

**PLANNING COMMISSION**

**Minutes**

**Special Meeting**

**January 30, 2007**

I. ROLL CALL

Fred Walstrom	Present
Andrew Bowman	Absent
Jack Deegan	Present
Jeff Ford	Present
Mary Ellen Hughes	Present
Laura Kors	Present
Sheryl McCleery	Absent
Peter Sears	Present
Sara Smith	Present

Also present were City Planner Larry Nix, City Attorney Jim Ramer and City Manager Fred Geuder.

Fred Walstrom called the meeting to order at 6:00 p.m.

II. MINUTES

Motion by Hughes, seconded by Sears, to approve the minutes of the January 18, 2007, regular meeting, as presented. Motion carried.

III. NEW AND OLD BUSINESS

- A. Consideration of Proposed Downtown Hotel Plan—Rob Mossburg
  - a. Proposed Re-zoning of TR property to CBD
  - b. Proposed Special Land Use for Hotel
  - c. Proposed PD Overlay District

Walstrom noted that there were potential conflict of interest issues to be considered and asked the City Attorney to comment.

City Attorney James T. Ramer outlined the process which had been developed for consideration of a conflict of interest question.

In accordance with that process, Ramer noted that he had been contacted by Commissioners Jeff Ford and Peter Sears, to discuss possible conflicts of interest.

Concerning Ford, Ramer noted that Ford had previously had discussions with Rob Mossburg about future potential joint ventures, but those discussions were not about the hotel, and there are no current discussions on-going. Ramer stated that Ford does not have a financial interest in the hotel or the Cottage Company (the applicant), and has stated that he (Ford) will not be part of the hotel project, and accordingly, Ramer gave his opinion that Ford does not have a financial conflict of interest. But because Ford had previously abstained from voting on the recommendation to Council on the Ordinances to define the condo-hotel and to allow for a Planned Development in

the CBD, Ramer said the Planning Commission should review Ford's status, and under the process for determining whether a member has a conflict of interest, the Commission must unanimously vote that Ford has no conflict of interest in order for Ford to take part in the discussion and vote on the hotel project.

Concerning Sears, Ramer noted that Sears' son Rob Sears is engaged as an architect by the applicant. Peter Sears has stated (as has Rob Sears), that Peter Sears has no financial interest in the hotel or his son's architecture business. Ramer stated that in his opinion Peter Sears does not have a financial conflict of interest. But because Peter Sears had previously abstained from voting on the recommendation to Council on the Ordinances to define the condo-hotel and to allow for a Planned Development in the CBD, Ramer said the Planning Commission should review Peter Sears' status, and under the process for determining whether a member has a conflict of interest, the Commission must unanimously vote that Peter Sears has no conflict in order for Peter Sears to take part in the discussion and vote on the hotel project.

Ramer suggested that the other Commissioners ask questions of Ford and Sears if they had any.

Peter Sears noted that at the time he had previously abstained, he did not know the specific rules for conflict of interest, and he had asked that the process be put in writing, which was done.

Smith asked Ford if he was involved in partnership discussions with Mossburg.

Ford stated that essentially discussions with Mossburg along this line had ceased. Ford acknowledged that he was a friend of Mossburg and that he did talk with Mossburg about business in general.

Jeff Ford and Peter Sears stepped down from the table. The Commission discussed the potential conflicts.

Kors said she felt that in Ford's case the process had been followed, and she was comfortable with Ford voting.

Motion by Kors, seconded by Hughes, that Ford be permitted to participate in the hotel discussion and vote on the questions before the Commission. Motion carried unanimously.

Walstrom noted that in a small town, you will often have different people knowing each other and talking to each other. The issue on Sears is whether he would make a different decision on this project because his son was working on the project, than he would with another project involving a different architect.

Deegan said he agreed with Walstrom's point about small towns, and did not believe Sears would show any favoritism. Deegan asked Ramer whether Peter's son being the architect made Peter conflicted under the law.

Ramer stated that it did not.

Smith noted that the architecture of the building is only one part of the overall project.

Motion by Deegan, seconded by Hughes, that Peter Sears be permitted to participate in the hotel discussion and vote on the questions before the Commission. Motion carried unanimously.

Ford and Sears resumed their seats at the table.

The City Manager noted that additional correspondence on the Project had been received and had been distributed to the Planning Commission, and will also go to the City Council members. He further noted that correspondence from the Woods' attorney stating that they were opposed to the project had been received and had been distributed to the Commission, along with a letter from Steve Witte stating that the value of the Woods' property would be diminished by the proposed hotel project.

