CITY OF WIXOM
49045 PONTIAC TRAIL
PLANNING COMMISSION MEETING
MONDAY, MARCH 28, 2016

Approved
04/25/16

The meeting was called to order by Chairman Day of the Planning Commission at 7:30 p.m. at which time allegiance was pledged to the American flag.

PRESENT: William Day (Chairman), Phillip Carter, Cory Lupinacci, Peter Sharpe, Sandro Grossi and Ray Cousineau
ABSENT: Anthony McClerklin (Excused), Joe Barts (Excused) and Anthony Lawrence (Excused)
OTHERS: Carmine Avantini (CIB Planning), Carol Maise (CIB Planning) and Nancy Fisher (Recording Secretary)

Determination of a Quorum:
A quorum of the Planning Commission was present for this meeting.

Agenda:
No additions or changes were made to the agenda.

Approval of the February 1, 2016 and February 22, 2016 Planning Commission Meeting Minutes:
MOTION and seconded by Commissioners Lupinacci and Carter to approve the February 1, 2016 Planning Commission Meeting Minutes, **as amended**, and the February 22, 2016 Planning Commission Meeting Minutes.

VOTE: **MOTION CARRIED**

Correspondence:
City Manager's Update – February 23, 2016
City Manager's Update – March 9, 2016
City Manager's Update – March 22, 2016

Call to the Public:
There were no comments made by the public.

Unfinished Business:
There was no unfinished business listed on the agenda for this meeting.

New Business:

1. **PLANNING COMMISSION BY-LAWS.** A study session will be held to discuss a revised set of Planning Commission By-Laws prepared by the City planning consultants, CIB Planning, for review and recommendation to City Council. The draft By-Laws are consistent with the requirement of the Michigan Planning Enabling Act of 2008, Public Act 267 of 1976, as amended.

Ms. Maise noted that the changes the Commissioners requested are marked on the copies of the By-Laws in the Commissioners' agenda packets. Per their request, monthly Planning Commission reports were changed to annual. She omitted the last line of Article III.E. She wants to clarify Section II.A 'Absences'. The Commissioners struck "failure to make notification 24 hours prior to meeting". Commissioner Lupinacci agrees that this is the wording that the Commissioners requested. However, he

is now wondering what the difference is between an excused and an unexcused absence. Chairman Day believes it may come into play when City Council is looking at whether to remove a Commissioner from duty or for purposes of re-appointment. Chairman Day encourages documenting unexcused absences so that Commissioners are encouraged to advise of their absences. In the sentence in Article III, Section 2.A that refers to "total absences exceeding 25 percent", Chairman Day said it should be corrected to state cause "for" removal instead of cause "of" removal. Commissioner Carter noted that under Article III, Section 2 which states "Members shall effectively communicate", that sentence should end after "when they intend to be absent from the meeting" and start with a new sentence stating "Otherwise, the absence shall result in an unexcused absence". Chairman Day indicated that absences should be reported to both the Commission Chairperson and the City Building Department staff. Ms. Maise noted that she will make Chairman Lupinacci's noted change from "Alternative" to "Alternate". Ms. Maise noted that on page 5, Section 1 'Special Meetings', she made a change to the City staff since that secretarial position was omitted. The same change was made to Section 4.

Ms. Maise noted that under Section 5, she added "recording secretary". Commissioner Carter suggested that the wording reflect that the Commission Minutes be prepared by the Commission Recording Secretary. It was noted under Section 5(B) that the Commissioners do not sign the Minutes and that it should instead state that the Minutes will be considered for approval at the next meeting. Ms. Maise noted that the formatting was cleaned up under Article VIII, Section 3 'Quorum'. Also, under Article IX, Section 1 'Order of Business' distinguishing between No. 8 and No. 12 under 'Call to the Public', agenda and non-agenda items were split up.

MOTION and second by Commissioners Lupinacci and Sharpe to recommend to City Council adoption of the Planning Commission By-Laws which were reviewed by the Planning Commission at the February 1, 2016 Planning Commission and the amendments and edits considered at the March 28, 2016 Planning Commission meeting.

VOTE: MOTION CARRIED

2. **TRAINING.** Planning and zoning training will be presented to the Commission by the City planning consultants, CIB Planning, and is entitled "Planning Commission Roles, Planning & Zoning Duties."

