

**CITY OF CHARLEVOIX**  
**PLANNING COMMISSION MEETING MINUTES**  
**Monday, May 13, 2013 - 6:00 p.m.**  
210 State Street, City Hall, Council Chambers, Charlevoix, MI

**I. Call to Order/Pledge of Allegiance**

The meeting was called to order at 6:02 p.m. by Chair John Hess.

**II. Roll Call**

Chair: John Hess

Members Present: Adam Whitley, RJ Waddell, Toni Felter, Judy Clock, John Elzinga, Sherm Chamberlain

Members Absent: Dan Buday, Becky Doan

City Planner: Michael Spencer

**III. Inquiry Into Potential Conflicts of Interest**

None.

**IV. Approval of Agenda**

No changes were requested by the Commission.

**V. Approval of Minutes**

Motion by Member Felter, second by Member Whitley, to approve the April 8, April 11, and April 23 minutes as presented.

Motion passed by unanimous voice vote, with Members Waddell and Elzinga abstaining.

**VI. Call for Public Comment Not Related to Agenda Items**

Chair Hess opened the meeting to public comment at 6:04 p.m. There were no public comments.

**VII. New Business**

A. Public Hearing on the 2013 Draft Zoning Ordinance

(1) Staff Updates

Planner Spencer advised the Commission that the legal review has been completed. Mr. Spencer will review recommended changes to the ordinance; however, these changes are not mandatory. If recommended legal changes are not made, legal counsel will probably recommend those changes again to the City Council. If Council makes any substantive changes to the ordinance, it will be returned to the Planning Commission for additional review and an additional public hearing.

(2) Call for Public Comment

Chair Hess informed the audience that he would like to receive comments as issues or topics arise. This will keep the flow of discussion smooth, rather than having the Commission discuss several topics and then revisit these topics during public comment.

(3) Review proposed changes

(a) Article 2

i. Section 5.8. Definitions E – F

- At the last meeting, the Commission changed the definition of "Easement" provided by legal counsel. Upon reviewing the change, legal counsel asks that the Commission return to their original recommendation. Specifically, the Commission had added the words: "... which benefits and/or burdens other land owners or which ...". Legal counsel does not believe it is appropriate or necessary to stipulate the burdening of land owners. The Commission stated that an easement which benefits one piece of land burdens the other piece of land. Planner Spencer reported that, since the easement follows the land and not the land owner, legal counsel's concern may be the word "owner." The Commission generally agreed to remove the word "owners" from the definition. Planner Spencer will discuss the use of the word "burden" with legal counsel. Planner Spencer stated that the definition specifies that an easement "grants rights to the public or a utility." Mr. Spencer would like to change that portion of the definition to read "to the public, a utility, or a third party." The Commission generally agreed.

Mary Eveleigh read a definition of Easement from *Black's Law Dictionary*.

- ii. Section 5.14. Definitions R – S
  - As requested at a previous meeting, a definition for “Residence” was researched. According to *Black’s Law Dictionary*, a residence is “the act or fact of living in a given place for a period of time.” There was no public comment on this item. The Commission generally agreed to add the definition as presented by *Black’s Law Dictionary*.
- (b) Article 3, Mapped Districts
  - i. Section 5.20. City of Charlevoix Zoning Map
    - As requested, the zoning map has been changed to reflect a zoning district of R4, High Density Residential, for the property on Kipke Lane.
- (c) Article 4, Residential Districts
  - i. Section 5.27. Area, Height and Placement Requirements
    - In subsection (1) Lot and Width Requirements, the planning consultants recommended changing the minimum lot area to 15,000 sq. ft. and the minimum lot width to 80 ft. in the R4 Zoning District, based on the master plan and requirements of other communities.
    - In subsection (4) R4 District Additional Requirements (a) Development Standards, legal counsel suggested removing some of the general development standards that were vague.
    - In subsection (4) R4 District Additional Requirements (b) Development Requirements, staff recommends a minimum distance of 40 feet between buildings, based on the Fire Chief’s recommendations.
    - Legal counsel also recommended moving verbiage regarding landscaping to the Landscaping section of the ordinance.