Walstrom asked Rob Mossburg to go over the changes in the Site Plan that had been submitted today from the Site Plan submitted on January 18, 2007.

Mossburg noted that the building on the southwest corner of the property (the "L" extending over the TR zone) had been moved to a 10' side yard setback on the West side of the lot, which is consistent with the existing requirement for buildings in the TR district.

Mossburg further noted that the building on the TR portion of the property adjacent to the Woods' property would be about 26'6" tall (not including the roof access), as opposed to the 35' height limit that is otherwise permitted for buildings in the TR district.

Mossburg also noted that he had revised his Conditional Offer of Re-zoning to impose a 10' setback on the West side of the TR Lot, to be consistent with the existing set back requirement for the TR District, and to be consistent with the set back used by the Woods in their on-going renovation project on their adjacent property.

Walstrom asked Planner Larry Nix to review the draft resolutions.

Nix prefaced his comments by saying that the draft resolutions he had crafted came from public hearing comments, Planning Commission comments, and comments received last year during the development of the ordinances which enabled the applicant to begin the process.

Nix also noted that the applicant had presented the City with a revised Conditional Offer of Zoning. (A copy of the Conditional Offer will be attached to the file copy of the minutes.) Nix said the Offer included conditions that if the current TR district parcel were re-zoned to CBD, the applicant would build a Condo-Hotel in strict conformity to the plans submitted; and, on the west side of the parcel to be re-zoned, he (the applicant) would maintain a 10' side yard setback.

Regarding the proposed resolution to re-zone the property, Nix stated that the resolution identifies the parcel as a .262 acre parcel to be re-zoned from TR to CBD. The resolution reiterates that the

conditional offer to re-zone was made by the applicant; and among other things states that the applicant will enter into a formal agreement with the City incorporating the conditions offered on the Rezoning; that the proposed re-zoning of the subject parcel from TR to CBD is consistent with the Master Plan; that the property is served by public utilities; and that a Public Hearing was held on January 18, 2007. The resolution recommends City Council approve the re-zoning of the TR Parcel, subject to, among other things, the Special Land Use resolution and the Planned Development resolution.

Regarding the proposed Special Land Use resolution, Nix stated that this resolution assumes that the property will be re-zoned. This resolution would approve the Condo-Hotel as a Special Land Use, subject to the conditions incorporated in the Resolution to Recommend Re-zoning.

Nix noted that the proposed resolution addresses the standards for approving a Special Land Use in the Whereas clauses. The Whereas clauses recite that an application has been received for a Condo-Hotel and describe the property where the Condo-Hotel would be built, and find that the applicant has submitted all documentation as required by law, including a revised site plan dated January 30, 2007, and that a public hearing was held on January 18, 2007.

The Whereas clauses further make the following findings of fact:

\* The location, size and character of the project is in harmony with the appropriate development of the surrounding area because the proposed project replaces an existing Condo-Hotel; it occupies the same area as the existing project; the architecture blends with buildings in the area; and the project will function much like the existing hotel.

\* The proposed use is of such a nature that will make vehicular and pedestrian traffic no more hazardous or congested than is normal for the CBD, taking into account multiple factors, because the number of rooms in the proposed Condo-Hotel is consistent with the existing hotel; the parking will be underground with better sight distances; the entrance will be located away from the corner of Main and Gardner; and the proposed use is no more intensive than the existing use.

\* The proposed use is designed, subject to conditions, so that nuisances from dust, noise, fumes, vibration, smoke or exterior lighting is minimized, because exterior lighting will be controlled; outdoor gatherings will be limited in terms of frequency and hours; the "L" shape design of the building shields the bulk of the activity in the lawn area from adjacent residents; and trash containers will be located inside the building.

\* The proposed use is such that the structure proposed will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value because the proposed design is of a scale to blend with some existing buildings in the downtown area: the building on the land re-zoned from TR will have a side setback of 10' which is consistent with TR required setback for residential buildings; and the design features are consistent with many of the existing downtown buildings.

\* The proposed use will relate harmoniously with the physical and economic aspects of adjacent land uses because the proposed use complements existing restaurant and retail uses existing in the area; provides a short walk from the marina area; and is within walking distance to all events and business areas in the CBD area.

\* The proposed use will be such that the public health, safety and welfare will be protected because, if the PD overlay is approved, all setback requirements of the City will be met or exceeded; all normal public services will be utilized to service the building; and adequate parking will be provided for the patrons.

