

CLAYTON TOWNSHIP PLANNING COMMISSION
REGULAR MEETING MINUTES
NOVEMBER 17, 2015 7:00 P.M.
CLAYTON TOWNSHIP HALL

CALL TO ORDER

Dr. Shaw called the Planning Commission meeting to order at 7:00 p.m.

ROLL CALL

Present: Kevin DePottey
Susan Hyde
Ed McCartney
Dennis Milem
William Shaw
Robert Widigan

Absent: Ryan Bower

Others Present: Ken Tucker, Attorney
Deanna Turner, Stenographer

Pledge to the Flag

Ms. Hyde led the Pledge to the Flag.

APPROVE PROPOSED AGENDA

Motion by DePottey, supported by Widigan, to approve the proposed agenda.

MOTION CARRIED.

APPROVAL OF MINUTES: October, 2015

Motion by Widigan, supported by Milem, to approve the October 20, 2015 Planning Commission minutes, as submitted.

MOTION CARRIED.

COMMUNICATION

None.

REPORT OF OFFICERS AND COMMITTEES

None.

PUBLIC COMMENT

None.

OLD BUSINESS

(1) UPDATE OF PARK PLACE MEADOWS BY ATTORNEY TUCKER

Mr. Tucker stated there was a show cause hearing last Tuesday at District Court against Park Place Meadows. The show cause motion was filed in September. Mr. Fick admitted responsibility for violating the 30 paragraph order from June 18, specifically, violations of paragraphs one and three. Paragraph one states that he has to keep and maintain necessary permits to operate his business. Park Place Meadows is not currently registered with the State of Michigan because it had not passed inspections through the County Surface Water Division. Paragraph three states that odors had to be substantially reduced before Clayton Township would approve the nuisance violation closure.

Mr. Tucker said the judge ordered Mr. Fick pay attorney fees and he would review how much those amounts would be. He didn't indicate on going back for all costs; there are bills back through January, 2015. There is a big argument for attorneys fees. He added that Clayton Township fee structures only allows up to \$300 in fines through an ordinance.

There is a December 8, 2015 hearing for continued violations. There will be updates on odor and any complaints in writing, even if they call in. Residents have been instructed to email Mr. Tucker directly. Supervisor Gehringer and Clerk Milem are recording all complaints. Mr. Tucker said the judge was very clear issuing a ruling that odors have to stop. There will be arguments heard on how the odor needs to be worded, and kept open after December 8. He added that with winter, the odor should be reduced because the compost facility will not be taking in grass clippings. The order could be reviewed in May or June when the season starts up again to see if new procedures help or eliminate odors.

Mr. Tucker said the facility is not going to turn the compost and will treat with an odor suppressant when they grind. He said that every time a pile is touched, a base is moved, it creates a smell and leads to a whole new issue.

Dr. Shaw asked if Mr. Fick has until spring to operate his business. Mr. Tucker responded the judge did not shut him down at the hearing, but could on December 8 if complaints continue. He is going to supply the judge with a written complaint summary at the hearing.

Mr. Fick is meeting with the Department of Environmental Quality (DEQ) at the State Attorney General's Office, who contacted Mr. Tucker on Monday. He spoke with them that afternoon at the Lansing location to discuss trying to resolve what he believes they are trying to do. Mr. Fick and his attorneys believe the state will re-register him if the

township says that he is in compliance. Mr. Tucker said it is being funneled down to the township level. Any time the state gets involved, they start off strong and ordinance enforcement funnels down to the local level. He said at this point, the lack of registration has no effect. He has watched trucks come in and out of the facility and he drove the neighborhood with no complaints that day. Mr. Tucker didn't smell anything either. He said Park Place Meadows has not been registered since September 14, 2015. He is not sure why Mr. Fick sued the State of Michigan to have his business reinstated on the registry if it is not having any effect on his business.