Mr. Avantini noted that he has a short Power Point presentation tonight which may help both new and more senior Planning Commission members. The Commissioners must give balance to public interest and private property rights. While it may be easy to side with a vocal public majority or even an applicant, they need to keep the City's Ordinances in mind. Everything that comes before the Planning Commission first goes through the City's staff and there is a lot that goes on behind the scenes. The City staff also coordinates with the Building Department. The Planning Commission reviews site plans, rezoning requests, special land uses, and makes recommendations to City Council on zoning and Master Plan amendments.

Commissioner Lupinacci inquired about the recommended interval between Master Plan updates. Mr. Avantini said the State calls for 5 years. They recommended it in 2012 and it was distributed. However, it quickly became outdated. It will be condensed to be more user friendly. This will better reflect what is going on with the Ford property and changes along Wixom Road. They have also been working on zoning amendments.

The Zoning Board of Appeals (ZBA) reviews variance requests and can also review an appeal of an administrative decision or a decision made by the Planning Commission. Only variances which meet the

criteria are encouraged to go before the ZBA. If Mr. Avantini recommends denial of a variance request, that means that the applicant was not working with the City staff.

Mr. Avantini noted that Michigan is a home rule state. Unless the State tells the City it can or cannot do something, they have free reign to write Ordinances if they see fit. This authority comes from the Michigan Zoning Enabling Act.

Chairman Day asked whether the Mobile Home Commission Act is common to Michigan. Mr. Avantini said that it is unique to Michigan and so is the Condominium Act. He had never heard of site condos before he came to Michigan. In Michigan, you have to go to the State who reviews it which takes at least a year. So, the State devised the Condo Act which applies to site condos which can include master deeds and other elements which bypass the Condo Act. The Site Condo Act works pretty well compared to the Subdivision Act. Mr. Avantini noted that case law and Attorney General opinions also influence what the Planning Commissioners can do.

Generally, the Planning Commission makes decisions on site plans and special land uses and they can make decisions on Master Plan amendments. The Master Plan goes from the Planning Commission to City Council. In most instances, City Council approves the Master Plan since they are involved in the update process. The Planning Commission can recommend text amendments to the Zoning Ordinance and rezoning. The Master Plan guides and gives direction. The Zoning Ordinance is law. Sometimes the Master Plan and the Zoning Ordinance match and sometimes they do not. If they do not, it is usually a matter of timing and availability of infrastructure.

Commissioner Cousineau inquired about the difference between the municipal code and the Zoning Ordinance. Mr. Avantini said that the municipal code is a compilation of all laws which governs the City. The Zoning Ordinance is a chapter in the overall Code. Subdivision regulations are another chapter in the Code. Some communities have a subsection under the subdivision law which deals with platting and consolidation of platted and unplatted lots. The City is exploring this.

The Master Plan covers housing, land use, recreation, facilities, etc. You want to think about everything including the roads. In a mature community, a lot of these elements are already fixed in place. You have to evaluate where the parks are, where they are located and whether they meet the needs of the community. Commercial and industrial are the bigger issues for Wixom.

The Zoning Ordinance includes definitions, general provisions, defines various districts, development requirements, ZBA and administrative enforcement. Zoning is permitted as deemed appropriate. However, users have the right to reasonable use of their property. The term 'reasonable' can be tricky. It does not necessarily mean optimum value of the property but it has to be reasonable. Cases like this can wind up in Court and may be determined by a judge. Commissioner Grossi asked for a background description of the Stonegate development currently being contested. Mr. Avantini noted that it is the property at Charms and Wixom Road and provided him with a summary.

Chairman Day noted that if they were going for Consent Judgment and commercial were allowed on the corner, they would be allowed one commercial use consistent with zoning. He inquired whether the types of commercial uses could be limited in a Consent Judgment and in particular whether retail use could be forbidden. Mr. Avantini said that it depends on how it is settled. The community usually seeks summary judgment. He does not think that happened here since there is a Court date scheduled for May in Oakland County Circuit Court. Commissioner Lupinacci noted that the Planning Commission did not deny the first one but instead supported Planned Unit Development (PUD) residential for the entire thing which freed up the applicant to go forward under those constraints. However, this was not acceptable to the

applicant. Mr. Avantini said that the applicant will try to prove, through experts, that that is not financially feasible.

Mr. Avantini noted that the City has strong development requirements including buildings, architecture, landscaping and screening, parks, access and circulation, pedestrian facilities, lighting, signs, utilities and drainage which yield quality developments. The zoning map goes hand in hand with the text and defines where the land uses will be located. There used to be a lot of interpretation with the maps; however, that has been rectified with GIS systems.