\* The proposed use will not cause substantial injury to the value of other property in the neighborhood and will not be detrimental to existing uses in the zoning district because the substantial investment to be made in the proposed use is consistent with other investments in the CBD.

Nix concluded that, in his opinion, the standards for a Special Land Use have been met. With that, Nix noted that Special Land Use Approval would be subject to and include:

\* That the applicant must satisfy that all other applicable provisions of the zoning code, and that the Resolutions recommending the conditional re-zoning and recommending approval of the planned development status must be adopted.

\* That the Site Plan package dated January 30, 2007, will be deemed a part of the Approval.

\* That the various supplements and written and drawn materials supporting the Site Plan package would be deemed a part of the Approval.

Further conditions of approval which must be met and maintained include:

\* The buildings must be constructed with the architectural details as shown in the Site Plan package.

\* Exterior construction materials described in the Site Plan must be used as specified.

\* Exterior Illumination plans must consist of low-intensity white light, and fixtures must be fully shielded and downward facing. The applicant must receive approval from the City Manager and the City Planner prior to light fixture installation. Further if it is found that the lighting is too harsh, or out of character with the surrounding land uses, the City can order replacement or reconfiguration of the fixtures.

\* Final signage plans must be approved by the City Manager and City Planner.

\* A final landscape plan must be approved by the City Manager and City Planner. Nix noted that a plan had been received at the meeting.

- \* Refuse collection and storage must be located inside the building.
- \* The outdoor fireplace must be supervised by hotel staff at all times while in use.
- \* Parking will include 33 on-site spaces as shown on the site plans, including two spaces designated for compact cars; spaces will be open to guests of the facility; access to the parking area will be electronic keypad, access card or other similar means; on-street parking on Main Street shall be coordinated and approved by the City Council; and the City Manager and Chief of Police will investigate parking and whether or not Gardner Street should be made one-way south from Main, subject to City Council approval.
- \* Nix suggested that the Roof Deck be limited to use by customer of the Hotel facility for casual use only and not for functions, and that capacity be limited to 50 people; hours for use of the Roof Deck were also proposed.
- \* Nix suggest that the Lawn Area could be used by customers as well as being available for functions by invitation; hours of use for the lawn area were proposed; the capacity would be limited to 100 people; no amplified music would be permitted; functions in excess of 100 people for local non-profit groups could be approved by the City Council; and functions for the Lawn Area would be limited to four per calendar month.
- \* Utility installations would have to be coordinated with the City.
- \* All aspects of the Special Land Use would continue to be subject to the terms and conditions of the Resolution, the Zoning Code and any subsequent amending resolutions.
- \* The Condominium association would have to be established consistent with the Resolution and the Zoning Code, with the Master Deed requiring that all co-owners be bound by the provisions. Amendments to the Master Deed will require the consent of the City.
- \* All requirements for the Condo-Hotel must be consistent with a Condo-Hotel as defined in the Harbor Springs Zoning Code.

Nix next addressed the proposed Resolution recommending approval of the application to apply Planned Development status to the project, Nix commented that this would be a recommendation to the City Council.

Nix stated that the Whereas clauses find that the Project is located in the area described in the Planned Development (CBD) District as defined in Zoning Code; state that the project exceeds one half acre; find that the Cottage Company would serve as a single proprietor to bring the development to fruition; find that the applicant has submitted an offer of conditional re-zoning; find that that the offer of conditional rezoning requires the applicant to enter into a formal written agreement with the City; and, finds that the project could be up to 39 feet and be three stories.

Other Whereas clauses in the proposed Resolution address the standards in the Ordinance for a Planned Development, and make the following findings of fact:

\* The proposed Planned Development Overlay would result in benefits to the public at large because the proposed project architecture is aesthetically pleasing; that a quality facility such as the proposed project will offer an attractive place for guests to the community; and vehicular and pedestrian traffic in the area of the Project will be improved through a better organized site.

\* There is a dedication of open space, because a portion of the existing asphalt parking lot will be replaced with a grassy lawn, or green space, available for public functions.

\* The project as a whole provides desirable economic development in the CBD, because year-round guests and visitors will have a quality place to stay, new jobs will be created, new retail space will be created, and the tax base of the City will be increased.

\* The project as a whole would promote the health, safety and welfare of the residents of the City of Harbor Springs, because of the significant aesthetic improvement in the buildings and structures on the property, the additional green space, the provision for indoor and underground parking, and internal trash storage.

