell her children where to go

in case of an emergency or if someone has an extra key – you can't do this with a short term renter. She is looking for community neighborhoods that build health, trust, resilience, relaxation, etc. There is a difference between Lakewood Lane and M-28. M-28 has bigger lots, more wooded, more private. The letters in the packet from people that are in support are not residents. The people that rent out their houses are businesses. Lakewood Lane should stay residential.

Scott Emerson, 119 Lakewood Lane – he has lived on Lakewood Lane for 38 years. He feels this is a global issue – there is a global boom in short term rentals, the definition of which is less than 30 days. This has been driven by web-based companies, and their business plans are very unique. The other term thrown around is “creative destruction”. Short term rental business plans encourage illegal activity. Zoning laws scramble to try to accommodate these business plans. He feels that this is a dangerous trend. The zoning laws are part of the resident's protection. As governments try to accommodate these businesses, problems have arose such as (1) decrease in availability of long term rentals; (2) creation of dark zones, which are blocks of outside investor properties; (3) increases in complaints, such as noise, trespass, creation of party houses, etc.; and, most importantly, (4) loss of neighborhood character – loss of sanctuary. When you look at integrated health, one thing that stands out is sense of community, and if this is lost, it increases your stress. Two things that are contributing to this are non-owner occupied short term rentals and density and concentration of short term rentals in residential zones. His recommendations to the Planning Commission are: (1) Don't rush this – it is continuing to evolve and sort itself out, and we need to learn from other's experience; (2) the main thing to address is the non-owner occupied short term rental; (3) Keep the Township regulations on this simple and enforceable; (4) Need to enforce the existing zoning ordinance; (5) Ordinance change proposal (short term rentals in all commercial zones, and short term rentals in all residential zones, including Lakewood Lane, and a conditional use with 5 acres or more). Handouts were given to Planning Commission.

Presentation closed at 8:25 PM. Short recess.

Meeting resumed at 8:32 PM.

VII. NEW BUSINESS

None

VIII. OLD BUSINESS

IX. Short Term Rentals

Staff Introduction

Throenle indicated that on the cover memo, the Motion from the Township Board should be:

“Rhein moved Engle second to give the Planning Commission three months to come up with a viable plan to present to the Township Board on Short Term Rentals.”

*MOTION CARRIED (Nays – Maki, **White**)*

Throenle also indicated that when the packet was put together, the Short Term Rental Definition page was inadvertently left out. It has now been put as a separate handout to the Planning Commission, along with additional copies on the back table for the public. There is also one email that was received in the correct time frame.

Comments on the packet information: Short term rentals have been in the Township since the 1980's. Since that time, there have been six zoning administrators, five of them since 2002, one for a period of three months. With this change in administrators come different interpretations of the zoning ordinance. In regard to the Jennifer Thum letter of 2011, at the time there was a motion made to direct the staff to consult with the Township Attorney. There does not appear to be any follow up to this motion. Thum then resigned in February of 2012. He has consulted with the Police Department an outline of complaints generated from Lakewood Lane for the past year – nine complaints were found, most with the people not knowing the ordinances. There is a need to be able to get this information out. There is no distinction in the Police calls as to the type – short term rental, long term rental, resident. Throenle has had two rental related incidents reported to his office – one of someone showing up at the wrong residence by mistake to request a key and the other was concerning trash. There may also be group owners of a single property for consideration in this discussion.

Another consideration is that there are two bills in front of the Michigan Senate and House right now – Senate bill No. 329 and House bill No. 4503. Both are in committee right now, and have identical language. If approved as written, the discussion on short term rentals will become a moot point.

Throenle pointed out that as the Planning Commission goes forward, the definitions need to be concise, as there could be many interpretations.

Based on emails and discussion, Throenle stated the arguments for opposition are loud music and noise, unleashed pets, fireworks, no respect for property or neighbors, privacy issues, safety issues, and trash. The arguments for are enhanced tourism, assistance in paying for the existing property and keeping it in the family, income for local businesses, not a hotel or resort, property rights, and an option to use if circumstances change in the future. Throenle also discussed the term “commercial”.

Throenle explained that the Planning Commission is directed by the Township Board to come up with a viable plan in a three month period – there does not have to be an ordinance in place in that time frame. His recommendations are: (1) Develop a plan; and (2) Continue working on the short term rental ordinance at the same time.

Throenle pointed out that the document laying on the Commissioner's table was a petition that was signed by residents of Lakewood Lane – 183 signatures representing 135 properties.

Throenle also encouraged the Planning Commission to consider the long term vision

for the Township – 10 to 15 years out. This should be based on the vision in the Master Plan.

Commission Discussion

Mahaney asked how many properties are in the waterfront district. Throenle explained he has two maps that show Lake Superior property – Lakewood Lane to Shot Point. It does not include anything on the river or on Kawbawgam Lake. This would include the ECF districts that are classified as Superior 1 and Superior 2. When running a report on properties that are less than 100% homestead, 37% fall into this category.

Smith questioned why, if we have a Zoning Ordinance and it appears that it is being violated consistently, we are not enforcing it. Throenle indicated it comes back to ambiguity of the ordinance – very hard to take to court and enforce.

