

CHARTER TOWNSHIP OF MONITOR
REGULAR TOWNSHIP BOARD MEETING
MARCH 12, 2012

The Supervisor called the meeting to order at 7:00 p.m.

Members present: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller
Members absent: None

The Pledge of Allegiance was recited by all present.

Public Input opened at 7:01 p.m. No public present wished to speak and public input was closed.

Motion by Malkin supported by Kochany to adopt the agenda as presented.
Motion carried.

Motion by Pike supported by Miller to approve the minutes of the February 13, 2012 regular meeting as presented.
Motion carried.

Motion by Pike supported by Miller to pay the bills in the amount of \$39,344.79 from General Fund.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

Consideration of First Reading of Ordinance 52-R ó Amendment to Rezone Property in VCTP
B. Bartlett, representing Central Michigan Railroad who is the current property owner of Lot 2 in VCTP was present.

The Clerk provided to board members her correspondence to the Planning Commission Chairman and attorney regarding concerns relating to the rezoning of Lot 2 from Industrial to Commercial zoning. The main concerns were: 1) The rezoning application was submitted by COPOCO, the potential purchaser of the property and not Central Michigan Railroad; 2) The fact that the road right-of-way property had not been relinquished by the township at the time the rezoning application was filed and considered by the planning commission; 3) The rezoning of the property is not in compliance with the township's master plan and by so doing would set a precedent for all future rezoning decisions; and 4) What potential impact the rezoning to commercial would have on the established industrial development district as it relates to IFT's. Arnold stated he did vote at the planning commission meeting to recommend the rezoning request. Having given the application a more thorough review, Arnold questioned the legality of the application submitted for rezoning without an authorization letter from the owner being on file.

Kochany questioned the setting of a precedent regarding allowing the submission of a rezoning application by the non-owner of the property.

Miller stated his concern is not so much its non-compliance to the master plan but that it would attract consumer business to the industrial park.

Kowalski stated she does not have anything against COPOCO purchasing the property and is in favor of business coming in to the park which would generate more tax revenue for the township. Her issue is that the same end result could be achieved by COPOCO submitting an application for a special use permit, as has been the past practice in the tech park, whereby eliminating the need to rezone the property, spend additional tax dollars to update the master plan to make it compliant or set the precedent of rezoning property inconsistent with the master plan.

Brandt stated Austin was out of town when the initial question came up. He was advised by Sheppard, the planning commission attorney, that rezoning would be the cleaner way to go. Brandt also referred to Austin's legal opinion dated March 5, 2012, in which Austin states, "the issues raised by Ms. Kowalski are not so fundamentally troubling as to require me to caution the Township against approval".

Malkin stated he was at the planning commission meeting when this item was being considered. Malkin stated the township planner and Sheppard went on record at the planning commission meeting that the rezoning request was consistent with the commercial zoning across the street on the east side of Mackinaw so as to not be considered "spot zoning". The Planning Commission also passed a motion at that meeting, to adopt McKenna's cost estimate to update the master plan and request a budget adjustment from the township board.

Kowalski stated the Master Plan underwent a thorough update in 2006. In fact, the future land use map was updated at that time, changing the future zoning on the east side of Mackinaw from commercial to industrial so Fabiano could go in. Now we are being given the opposite argument to change the future zoning for COPOCO from industrial to commercial. The Planning Commission was discussing last year if an update to the master plan was needed because there were no "significant changes" to the adopted master plan (which could have been done with minimal township cost). Now we are being asked to do another expensive change to remain in compliance. The planner cannot say the rezoning request is OK when considering the rezoning request and then state the importance of the Master Plan compliance with existing zoning when submitting the reasons to update the master plan.

Motion by Miller supported by Malkin to have this meeting serve as First Reading of Ordinance 52-R, an Ordinance to rezone lot 2 and the relinquished road right-of-way in VCTP from industrial to commercial zoning and set Second Reading of this ordinance for the March 26, 2012 regular meeting.

Roll call vote:

Yes: Brandt, Pike, Arnold, Malkin, Miller

No: Kowalski, Kochany

Absent: None

Motion carried.

Planning Commission Recommendation Regarding McKenna Proposal to Update Master Plan

Kowalski wanted to make the board aware that the proposal submitted by McKenna to update the Master plan does not include paying for their attendance at any additional meetings or doing more than one draft of the master plan. Any draft revisions will be at an additional cost.