Nix also said the Whereas clauses make the following additional findings of fact:

\* The project will not cause the interests of the adjacent property owners to be damaged or injured, as a public hearing was held on January 18, 2007, where public comments were received, which have been satisfied by the applicant modifying the proposed Site Plan.

\* The Planning Commission has approved a Special Land Use for a Condo-Hotel.

\* The request meets the Special Land Use standards as outlined in the resolution approving the Special Land Use.

\* The proposed Planned Development Overlay in connection with the project meets the intent of the Planned Development Overlay to promote context-sensitive development.

Nix stated that the Resolution would resolve that the Planning Commission recommend that the City Council approve the request to apply the Planned Development Overlay status to the project, subject to:

1. The Resolution recommending approval of the Conditional Re-zoning and the Resolution approving Special Land Use for a Condo-Hotel; and

2. The formal written agreement required by the Zoning Code must be approved by the City Council prior to the Planned Development taking effect.

Nix noted that the combination of the resolutions addressed seven comments he had listed from the public hearings:

1. Gardner Street concerns, which would be addressed by the Chief of Police and City Manager.
2. Lawn Use, where parameters on usage are established.
3. Loss of View, primarily because of the west side setback, which the applicant addressed.
4. Barrier Free access, which was addressed at the hearing.
5. Using TR setbacks on the west side, which the applicant has offered as a condition of the rezoning..
6. Loss of air, light and view, which was addressed by increasing the setback. Nix also observed that unless you have purchased a view, it is not yours and it is not a property right.
7. The aesthetic appearance of the West Wall, which the applicant addressed by adding several windows and architectural details.

Nix also noted that if the re-zoning request was not subject to the offer of conditional rezoning, a request for CBD zoning of this Parcel would have far different implications. Nix called this plan with the conditional zoning a unique and rare opportunity for the Planning Commission and City Council to know what will be built at this location.

Nix noted that the three resolutions were a logical progression—one has to follow the other and if one fails, they all fail.

The Commission then began reviewing each resolution.

### **Re-Zoning**

Hughes asked what would happen to the conditions of rezoning, if the project were sold.

Ramer noted that the conditions would run with the land. If the land was sold, a successor owner could only develop a condo-hotel on the site, and all buildings would have to be located as provided in the Offer of Conditional Zoning.

Sears noted that the final decision on the Rezoning would be made by the City Council.

The City Manager confirmed that the re-zoning resolution is a recommendation to the Council.

Ramer also noted that if the Council approved the rezoning with the conditions that the TR District Parcel be limited to use as a condo-hotel, and the buildings must be constructed as specified in the Site Plan, the Parcel could be used on as a condo-hotel under the Code. Any proposed change of use or different location of buildings on the Parcel would require that the Parcel be rezoned, and the full rezoning process would need to be completed.

Kors noted that if the Council negates the re-zoning, the Special Land Use is dead.

Ramer recommended that if the Special Land Use was approved, such approval should be contingent upon the Council approving the re-zoning, and approving the Project as a Planned Development under the Code.

There being no further questions, upon motion made by Commissioner Hughes and supported by Commissioner Deegan, it was proposed that the following Resolution be adopted:

**RESOLUTION RECOMMENDING APPROVAL OF THE CONDITIONAL REZONING  
OFFER TO REZONE PROPERTY FROM TR – TRANSITIONAL RESIDENTIAL  
DISTRICT TO CBD – CENTRAL BUSINESS DISTRICT**

WHEREAS, Mr. Robert E. Mossburg, III of the Cottage Company (“the applicant”) has completed and submitted the required City of Harbor Springs rezoning application to rezone a .262-acre parcel (Tax Parcel No. 24-51-15-13-176-123, hereinafter referred to as the “Subject Parcel”) located at the northwest corner of Gardner Street and Bay Street from TR to CBD;

WHEREAS, an offer of conditional rezoning, as amended on January 30, 2007, has been voluntarily presented to the City by Mr. Robert E. Mossburg, III of the Cottage Company as Manager of Harbor Springs Hotel, LLC, in accord with Section 405, Public Act 110 of 2006, of the Michigan Zoning Enabling Act, as amended;

