

Otsego County Planning Commission

Approved Minutes for July 16, 2018

Call to Order: 6:00pm by Chairperson Hartmann

Pledge of Allegiance

Roll Call:

Present: Chairperson Hartmann, Vice Chairperson Jarecki, Secretary Arndt, Mr. Hilgendorf, Mr. Brown, Mrs. Norton, Mr. Klee, Mr. Caverson, Mr. Bauman, Ms. Corfis

Absent: Mr. Borton

Staff Present: Mr. Mouch, Ms. Boyak-Wohlfeil

Public Present: Dan Lubelan, Dan Lubelan Sr, Keith Huff, Charlton Township Trustee, Michelle Noirot, Bagley Township Supervisor

Approval of minutes from: June 18, 2018

Motion made by Mr. Brown to approve minutes as presented; Seconded by Mr. Arndt.

Motion approved unanimously.

Consent Agenda: None

Other: None

Public participation for items not on the agenda: None

Public Hearing:

1. *Daniel G. Lubelan, property owner, has requested a Rezone for property located in Charlton Township:*

*10508 Sparr Rd
Johannesburg, MI 49751
022-029-400-005-00*

PZRZ18-001 - Property zoned FR/Forestry Recreation Zoning District with a request to be rezoned to AR/Agricultural Resources for farming purposes

Chairperson Hartmann stated the case before them and opened the public hearing.

Public Hearing Open: 6:02pm

Daniel Lubelan, owner, stated he and his family have been living on the property for five (5) years. He was recently transferred full time so he no longer had to commute to work. They were currently farming rotational crops and would like to add a small number of livestock as well. It would be run as a family farm.

Chairperson Hartmann requested comment from Mr. Brown, Charlton Township representative.

Mr. Brown stated the property to the south of Sparr Rd was currently zoned Agricultural so Charlton Township did not feel this was spot zoning. They were recommending approval of the rezone.

Chairperson Hartmann closed the public hearing

Public Hearing Closed: 6:05pm

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Advertised Case:

1. *Daniel G. Lubelan, property owner, has requested a Rezone for property located in Charlton Township:*

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Johannesburg, MI 49751
022-029-400-005-00*

PZRZ18-001 - Property zoned FR/Forestry Recreation Zoning District with a request to be rezoned to AR/Agricultural Resources for farming purposes

With no further comments, Chairperson Hartmann requested a motion.

Motion made by Mr. Brown to recommend case PZRZ18-001 be rezoned from FR/Forestry Recreation to AR/Agricultural Resource to the Otsego County Board of Commissioners; Seconded by Mr. Hilgendorf.

Motion approved unanimously.

Chairperson Hartmann thanked them for coming.

Public Hearing:

2. *Otsego County Zoning Ordinance -- Zoning District Addition, Article 5b R2b Residential District:*

District created for Mobile Home Zoning located in Bagley Township and Otsego Lake Township:

- a. **Bagley Township:** Gaylord Mobile Home Estates, Hidden Pines Mobile Estates, Maple Grove Estates I, Maple Grove Estates II and Parkwood Subdivision*
- b. **Otsego Lake Township:** Arbutus Beach Highlands*

Chairperson Hartmann stated the case before them and opened the public hearing.

Public Hearing Open: 6:12pm

Chairperson Hartmann stated a response from the two townships involved and also comments from a third township had been received. He requested a summary of the proposed zoning from Mr. Mouch.

Mr. Mouch stated these platted subdivisions were previously zoned for single wide mobile homes but had been zoned out. This is an amendment to the R2 Zoning District to allow them in the listed subdivisions again. Land Use staff has driven through the subdivisions and collected statistics of all existing uses of property; Mr. Mouch read those statistics aloud stating the majority of occupied lots in both townships had single wide mobiles that could not be replaced or updated. He requested Chairperson Hartmann read aloud the ten (10) criteria items for rezoning, including the first paragraph as presented by the County attorney.