There was no public comment regarding these changes. The Commission generally agreed to these changes.
- (d) Article 5, Nonresidential and Mixed Use Districts
  - i. Section 5.31. Schedule of Uses
    - In Table 5.31., which shows allowed uses in the Non-Residential and Mixed Use zones, staff recommends changing Boathouses to a Permitted Use by Right in the Marine Commercial District (MC). It was never intended that Boathouses be subject to a Special Land Use permit in this district, only in the R1 District.

There was no public comment regarding these changes. The Commission generally agreed to these changes.
- (d) Article 7, Use Requirements
  - i. Section 5.46. Accessory Buildings and Uses
    - Subsection (1) Accessory Buildings and Structures, has been completely revised. Planner Spencer reviewed this section and the reasons for the proposed language. The Commission discussed various types of carports that do not require foundations. The Commission generally agreed that stand-alone carports are not allowed.

Michael Esposito asked if the restriction for stand-alone carports applied only to residential districts, or to all districts. Planner Spencer explained that it does apply to all districts, but the use on his industrial property is not as an accessory structure; it is a primary use. The Commission generally agreed to create an exemption for the use of stand-alone temporary structures in the Industrial District.

- (e) Article 5, Nonresidential and Mixed Use Districts

Council member Shirley Gibson asked to discuss Boathouses in the Scenic Reserve district and shared concerns about allowing structures in this district. Planner Spencer explained that the only scenic reserve area that would allow boathouses is in the Belvedere Club; however, there are several areas throughout the City, including parks, that are zoned Scenic Reserve and allow structures such as pavilions. Relating to discussions specifically involving the “island”, Planner Spencer stated that he doesn’t believe the Department of Environmental Quality (DEQ) would ever allow a structure on the island. Additionally, any structure must be accessible by fire personnel and equipment; in order to build a structure on the island, the Chicago Club would need to build a bridge to the island for fire access. Planner Spencer explained how the Scenic Reserve is more restrictive than in the previous ordinance.

Mary Eveleigh reported that if a Conservation Easement has ever been granted for any of these properties, then development will never be allowed on the property and if the easement was granted through a federal tax incentive, the City may be unaware of the easement. Planner Spencer reported that there are no Conservation Easements in the entire City. Chair Hess stated that any easement would be recorded at the County and that could be checked at that office.

(f) Article 7, Use Requirements

i. Section 5.46. Accessory Buildings and Uses

- Subsection (3) Bed and Breakfast Establishments has been modified to indicate “whenever the bed and breakfast is open for renting of rooms, the residence shall be occupied by the owner or innkeeper at all times.” Additionally, language was added to indicate that sufficient parking must be available “on site or within 300 feet of the property.” The Commission generally agreed.

Councilmember Gabe Campbell asked for, and received, clarification on parking requirements for Bed and Breakfast establishments.

- In Subsection (5) Day Care: Group Day Care Home, Planner Spencer recommends deleting that portion of the subsection which does not allow day care or adult foster care homes within 500 feet of each other, but maintaining that requirement for proximity of a day care to a correction facility or substance abuse treatment facility. The Commission generally agreed. Legal Counsel requested that the requirement to maintain visual characteristics of the property be consistent with the neighborhood, as this requirement would be subjective. Planner Spencer also suggested that sections (c) and (e) regarding recreation space and drop off/pick up areas are not necessary, as they are either regulated by the State or over-regulation. The Commission generally agreed to all these changes.

ii. Section 5.47. Residential Uses

- Subsection (3) Site Condominiums (j) Variances should authorize the ZBA to permit a variance. Current language gives that authority to the Planning Commission and Council. Planner Spencer recommends changing this to the ZBA, since they are trained to issue variances. The Commission generally agreed that the ZBA is the appropriate board to issue variances.

iii. Section 5.48. Lodging, Dining and Entertainment Uses

- In Subsection (1) Sexually Oriented Businesses (c) Locational Requirements, Planner Spencer recommends allowing sexually oriented businesses only in the Industrial District and reducing the minimum distance between the establishment and other listed buildings/parcels to 300 feet (from 1000 feet). If the minimum distance is not increased, there is only one location in the industrial park where these businesses would be allowed; by increasing the minimum distance, the City ensures that there are sufficient choices for a prospective business owner to prevent most legal objections.