WHEREAS, the offer of conditional rezoning states that if the Subject Parcel is rezoned to CBD and if the applicant receives approval pursuant to a Special Land Use application to establish a Condo-Hotel on the Subject Parcel, and approval related to a Planned Development overlay application, that the use of the Subject Parcel would be limited to that of a Condo-Hotel, and that no building or structure will be constructed or located above ground level within ten feet of the West property line of the Subject Parcel, and that the Condo-Hotel would be constructed, located and used on the Subject Parcel only in accordance with the site plan package, with a cover sheet revision date of January 30, 2007, and supplements submitted by the applicant and applicable provisions of the City Zoning Code;

WHEREAS, the offer of conditional rezoning states that, upon a rezoning, the applicant will enter into a formal agreement with the City confirming the terms of the rezoning;

WHEREAS, the proposed rezoning would comply with the recommendations of the City of Harbor Springs Master Plan;

WHEREAS, the subject property is served by public utilities;

WHEREAS, the proposed zoning and condo-hotel project is consistent with the existing use of the property;

WHEREAS, the impact on nearby property will not be a detriment to the public health, safety and welfare of the City of Harbor Springs;

WHEREAS, a public hearing was held on January 18, 2007 at the Harbor Springs City Hall on the rezoning and related applications at which public comments were received as to the rezoning of the property.

IT IS, THEREFORE, RESOLVED AS FOLLOWS:

The Planning Commission recommends that the City Council rezone Parcel Number 24-51-15-13-176-123 (the "Subject Parcel") located at the northwest corner of Bay and Gardner Streets, from TR to CBD; such approval being subject to the terms and conditions of the RESOLUTION APPROVING SPECIAL LAND USE FOR A CONDO-HOTEL and the RESOLUTION RECOMMENDING APPROVAL OF THE APPLICATION TO APPLY PLANNED DEVELOPMENT STATUS of today's date; and subject to the Applicant entering into a formal agreement with the City providing that the use of the Subject Parcel would be limited to a Condo-Hotel, and that no building or structure will be constructed or located above ground level on the Subject Parcel within ten feet of the West property line of the Subject Parcel, and that the Condo-Hotel would be constructed, located and used on the Subject Parcel only in accordance with the site plan package, with a cover sheet revision date of January 30, 2007, and supplements submitted by the applicant and applicable provisions of the City Zoning Code.

There being no further discussion, the Chairman asked that a roll call vote on the motion to approve the foregoing Resolution be taken, and the following votes were cast:

AYES: Hughes, Kors, Sears, Smith, Walstrom, Deegan, Ford,  
NAYS: None  
ABSTAIN: None  
ABSENT: Bowman, McCleery

The Secretary /Clerk declared that the **RESOLUTION WAS ADOPTED, 7-0.**

### **Special Land Use**

Sears asked about the traffic issues at Main and Gardner Street.

The City Manager said that the Police Chief has investigated the matter, and the Resolution requires that the City Council consider this issue.

Smith asked Mossburg what was lost by increasing the setback to 10' on the West side of the TR Parcel.

Mossburg said that roughly 500 square feet of floor space and 500 square feet of the lawn area were lost.

Ford asked about the capacity of the roof deck.

Nix said from a building code standpoint, the deck capacity was probably around 200 people, but the question for the Commission was how and who should be using the roof deck.

Smith asked if guests of the hotel could use the deck as a sundeck.

Nix noted that this would be a permitted use along with others proposed. Water is available on the deck.

Hughes asked why not have a capacity of 200?

The City Manager noted that with increased numbers of people, noise becomes an issue and access to toilets, along with parking, may become problematic.

Commission members expressed that some number of functions on the roof deck is desirable, because part of the benefit of the hotel is to bring the downtown vibrancy.

Nix suggested that the Commission look at the overall picture of this.

Kors noted that, as a member of the public, she was hoping that she might be able to rent the roof deck for an appropriate event.

Smith noted that the lawn area restrictions seemed reasonable, and perhaps something similar could be done with the roof deck.

After some discussion, Nix asked for a consensus on various issues

The consensus on parameters for the roof deck use was that the capacity should be 75 people; functions (guest or non-guest) could be held two times per week; quiet hours would be 11:00 p.m. to 7:00 a.m., with the hours being 12:00 midnight to 7:00 a.m. on the night of July 4<sup>th</sup>.

The consensus on parameters for the lawn area use was that the capacity should be 100 people; functions (guest or non-guest) could be held two times per week; quiet hours would be 11:00 p.m. to 7:00 a.m., with the hours being 12:00 midnight to 7:00 a.m. on the night of July 4<sup>th</sup>.