Mr. Milem said it doesn't seem to bother the companies. Mr. Tucker asked the DEQ what effect does it have if a business is not registered. The DEQ cannot give a straight answer or explanation. He added that the state is giving the township the courtesy to have them involved with that case. He said that tickets can be written each day if the same problem keeps occurring under statute and case law; there is a new violation each and every day.

Mr. Tucker said the ultimate option, if they take a position, is if the Planning Commission wants to review his permitted use, they can re-do it or un-do it the way it was granted. They can make a recommendation to the Board, continue it, restrict it, reduce volume, reduce work hours or let it go through the Board and let them make the ultimate decision. They can also shut the facility down and pull permitted use or do nothing and leave it the way it is.

Mr. Milem asked how that would affect the product that is already there. Mr. Tucker said that is a big problem because the position of the state is that everything has to go within 30 days. He said the letter didn't say that though, but did say Mr. Fick couldn't take any new product. The DEQ told Mr. Fick that if he had problems he needed to remove it or stop taking new product, but they never enforced it.

Mr. Tucker advised that the Planning Commission could have another public hearing to give residents the opportunity to speak publicly. The board can accept the Planning Commission's recommendation or alter it.

Mr. Tucker added that if you stock pile this material, it can spontaneously combust, which it already has prior. He is going to send everyone a copy of the letter he received from the DEQ.

Mr. Widigan asked what their options were; should they make a motion to start the review process. Mr. Tucker said the board has asked the Planning Commission to review it. Dr. Shaw said it may be difficult in regards to timelines and procedures they have to go through. Mr. Tucker said he doesn't think the judge will shut the compost facility down on December 8, but he doesn't know what the judge will do. He added that the judge has only had the case for a few months. He hasn't heard the facts of the case since the show cause hearing in September, which they discussed the entire case in the judge's chambers. Mr. Tucker said that at the hearing last Tuesday, they met for two hours in the judge's chambers and then put the arguments on the record in the courtroom. He said that in order for a judge to close a business, there must be an immediate threat and he is unlikely to make that decision on one hearing.

Mr. Milem said that he thought the judge told Mr. Fick that if there is still a smell on December 8 then that's it and he went as far as to tell Mr. Fick that he put the wrong business in the wrong place. He said they have gotten some complaints, but residents do not want to leave their names and the court won't even look at them. He said people are afraid to get subpoenaed. Mr. Milem said that he plans to go to the compost facility every day between now and December 8. He visited that day, and yesterday and there was a big bonfire on the corner and added the smell does travel to Saratoga.

Mr. Tucker said the judge was more forceful than he anticipated, but he doesn't want them to think it's an easy process and that on December 8th, that's it. He said there is no way to predict what will happen.

Mr. McCartney asked how the compost facility they visited handles the piles. Mr. Tucker said he didn't go, but he spoke to them. Mr. Milem said they toured Tuthill Farms in South Lyon. He said they bring in the compost and dump into one pile, which smells a bit, but they cover it with leaves, brush and wood chips, which deadens the odor. Mr. Milem spoke with their clerk and have had only had one complaint noise and no smell complaints. The facility is within 1.4 miles of a gated community. He added that it is a two year process. They spoke with Sandra Tuttle who said that they do not do anything the DEQ recommends, though the DEQ asks their facility to go to other sites that have problems to help. Mr. Fick has been to their facility and received a recommendation and plan from them.

Mr. Tucker said their ordinance requires the Planning Commission to be involved, but it does not address how to un-do a conditional use permit. He said he isn't sure they have ever undone or set one aside; there are no prior cases to fall back on.

Mr. Milem asked if they should wait until the next hearing to make a decision. Mr. Tucker said he would not if they plan to address it. He suggested they may take no action after they hear what the public has to say. He also said there probably won't be odor complaints because it is winter time.

Motion by Widigan, supported by Milem, to set a public hearing to review the conditional use permit for Park Place Meadows.

A discussion ensued about the statutory timelines to notice residents.

Mr. Widigan withdrew his motion.

Motion by Widigan, supported by DePottey to set a public hearing for December 15 to review the conditional use permit for Park Place Meadows.