There was no public comment to these changes, and the Commission generally agreed.

iv. Section 5.55. Other Uses

- In Subsection (3) Similar Uses, legal counsel recommends deleting subsection (c) because the Zoning Administrator should not have the discretion for sending a decision to the Planning Commission when the section already allows an applicant to do so. The Commission generally agreed.

(g) Article 8, General Provisions

i. Section 5.64. Grading

- Planner Spencer recommends eliminating subsections (2) Elevations at Lot Lines and (3) Finished Grade, as many properties are not the same elevation at the property line due to sloping topography throughout Charlevoix. Planner Spencer noted that the Planning Commission could add language to prohibit filling to artificially increase the grade of the property, applying for a permit based on the artificial grade, and then building on the artificial grade. There is language under the section for Boathouses prohibiting artificial grades; this language could be used in this section also, or new language could be created. The Commission generally agreed to add a subsection stating “Property

owners shall be prohibited from creating an artificial grade prior to application for the zoning permit.” Planner Spencer noted that similar language has been added to the fence section of the ordinance.

- ii. Section 5.65. Fences and Walls
    - Planner Spencer recommends adding subsection (3), which allows for decorative caps on fences which do not extend greater than six inches above the maximum allowed height of the fence.
  - iii. Section 5.70. Site Excavation
    - Legal counsel recommends deleting the entire section for temporary permits, stating that it would be simpler and less costly to prohibit the accumulation of stagnant water than to require a “suitable agreement.” The Commission generally agreed that this section could be eliminated.
- (h) Article 9, General Site Development Requirements
- i. Section 5.81. Landscaping
    - In a previous meeting, Mr. Esposito had suggested that a performance guarantee should not be required of the property owner (Subsection (2)(a)). Planner Spencer suggested that the Planning Commission review this language to decide if a performance guarantee “shall” or “may” be required, or if the requirement should be deleted altogether. This section applies to Commercial or Industrial properties, not Residential properties.

Mr. Esposito clarified his comments, stating that a performance guarantee that “may” be required for construction, but “shall” be required for landscaping, seems disproportionate. Planner Spencer stated that the use of “may” can be implemented for many reasons, including the size of the project.

Chair Hess noted that landscaping is often a delayed portion of a development project, and the performance guarantee will ensure that the landscaping gets completed. The Commission generally agreed to use the word “shall” in requiring a performance guarantee.

- In subsection (2) General Requirements (l), Planner Spencer suggested adding circumstances in which the Planning Commission may allow a deviation for the requirements of the Landscaping Section, and reviewed these circumstances with the Commission.

Ms. Eveleigh suggested that the Planning Commission require the use of native vegetation when landscaping is required near water.

Larry Levensgood was asked to comment, as he is a member of the County Planning Commission. Mr. Levensgood stated that most ordinances require landscaping, but are not usually specific. Sometimes, non-native species work just as well as native species, so long as it is non-invasive.

Member Clock suggested that the ordinance include language that landscaping is ecologically responsible. Chair Hess stated that including language that states the Planning Commission “may” request input from outside parties, such as the Shade Tree Commission, may be beneficial in this section.

- In subsection (3) Buffer Areas (a), the Commission decided that use of a buffer area “may be” required where any use in a business or industrial district is adjacent to residentially zoned land. This allows the Planning Commission to look at the issue on a case-by-case basis.
- Subsection (8) Parking Lot Landscaping (b)2. allows for the absence of curbs where storm water runoff can be managed without the use of curbs. The Commission generally agreed.
- In subsection (9) Fencing, Screening and Walls, Planner Spencer does not see the need for screening around a staging, loading, or unloading area. The Commission generally agreed.
- In reference to properties greater than one acre, subsection (10) Landscape Site Plan Requirements, currently requires the landscape architect to be licensed in the State of Michigan. The Commission discussed this requirement, and decided to delete it.