Mahaney indicated that he has been researching this – this is a tough issue, and with the bills that are in the House and Senate he wonders what will happen if they do go through. There is a lot to consider.

Smith asked if there has ever been an attorney opinion requested. Throenle indicated that the first was a verbal from Mike Summers and the second was a written from Roger Zappa.

Kangas felt that the Planning Commission needs to adopt a definition for short term rental (or vacation rental), there will continue to be the ambiguity which makes it a challenge for staff to be able to enforce it. The reason that this is so public now is because of the internet – properties can no longer fly under the radar. He feels that it ultimately comes down to the property owner / manager responsibility. Attention has been diverted at this point to focus on one small district, when the real need is to take a look at the big picture. Need to focus on the definition.

Milton indicated that he like the term “vacation rental” – he feels this term fits better.

Meister thought it would be useful to include other concerns when talking about short term rentals such as requirements, restrictions, protection of property owners, and the entire township.

Kangas indicated that in his time on the Planning Commission there has never been talk of allowing short term rentals unrestricted in the Township.

Smith indicated that he would like there to be some type of criteria behind the definition of short term rentals. No reason to reinvent the wheel.

Meister feels the definition is a good place to start. Kangas feels if you have a definition it allows you to make a better determination on which district it would be considered appropriate in.

Throenle indicated that the definition should be fluid.

Smith moved, Kangas seconded, to have the Planning Director follow through on the motion that was made on September 12, 2011 and look at a broad range of communities for the next meeting.

Vote: Ayes: 7 Nays: 0

MOTION CARRIED

X. PUBLIC COMMENT

Peter Ollila, 633 Lakewood Lane – the proposed definition of short term rentals – the first sentence needs boundaries. Less than 30 days, monthly, what about February?

John Peterson, 733 Lakewood Lane – has live here for 47 years. Has not seen any change in the fireworks ordinance – still the same from year to year. People are complaining about the trash problem – people are putting out there in bags - need to put in garbage cans. The people who took the petition up and down Lakewood Lane were basically harassing the public.

Jennifer Bruggink, 673 Lakewood Lane – the one thing that wasn't mentioned previously was community. Other issues can be resolved. Community is about quality of life. She thinks there approximately 200 – 225 parcels on Lakewood Lane with water frontage. She apologized for the fact that some residents may have felt harassed – if it's hard to tell someone you won't sign their petition think of how hard it would be to tell someone you don't like what they are doing. Hopes there are some rules that can be made concerning short term rentals.

Kenlyn Hubbard, 121 Wintergreen Trail – wanted to talk about community and neighbors. Her mother-in-law who lives on Lakewood Lane has a neighbor on one side who is wonderful, on the other side is the neighbor from hell. Everyone wants community and good neighbors. Short term rentals are not a bad thing – make some rules, but don't cut them out. Community comes from the heart, not property.

Deborah Mulcahey, 633 Lakewood Lane – the two pieces of legislation in committee – suggested the Planning Commission look at the Birch Township Supreme Court decision. Sense of community and property rights are important to her. The WFR district specifically says the permitted use is single family dwellings. There is nothing about short term rentals. Mulcahey, Jennifer Thum, and Mike Summers had many discussions about this issue. She stated that the Supreme Court has ruled that if something is not specified as allowed, then it is not allowed. Any attorney will say that enforcement may be problematic. Mulcahey read one sentence from a document from a previous attorney, "... The conversion of what is otherwise a single family dwelling in a residential for seasonal rental on a periodic basis to different families or groups is a commercial use by definition ...” If you are going to have zoning, you should do the enforcement.

Public comment closed at 9:52.

XI. COMMISSIONER'S COMMENTS

White – Stated that this is her last meeting. She has given notice to Supervisor Bohjanen that she no longer wishes to serve on the Planning Commission. She stated she has learned a great deal, and has a lot of respect for the members of the Planning Commission. The Planning Commission is derived of many talents and much experience – they give up their time for the community and the citizens should be proud of all the work that they have done.

Milton – None

Kangas – Something to remember during the short term rental discussion – if it's not enforceable, the Planning Commission is probably wasting their time.

Mullen-Campbell – Don't be too discouraged – there is a lot to digest on the subject of short term rentals. Feels the Planning Commission needs to persevere.

Smith – None

Meister – Feels the Planning Commission needs to get the overlay district back on the agenda.

Mahaney – Thanked the audience for their comments. Also wondered about the tablets – Suzanne will have a report the next meeting.

XII. DIRECTOR'S COMMENTS

Throenle thanked the Planning Commission for their patience, and also apologized for the quality of the packets.

Throenle had also recently completed FEMA training and has been designated as the Flood Plain Manager for Chocolay Township. In the future, this may mean looking at certifying our community which would possibly help with reductions in flood insurance for the residents.

XIII. INFORMATIONAL ITEMS AND CORRESPONDENCE

A. Minutes – Marquette City Planning Commission, 07.11.17

B. Minutes – Marquette City Planning Commission, 07.18.17

C. Minutes – Marquette City Planning Commission, 08.01.17

D. Minutes – Township Board minutes, 07.10.17

E. Minutes – Township Board minutes, 08.14.17

XIV. ADJOURNMENT

Mahaney adjourned the meeting at 9:56 pm.

Submitted by:

Planning Commission Secretary
Donna Mullen-Campbell