MOTION CARRIED, with one abstention, Ms. Susan Hyde.

Mr. Tucker said that if they are trying to squeeze the public hearing in, he can always request an adjournment of the December 8 hearing, if they want more time.

Dr. Shaw asked if they put restrictions on two or three, will they still be open for business. Mr. Tucker said until the board takes action, they can restrict him or take adverse action if the board approves it. He said that Mr. Fick can file an injunction in Circuit Court until a hearing can be held, showing that it has an immediate adverse effect on his business, claim he will lose a significant amount of money, until a hearing is heard. Mr. Tucker could file a counter motion for an injunction for not bringing in more product and the judge will have to have an immediate hearing.

Mr. Milem asked if due to complaints, the judge shuts them down on December 8. Mr. Tucker said they can enforce that immediately, but Mr. Fick will probably appeal to Circuit Court and then hold a hearing.

Motion by Mr. Widigan, supported by Mr. DePottey, to allow Ms. Hyde to abstain from voting because she is a resident of the area and it is a conflict of interest.

MOTION CARRIED.

Dr. Shaw said that the special permit needs to be addressed after everyone has had a say. Mr. Milem said Mr. Tucker has a complete file and he can get the 2009 meeting minutes and make an agenda with everything on there. Mr. Tucker said his notes are highlighted.

Dr. Shaw asked if Mr. Fick owned the facility off I75 in Mundy Township. Mr. Tucker said he does own that place too. It is not a compost facility, but a landscaping supply, which takes him out of the "right to farm" argument. The judge did rule that it is not a "right to farm" argument after he did his own research.

Dr. Shaw asked if anyone had seen the ads in the local paper over the past weekend asking for wood chips and grass. The ad said those items could cause residents' yards to smell.

(2) SURVEY

Mr. Milem said that hours have been put into the survey and the changes they wanted have been made. He said the township is not going to pay for the survey to be mailed out, therefore, they are going to put the survey online and let Google tally the results. He said they will also have copies on the township counter for people to take and use. They are going to print a notice in the paper indicating that the Master Plan Survey will be online with the applicable information.

Ms. Bower, resident, said that she has been coming to meetings for 15 years and has been through two or three master plans and none of the surveys have done any good. Dr. Shaw said he takes exception to that because they ask for residents to indicate what is important to them and that is what their master plan is directed at, greenery, the environment, spaces between homes, lack of condos, apartments, houses etc. The question is after 10-20 years, does the community want something different.

Mr. Milem said there are no costs to put the survey on Google. Dr. Shaw wants the introduction to mention that residents can pick up a survey from the office. Mr. DePottey suggested they enter the information for residents who mail or turn their survey back in. Mr. Milem said that people will come to the township office to pay taxes or their water bill.

Ms. Hyde suggested the hard copies have an email address for people to return them to also.

Dr. Shaw said originally they wanted the surveys returned by November 30. Ms. Hyde suggested a December deadline. Dr. Shaw said they need the information tallied for the board meeting and since they are having a public hearing at the next planning commission meeting, they will wait to report data until the following month.

Mr. DePottey suggested they have a deadline of December 31 for survey responses and the results can be presented at the January 19 meeting.

Ms. Hyde asked if they can add "no opinion" to questions nine and ten. Mr. Widigan added that all yes or no questions are supposed to also include "no opinion." Ms. Hyde also asked if they can change the word of services to road and ditch improvements.

Mr. Milem said he hasn't heard any more on Misteguay. He said the lady they sold the bond to for \$1 million called the bond in on August 1. He said \$860,000 has been spent and they haven't even had a shovel in the ground yet.

A discussion ensued.

(3) MASTER PLAN

Dr. Shaw asked if there were any additional comments. There were none.

ADDITIONAL ITEMS

None.

ADJOURNMENT:

Motion by DePottey, supported by Widigan, to adjourn the Planning Commission meeting at 8:05 p.m.

MOTION CARRIED.