Malkin stated the 2012 Township Planner budget account (401) is \$20,000 for 2012. Last year the costs were approximately \$4,000 less than that. Malkin questions if a budget adjustment for the master plan is needed at this time.

Kowalski stated that because actual costs are not known, she would suggest waiting until further in the year to see if a budget adjustment is needed.

Motion by Malkin supported by Pike to direct the Planning Commission to update the Master Plan and approve the proposal dated March 8, 2012 from McKenna for additional professional services to update the Master Plan in the amount of \$7,550.

Roll call vote:

Yes: Brandt, Pike, Arnold, Kochany, Malkin, Miller

No: Kowalski

Absent: None

Motion carried.

Possible Referral to Planning Commission ó Sign Provisions in Ordinance 52, Chapter 15

Brandt stated shortly after the township amended the sign provisions in Chapter 15 of the Zoning Ordinance (52-F), the ZBA granted a variance for McDonalds to change their LED sign more frequently than the time stated in our ordinance. Since then, there have been other people who would like to change, or put up new LED signs and also have the message board change more frequently. Brandt would like to have the Planning Commission review the sign provisions and suggest they consider changing the frequency for signs in commercial or industrial districts from once every 4 hours as stated in 15.06 (g), to once every 4-6 minutes.

Miller stated he is in favor of keeping the existing language. If a business wants to change the message on their sign more frequently they can come to the ZBA for a variance but should know that the current ZBA board does not consider financial hardship as a reason for granting a variance.

Motion by Brandt supported by Arnold to refer Chapter 15 of Zoning Ordinance 52 to the Planning Commission and request they review the provisions stated in the ordinance relating to, and governing, LED signs.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin,

No: Miller

Absent: None

Motion carried.

Fire Chief Recommendation ó Resignation of Firefighter J. Karnath

Motion by Pike supported by Malkin to accept the resignation of on-call firefighter J. Karnath as requested by the Fire Chief in his letter dated February 21, 2012.

Motion carried.

Supervisor Recommendation - DDA Member Appointments

Motion by Brandt supported by Malkin to reappoint Amy Lyday and Connie Schweitzer to the Monitor Township DDA Board for the terms of office commencing on April 1, 2012 and ending on March 31, 2016.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

Road Improvements for 2012

Brandt supplied to the board copies of the road condition ratings and road traffic counts for the local roads in the township.

Brandt requested that in lieu of having a roads committee, board members review this information and bring road work recommendations to the next meeting so cost estimates can be obtained from the Road Commission. Brandt additionally requested board members to offer suggestions of roads needing improvement to update the township road five-year plan.

SUPERVISOR'S REPORT

Brandt provided board members a listing of upcoming meetings that impact the township and encouraged board member attendance.

The meeting adjourned at 9:01 p.m.

Cindy L. Kowalski, Clerk

Gary A. Brandt, Supervisor

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March 5, 2012

Mr. Gary Brandt, Supervisor
Charter Township of Monitor
2483 E. Midland Rd.
Bay City, Michigan 48706

RE: Proposed RE-ZONING OF LOT 2 - STRAITS DRIVE

Dear Mr. Brandt:

You have requested my opinions regarding the proposed re-zoning of Lot 2 of the Industrial Park which consists of 2,994 acres of land now zoned Industrial (I-1), located on the northwest corner of Straits Drive and South Mackinaw Road. More specifically, you have requested my opinion on the issues raised in Ms. Kowalski's e-mail correspondence of February 13, 2012, and February 15, 2012, questioning the wisdom of this request. From these e-mails I have identified the following concerns:

- 1) Would the proposed re-zoning constitute "spot zoning"?
- 2) Could the proposed use (credit union) be accommodated by special use approval, and, if so, would this be a more appropriate method for the Township to use?
- 3) Would the proposed re-zoning constitute a violation of the Township's Master Plan, and if so, would this set a precedent for future re-zoning requests (presumably along the west side of Mackinaw Road)?
- 4) Would the proposed re-zoning jeopardize the integrity of the Industrial Development District itself? Would the Township be put to the expense of re-defining the District or the District's boundaries?
- 5) Is COPOCO a proper party to request re-zoning property owned by the Central Michigan Railway?