Chairperson Hartmann read aloud the first paragraph as follows:

Criteria for Rezoning:

While the MZEA does not contain any required standards for the Planning Commission and the County Board of Commissioners to follow when considering a rezoning request, the following factors are among those that should be considered in evaluating a rezoning request. While all these factors are important, there is no general formula that has been articulated by the courts regarding how much weight should be afforded to any one of these factors. Each rezoning request should be decided on its own facts.

He continued reading the remaining criteria of rezoning items one by one for discussion. (SEE ATTACHMENT 1)

Chairperson Hartmann requested comment from Ms. Corfis, representing Otsego Lake Township.

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Ms. Corfis stated Otsego Lake Township did not feel this was addressed in either Otsego Lake Township's Master Plan or the County's Master Plan. They felt this should be done before moving forward; having this foundation in place would allow a sound basis for a decision.

Chairperson Hartmann stated that maybe this should be looked at as a subset of the R2 Zoning District not necessarily a rezone; it would still be R2.

Chairperson Hartmann requested comment from Mr. Arndt, representing Bagley Township.

Secretary Arndt stated Bagley Township had a number of these subdivisions within Bagley and agreed the Master Plan needed to reflect the zoning. Bagley was recommending approval for the subdivisions in Bagley.

Mr. Brown stated Charlton Township viewed this as spot zoning for Bagley and Otsego Lake Townships only; they felt it should cover other areas throughout the County.

Secretary Arndt agreed it should be applied County wide; it was being considered for these two townships because these were problem areas.

Mr. Caverson stated he was under the impression this was for replacement purposes.

Mr. Brown stated it should be for replacement purposes only or a single wide could be placed on any of the empty lots available.

Ms. Corfis stated they had also discussed applying this to other zoning districts and brought up the fact the minimum structure width was being changed in the R3, AR and FR Districts as well.

Vice Chairperson Jarecki stated they did not make single wide mobiles that small anymore; fourteen foot (14') is the minimum.

Secretary Arndt stated construction standards are higher and the thought was a more modern structure would be brought in meeting those standards.

Chairperson Hartmann stated the more modern mobiles had smoke detectors and such that are now required.

Mr. Caverson stated there was more to this and didn't feel all the changes proposed were being discussed; other districts were being changed also.

Mr. Hilgendorf stated safety issues were discussed at committee meetings in the context of these trailer park areas, not the whole world.

Mr. Brown stated the whole county needed to be treated alike; these subdivisions of trailers could not be treated different.

Mr. Mouch stated these subdivisions were originally platted for mobile homes and then zoned out. The intent was to review these subdivisions for a resolution.

Chairperson Hartmann suggested looking at the issue differently, losing the term 'rezone' and incorporating what's needed into the R2 Zoning District.

Mr. Mouch suggested bringing it back to committee.

Chairperson Hartmann agreed.

Secretary Arndt stated it essentially was a part of the R2 District the way the narrative was arranged. The standards could possibly be applied to other R2 areas.

Mr. Caverson questioned why replacement rights were being considered for trailers alone; there were multiple lots around lakes with structures that could benefit from this as well.

Mr. Mouch stated that issue had not been looked into; there were enforcements on lots within these subdivisions and the intent was to alleviate this issue.

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Vice Chairperson Jarecki questioned why replacing a trailer because of a fire, couldn't be considered an 'Act of God'.

Secretary Arndt stated they had previously been told by the County attorney 'Act of God' language needed to be included in the Zoning Ordinance.

Mr. Caverson stated there was a section in the ordinance pertaining to replacement. He thought that should be reworked instead of adding a new district.

Mr. Hilgendorf stated he did not believe the attorney's opinion stated they were doing anything wrong. He questioned if changing the year of a mobile being brought into the county would correct the problem.

The year electrical codes changed had been researched and fifteen (15) years was determined the age of a mobile home being brought into the County.

Mr. Mouch stated he was told fourteen feet (14') was the standard size width and the age would not change the current width allowed in the district.

Discussion ensued concerning low income housing issues.