- ii. Section 5.82. Lighting
  - Because the language is vague and discretionary, legal counsel recommends eliminating subsection (4) General Requirements (c) and subsection (6) Lighting Plans (b). The Planning Commission reviewed the language and generally agreed to eliminate these sections.

Member Clock asked if times for parking lot lighting are regulated by the City. They are not.

- iii. Section 5.83. Trash Receptacles
  - Based on earlier discussions, the construction materials of vinyl, plastic, or wood have been added to subsection (1)(d). The Commission generally agreed to this change.
- (i) Article 10, Off-Street Parking, Loading, Access and Circulation
  - i. Section 5.92. Parking Requirements and Limitations
    - Based on earlier discussions, minimum parking requirements have been reduce by approximately 20%. Waivers are still available for businesses that front Bridge Street in the downtown district. Planner Spencer deleted a reference to allowing owners to exceed the minimum parking requirements by 10%; property owners can still exceed minimum requirements if approved by the Planning Commission. The Commission generally agreed to these changes.
  - ii. Section 5.93. Parking Alternatives
    - Subsection (6) Payment in Lieu of Parking is the same verbiage as the existing ordinance. Legal counsel reviewed the language and does not see the need for modifications.
  - iii. Section 5.94. Off-Street Parking Facility Design
    - Subsection (1) Off-Street Parking Location and Setbacks (b) Front Yard Limitations, acronyms have been added to clearly identify the districts affected by this section. The requirement of this section prohibits parking in the front yard setback for the Central Business, General Commercial, Professional Office and Commercial-Mixed Use districts.
- (j) General Information

Planner Spencer reported that, based on input from the planning consultant, the City's general commercial district, formerly known as C-1, has been changed to GC, or General Commercial.
- (k) Article 11, Signs

There were no recommended changes from Planner Spencer.

Tony Duerr noted that he was happy that the language regarding changeable message boards had been deleted. Mr. Duerr asked if there is still a prohibition on off-premises signs. There is. Mr. Duerr noted that the Michigan Court of Appeals had struck down a prohibition on off-premises signs. Mr. Duerr strongly recommends that the Planner ask legal counsel to review this case law and make a determination to protect the City.

Mr. Duerr noted that the ordinance permits banners on the north and south of town. Mr. Duerr stated that if the banners are placed adjacent to the right of way they violate Michigan law, and if they are placed in the right of way the banners violate Federal law. Mr. Duerr realizes that this is an awkward situation for the City. It is difficult to enforce a law that contradicts other law, especially when the City puts banners up. Mr. Duerr does not feel the banners are a problem or offensive, but is concerned with the Federal and State law violations. Mr. Duerr suggested that the City take out the verbiage that permits banners and then turn a "blind eye" to the placement of the banners. This may or may not put the City in a better legal position. Legal counsel has not checked into these contradictions. Planner Spencer noted that the language helps keep the banners limited to those areas and non-profit purposes.

- (l) Article 12, Site Plan Review
  - i. Section 5.116. Applicability.

This section defines when a Level A versus a Level B review must be done. Planner Spencer asked the Commission if they felt the criteria should be 5,000 sq. ft., 2,000 sq. ft., or a different size, and explained why he believed 5,000 sq. ft. is too much for Charlevoix. On a similar issue, Planner Spencer noted that

additions to existing buildings require a Level A review when the addition is not larger than 50%. Planner Spencer suggests reducing that to 20%. The Commission generally agreed to 2,000 sq. ft. and 20%. [Subsection (1)(a) and (1)(b).]