General site plan approval is required on commercial, industrial and multi-family uses. Minor issues can be approved by the staff. They are reviewed for appearance, quality, safety and functionality governed by Ordinance standards. This includes administrative review by police, fire and the City's traffic consultant.

Mr. Avantini noted that a recent Arizona case, where a community discriminated against signs for a church, effected all Sign Ordinances which he recently wrote. You cannot look at the content of a sign. All Sign Ordinances must be content neutral including the definitions. The result is that signs must be unusually small, especially commercial signs which results in more variances and waivers.

The Ordinance covers permitted uses. Then there is another category called special land uses which are allowed but under certain conditions in order to prohibit things that are 'bigger' and 'badder'. It allows for controls which run with the land and offers review authority. It can be used to clean up sites that are not in compliance with previous site plans and can even result in revocation of special land uses.

There are two types of standards: 1) general (for all special land uses which meets the intent of the Master Plan and Zoning Ordinance; 2) special standards which applies to some but not all uses. There is a special part of the Special Land Use Ordinance which defines the uses it applies to.

The City can control the uses and the design of the development with planned unit developments. PUD's offer a lot more flexibility and he cited the example of the Village Center Area (VCA). There are a number of communities he has worked with where he has made the downtown a PUD. They did this with General RV. A PUD is its own zoning district and it is an overlay. In the GPUD, they identify what the overlying uses are and the property owners agree to it. It is like a contract.

Non-conformities are one of the most challenging things to deal with and there are generally three types: 1) uses; 2) buildings; 3) lots. Lots are usually the easiest with which to deal and they can still be built upon as long as it meets setback requirements. Buildings and uses are trickier although this does not usually happen unless it is part of a site plan. Nonconforming uses run with the land and not with the owner, regardless of who was responsible for it. It does not relate to the people involved. When you rezone to make something nonconforming, the user can take the City to Court which is why the City likes to avoid this. The City is the one who makes something nonconforming. If someone does something without meeting the Ordinance requirements or does not pull permits, it does not make something legal with the passage of time.

Mr. Avantini noted that he does not see a lot of rezoning requests. However, you need to look at: 1) is it consistent with the Master Plan? 2) is it compatible with the surroundings? 3) is it capable of accommodating all possible uses in that district?

Spot zoning used to be more common. Those are things that do not really belong and should not have been rezoned. They are usually smaller in size, are different and convey a benefit to the property owner. Neighborhood commercial means you do not have anything commercial around you. Condition rezoning is rezoning for 'certain uses and development'. You can go into a community when it is highly defined

with conditions that are agreed upon. That zoning can be revoked once conditions are no longer being met. The Planning Commission cannot ask for conditions and per the State, it has to be voluntary. This is also known as contract rezoning. It is a better tool than a use variance because it goes through an elected body and they have to prove that the intended use is acceptable to the community.

Keys to effective planning include having a plan and sticking to it, having a long-range plan and being persistent with the City's vision.

Call to the Public:
None.

Staff Comments:
Mr. Avantini noted that he continues to see a lot of projects coming in.

Commission Comments:
Chairman Day inquired whether it is true that Aldi's may be coming to Wixom. Mr. Avantini said that they have had conversations with them regarding one of the Menards' outlots.

Chairman Day noted that the Planning Commission has gone round and round with Static Controls using its billboard for advertising and they are now advertising for The Drafting Table. Maybe the Planning Commission and the City Council have different ideas about this. Mr. Avantini said that he has talked to the City Manager and the building staff responsible for enforcement. He has developed handouts regarding temporary signs and electronic signs which he will give to businesses. If they violate the regulations, the signs may be removed. Chairman Day noted that this has been going on for a couple years. How long should the City take a light handed approach? Commissioner Lupinacci requested a time frame for dealing with this and noted that it has been years. Mr. Avantini noted that it is on his radar and that Mr. Goodlein is concerned about following the rules. Chairman Day said that he has been hearing the same thing for a couple years but it only grows worse. Mr. Avantini noted that Code Enforcement is handled on a complaint basis. Mr. Avantini said that at the City's next joint meeting he will do a session on Community Image Building including the impact on the community. Chairman Day noted that the dentist office located at Maple and Wixom Roads has a permanent temporary sign (sandwich board style). Mr. Avantini noted that this will be dealt with.

ADJOURNMENT:
This meeting of the Planning Commission was motioned and adjourned at 8:56 p.m.

Nancy Fisher
Recording Secretary