Chairperson Hartmann closed the public hearing

Public Hearing Closed: 6:55pm

Advertised Case:

2. Otsego County Zoning Ordinance -- Zoning District Addition, Article 5b R2b Residential District:

District created for Mobile Home Zoning located in Bagley Township and Otsego Lake Township:

- a. **Bagley Township:** Gaylord Mobile Home Estates, Hidden Pines Mobile Estates, Maple Grove Estates I, Maple Grove Estates II and Parkwood Subdivision*
- b. **Otsego Lake Township:** Arbutus Beach Highlands*

Chairperson Hartmann stated this would be taken back to committee for further discussion, maybe look at it from another angle. A meeting was set for Friday, August 3, 9:00am. Committee members to include:

Mr. Hartmann
Mr. Arndt
Mr. Hilgendorf
Mr. Brown
Ms. Corfis

Michelle Noiro, Bagley Township Supervisor, stated the two points Bagley's Planning Commission and Township Board had based their decision on were, not penalizing a property owner for needing or wanting to replace a home that didn't meet zoning and not having that home replaced with something substandard.

Mr. Caverson stated he felt this was geared towards R2 only and was bias; he would like to see this expanded to cover other districts with smaller lots giving them replacement rights as well.

Unfinished Commission Business: None

New Business:

Chairperson Hartmann stated there were some new special use permits coming up; one was in Elmira Township for a cell tower located on M-32 across from Camp Sancta Maria;

Mr. Mouch stated there were two parcels in Livingston Township seeking special use permits for mining, two parcels in Bagley Township seeking special use permits for storage units and a fourth special use permit in Hayes Township for storage units as well.

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Reports and Commission Member's Comments:

1. Otsego County Parks & Recreation report/Judy Jarecki

Mrs. Jarecki stated July's Parks & Recreation meeting was being held concurrent to the Planning Commission meeting so she could not report on that yet. She stated they had met out at the Groen Preserve and discussed a future plan of what the County would like to do and what the Groen's had wanted done. A new parking lot and new driveway entrance to the Groen property was underway; the house was being turned into a museum to the Groens but would take some work to make it handicap accessible.

Mr. Brown questioned the new beach installed at the County Park saying he did not consider it a beach.

Mrs. Jarecki stated the new beach was the best that could be done; they had multiple other problems at the Park that needed attention, campsites had been under water in the spring from the snow, the boat ramp was repaired from the ice pushing on it, moving the ranger station to the new parcels purchased had to be postponed until fall because of the snow and ice, a new septic had to be installed as well as the dumping station and the electrical needed upgrading.

2. Land Use Services report/Jim Mouch

Mr. Mouch stated construction had begun on the Belle Tire store behind Awakon Credit Union.

Chairperson Hartmann adjourned the meeting.

Adjournment: 7:12pm by Chairperson Hartmann

Ken Arndt; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

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ATTACHMENT 1:

Directors Report 07/16/18

Good Afternoon,

On Friday July, 13 2018 and Monday July 16, 2018 statistics were gathered in relationship to Article Sb R2b- Residential District (Attachment-Article Sb R2b -Residential District) the intent of this amendment and the county's attorney opinion on this matter (Attachment-Rezoning of Plats in Bagley and Otsego Lake Townships to permit dwelling units of less than 20 feet in width) the following:

Otsego Lake Township

Correspondence (Attachment-Otsego Lake Township Correspondence)

Otsego Lake Township Table A
Data Analysis
Arbutus Beach Highlands

Single Wide Width <= 20'			% of Total
	110		45%
Double Wide Width >= 20'	19		8%
Site Built Width >= 20'	12		5%
Accessory Structure	8		3%
Vacant Lot	93		38%
Total	242		100%

Bagley Township

Correspondence (Attachment-Bagley Township Correspondence)

(Continued)

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Bagley Township Table B

Data Analysis

Gaylord Mobile Home Estates, Hidden Pines Mobile Estates, Maple Grove Estates 1&2, Parkwood Subdivision

Single Wide Width <= 20'			% of Total
	123		74%
Double Wide Width >= 20'	23		14%
Site Built Width >= 20'	2		1%
Accessory Structure	3		2%
Vacant Lot	15		9%
Total	166		100%

CMDA, Haider A. Kazim Attorney at Law
Opinion in "Quotes"

Criteria for Rezoning:

While the MZEA does not contain any required standards for the Planning Commission and the County Board of Commissioners to follow when considering a rezoning request, the following factors are among those that should be considered in evaluating a rezoning request. While all these factors are important, there is no general formula that has been articulated by the courts regarding how much weight should be afforded to anyone of these factors. Each rezoning request should be decided on its own facts.