Michael Esposito noted that subsection (1)(d) states that the zoning administrator “may, at their sole discretion, submit the site plan to the Planning Commission.” Mr. Esposito is concerned about the language, which seems to indicate that the Zoning Administrator is responsible for presentation, costs related to this submission. Planner Spencer is not concerned: The standards for Level A and Level B are the same, and the fees are the same. Mr. Esposito suggests changing the language to read “the zoning administrator may require the applicant to go through a Level B review”, and explained his reasons. The Commission generally agreed to this change.

Mary Eveleigh asked how this requirement would affect boathouses and was told that, regardless of size, boathouses require a special use permit and related review.

- ii. Planner Spencer informed the Commission that legal counsel had reviewed section 5.22. Performance Guarantee, and had no recommended changes to the language.

(4) Call for Public Comment

Chair Hess opened the meeting to public comment at 8:05 p.m.

Mary Eveleigh reported that the DEQ recommends use of natural vegetation along the shoreline for erosion control.

Ms. Eveleigh referred to discussion in previous meetings about vertical seawalls; the DEQ recommends a more natural structure that can withstand conditions and that a goal of alternative shorelines is to avoid the installation of vertical seawalls, as the vertical seawall is more detrimental to the waters. Ms. Eveleigh also asked that the City should pay attention to pesticides, herbicides, and fertilizers since there is no protection from those chemicals going into the water. This could be accomplished by requiring a green belt along the shoreline.

Chair Hess believes that the City of Charlevoix has done an excellent job of shoreline protection.

Chair Hess closed public comment at 8:12 p.m.

Chair Hess called for a short recess at 8:12 p.m. The meeting resumed at 8:19 p.m.

(5) Review proposed changes (continued)

(a) Article 14, Planned Use developments (PUDs)

i. Section 5.141. Qualifying Conditions

The Planning consultants recommend reducing the minimum site size of one-half acre, or 21,780 sq. ft.. City Council may rezone smaller sites, based on specific criteria. The Commission generally agreed to the reduced size.

(b) Article 17, Zoning Board of Appeals

i. Section 5.180. Decision of the Board

Legal counsel recommends deleting language that specifies the amount of time the ZBA has to make its decision on an application and appeal, giving the City more flexibility.

(c) General information

Planner Spencer reviewed proposed language for fees and escrows with the Commission. This would be new language to the ordinance. The Commission agreed that the language was appropriate and should be added.

The Commission had discussed zoning of the Kipke Lane properties at an earlier meeting. Planner Spencer discussed the zoning with the Belvedere Club; the Club would like the properties zoned R4. The Commission agreed to this zoning change.

Michael Esposito noted that the current ZBA was established by the current Zoning Ordinance and asked if passage of the new ordinance will require dissolution of the existing ZBA and establishment of a new ZBA, with new or existing members being appointed to the new Board. Planner Spencer stated that he does not believe the Board needs to be dissolved, they administer the existing ordinance; however, Planner Spencer will check with legal counsel to be sure.

Following comments by Mary Eveleigh, the Commission decided to revise Article 17, Section 5.178. Powers and Duties, subsection (7) Use Variances (d) Use Variance – Decision of the zoning board of appeals. 5. Use Variance Standards for Review b. Unique Circumstances to read “these features make it impossible for the applicant to reasonably use the property.”

(6) Motion

Motion by Member Whitley, second by Member Chamberlain, to recommend approval of the 2013 draft [zoning] ordinance as amended.

Motion passed by unanimous voice vote.

**VIII. Staff Updates**

Planner Spencer thanked the Commission for their hard work and suggested that the Commission did not need to meet in June. The draft ordinance will go to the City Council to set their public hearing.

In July, the Commission will need to review and possibly adopt new by-laws and draft a resolution stipulating which City projects need Planning Commission review. The resolution can reference the gift/donation policy. Future meetings will return to the 7:00 p.m. meeting time.

**IX. Requests for Next Month’s Agenda or Research Items.**

None.

**X. Adjournment**

Chair Hess announced that, if there were no objections, the meeting would adjourn. There were no objections.

Meeting adjourned at 8:41 p.m.

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Stephanie C. Brown

Deputy City Clerk

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John Hess

Chair

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Carol A. Ochs

City Clerk