Please be advised that prior to preparing this correspondence I have had the opportunity to review the following documents:

- *Attorney Sheppard's e-mail correspondence to Ms. Kowalski dated February 16, 2012,
- *John R. Jackson's planning review of the proposed re-zoning dated January 31, 2012,
- *Minutes of the Planning Commission's February 7, 2012, meeting recommending the re-zoning request.
- *(recorded) Affidavit of William F. Bartlett; Resolution of the Bay County Board of County Road Commissioners; Resolution-Relinquishment of Public Right-of-Way (adopted February 13, 2012 by the Monitor Township Board);
- *Correspondence from William Bartlett to Gary Brandt dated February 22, 2012.

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March 5, 2012
Mr. Gary Brandt
Re: Re-zoning Lot 2-Straits Drive

In preparing this opinion I have also reviewed Act 198 of 1974 (MCL 207.554), as amended.

It is important that I preface this opinion with the following perspective. I am the Township Attorney. It is my responsibility to keep the Township from taking action that are illegal or which are likely to result in litigation which would result in financial damages being awarded against the Township. In matters of judgment as to which one of two lawful choices is preferable, it is not my place to express any personal opinion. My opinions regarding this proposed re-zoning, therefore, relate only as to whether or not any of the issues raised by Ms. Kowalski are so fundamentally troubling as to require me to caution the Township against approval—and not as to whether or not the re-zoning is or is not the better course of action.

Spot Zoning - Quoting from Mr. Jackson's review, "...the building to the south of Straits Drive is built to accommodate commercial uses and the area on the east side of Mackinaw is planned, zoned and currently used for commercial businesses. The intersection of Straits and Mackinaw is developing as a commercial road." As Mr. Sheppard's e-mail points out, the commercial zoning on the east side of Mackinaw Road extends to the center of the roadway.

Given the commercial nature and zoning of the area I do not believe a Judge would invalidate a commercial re-zoning on a "spot zoning" basis.

Special Use Approval vs Re-zoning - There is little question that a credit union type commercial use could be located at the site by special use approval. In my telephone discussions with Attorney Sheppard and Attorney Darhee the proposed purchaser of the property is not interested in locating its business at this location with special use approval (and its inherent restrictions on uses and subsequent users).

Master Plan Concerns - There can be no question that the proposed re-zoning is not consistent with the Master Plan and that it would indeed set a precedent for future commercial re-zoning requests in this area also contrary to the existing Master Plan. Mr. Jackson's review candidly admitted these points.

While the re-zoning may call into question the viability of a portion of the 2006 Master Plan, I leave to the members of the Township Board the obligation to assess how vital that viability in this area that may be. Mr. Jackson suggests the Plan should be revisited to "make sure the plan matches the current development objective for this intersection".

Integrity of the District - My review of Act 198 of 1974, as amended, and the appellate cases reported which involve this legislation give me no reason to believe that the proposed re-zoning would destroy the integrity of the established District or require the Township to re-establish the District boundaries.

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March 5, 2012
Mr. Gary Brandt
Re: Re-zoning Lot 2 Straits Drive

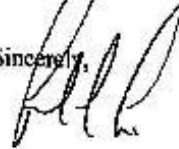
Standing to Seek Re-zoning - It is my opinion that COPOCO Credit Union, which based upon the representations of Mr. Bartlett, has a pending Purchase Agreement to purchase the subject property, and which has been given the full support of the Central Michigan Railway Company for the proposed re-zoning, has sufficient standing to seek the proposed re-zoning.

Accordingly, it is my opinion that there is no legal reason why the Township Board cannot approve the re-zoning request.

In closing I do wish to address one specific comment contained in Mr. Bartlett's correspondence of February 22, 2012. While the Clerk has most certainly made her concerns regarding this re-zoning request known by asking the questions referenced above, she has never refused to perform her duties as Clerk and place this matter before the Township Board for its consideration in due course. In fact, this Clerk, has in her usual conscientious fashion, gone above and beyond her duties as Clerk and prepared the proposed Ordinance approving the re-zoning request. I reviewed that proposed Ordinance this morning, and, as usual, found it to be most suitable for the Board's consideration.

Should you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Richard L. Austin

RLA/bn

cc: Cindy Kowalski, Clerk
Attorney Richard Sheppard