1. Master Plan Designation

- a. "The MZEA requires that a zoning ordinance must be based on a plan and contain criteria and list of standard the plan must be designed to promote MCL 125.3203(1). Consistency with the County's master plan is the most important factor when considering the rezoning request."
- b. Directors Comments:
 - i. Currently both Bagley Township and Otsego Lake Township Sites are zoned R2-General Residential.
 - ii. Master Plan has no change in the residential usage of these sites.

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2. Consistency with Zoning Classifications in the General Area
 - a. "In determining the reasonableness of OCZO, the Planning Commission and the County Board of Commissioners should consider the purposes for which the property in the immediate vicinity is zoned."
 - b. Directors Comments:
 - i. Currently both Bagley Township and Otsego Lake Township Sites are zoned R2 General Residential.
 - ii. Master Plan has no change in the residential usage of these sites.
3. Consistency and Compatibility with General land Use Patterns in the Area
 - a. "Any amendment to the OCZO must be made with reasonable consideration of the general and appropriate trend and character of land, building, and population development. In reviewing the amendment, the county should consider whether the proposed new use is consistent and compatible with land uses in the surrounding area."
 - b. Directors Comments:
 - i. Reference Table A and Table B
4. Suitability of the Proposed Use in the Zoning District
 - a. "In amending the OCZO, the County must take into consideration the character of each zoning district and its peculiar suitability for the designated purposes."
 - b. Directors Comments:
 - i. Reference Table A and Table B
5. Reasonable Use Under Current Zoning Classification
 - a. "Whether property can be put to a reasonable use in the current zoning district is a factor to consider in evaluating a proposed rezoning to a new district. If a zoning classification renders property entirely without value, the zoning classification can be attached as confiscatory and unconstitutional and, additionally, the ordinance may affect a "taking" of property."
 - b. Directors Comments:
 - i. Reference Table A and Table B
6. Identifiable Public Need
 - a. "Under the MZEA, a use may not be totally prohibited within a community in the presence of a demonstrated need for that land use, with certain exceptions. MCL125.3207. When considering a rezoning request, the County may consider whether there is a need for additional land to be rezoned to a proposed classification. However, even when an applicant demonstrates an identifiable and public need, the County should review whether there is adequate land already zoned to accommodate that need. Specifically, mobile home parks generated a substantial amount of litigation during the last half of the twentieth century. Many of the court decisions arising from that litigation reference the need for a range of housing types to accommodate residential demand."
 - b. Directors Comments:
 - i. Reference Table A and Table B

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7. Spot Zoning

a. "Courts frown upon "spot zoning". The Michigan Supreme Court has defined "spot zoning" as "a zoning ordinance or amendment creating a small zone of inconsistent use within a larger zone." In *Trenton Dev Co v Trenton*, 345 Mich 353 (1956), the Michigan Supreme Court invalidated rezoning of three (3) city blocks to a single-family classification, where it was surrounded by areas zoned for multiple dwellings and commercial establishments. The court indicated that the inconsistency between the new zoning and the surrounding area, in the absence of any purported health, safety, or welfare considerations, was invalid. The court also noted that the general character of the entire neighborhood had not changed."

b. Directors Comments:

i. Reference Table A and Table B

8. Effect on Surrounding Property

a. "The County may also consider the effects of the uses that would be permitted by the rezoning request on surrounding property."

b. Director Comments:

i. Reference Table A and Table B

9. Diminution in Value

a. "The County can rezone property even if such action reduces the value of the property, AS LONG AS the result does not result in a "taking". The County is not required to rezone property for its most profitable use."

b. Directors Comments:

i. Reference Table A and Table B

10. Citizens Opposition Public Hearing July 16, 2018