The Commissioners also agreed with the idea to allow non-profit groups to seek a permit for special events larger than the capacity limits.

Nix also suggested that the use parameters be conditionally approved, and be subject to annual review and modification by the Planning Commission as is sometimes done with other special use conditions.

The Commissions liked this idea since there was no history to go by.

Hughes asked whether there would be phone and cable TV.

The City Manager noted it would be available through the hotel itself.

Ford commented on the fact that it should say “primary” ingress/egress is via the inside of the hotel. He was concerned about doors off the ground floor units by the lawn area.

It was agreed that these doors could not be keyed, and they would not be considered ingress/egress locations.

Kors expressed a concern about the exterior fireplace. After Nix reviewed the location of this feature, and the restrictions on its use, Kors said she was okay with it.

It was noted that access to the retail/spa area was directly from Main Street. It was explained that the ingress/egress rule did not apply to this area because it was not space for lodging.

Ramer suggested that a clause be added to the resolution that would make the Special Land Use contingent upon the re-zoning and planned development status being approved by Council.

There being no further questions, upon motion made by Commissioner Ford and supported by Commissioner Hughes, it was proposed that the following Resolution be adopted:

**RESOLUTION APPROVING SPECIAL LAND USE FOR A CONDO-HOTEL**

WHEREAS, Mr. Robert E. Mossburg, III of the Cottage Company (“the applicant”) has submitted an application for Special Land Use to establish a Condo-Hotel;

WHEREAS, the applicant has submitted an offer of conditional rezoning and subject to City Council approval of said offer, the subject site parcels numbers 24-51-15-13-176-123 and 24-51-15-13-165-001, commonly known as 266 East Main Street, is zoned CBD – Central Business District, within which, a Condo-Hotel is a permitted special land use per Section 50.1202(2) of the City of Harbor Springs Zoning Code subject to the standards of Article 21 of the same;

WHEREAS, the applicant has submitted all materials required by the City of Harbor Springs Zoning Code, a site plan package with a cover sheet revision date of January 30, 2007 and supplements;

WHEREAS, a public hearing was held on January 18, 2007 at the Harbor Springs City Hall on the rezoning and related applications at which public comments were received regarding certain aspects of the Condo-Hotel;

WHEREAS, the proposed special land use is of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood and/or vicinity and applicable regulations of the zoning district in which it is located because the property is located in the CBD area, the proposal replaces an existing condo-hotel, it occupies

approximately the same area as the existing condo-hotel, the architectural style blends with buildings in the area, and will function much like the existing use;

WHEREAS, the proposed use is of a nature that will make vehicular and pedestrian traffic no more hazardous or congested than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicular interfacing in residential districts because the number of rooms will be consistent with the existing condo-hotel, the proposed condo-hotel parking area will be located in a lower area garage area improving site safety, the front door will be approximately 60 feet from the corner of Gardner and Main Streets minimizing conflicts at the corner, and the proposed use is no more intensive than the existing facility;

WHEREAS, the proposed use is designed, subject to the terms and conditions herein, as to the location, size, intensity, site layout and periods of operation of any such proposed use to eliminate any possible nuisance emanating there from which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights because exterior lighting will be controlled to minimize glare with appropriate fixtures, outdoor gatherings will be limited in terms of frequency and hours to respect the residents in the area, the 'L' shape of the facility will shield the bulk of the activity in the lawn area from adjacent residents, and trash containers will be located inside the lower level controlling litter and blowing material;

WHEREAS, the proposed use is such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value because the proposed design is of a scale to blend with some existing buildings in the downtown area, the building on the land portion re-zoned from TR has a ten (10) foot west side yard setback which is the same setback as required for residential principal buildings in the TR zone, the building contains many design features such as windows, decks, different materials, and architectural elements that create a pedestrian oriented building consistent with many of the existing buildings in the CBD area;

WHEREAS, the proposed use will relate harmoniously with the physical and economic aspects of adjacent land uses in connection with prevailing shopping habits, convenience of access by prospective patrons, continuity of development, and need for particular services and facilities in specific areas of the City because it complements existing restaurant and retail uses existing in the area, provides a short walk from the marina areas and is within walking distance to all events and business areas in the CBD area;

WHEREAS, the proposed use will be so designated, located, planned and operated that the public health, safety and welfare will be protected because all setback and height requirements of the City have been met or exceeded, all normal public services will be utilized to service the building, and adequate parking will be provided for patrons;

WHEREAS, the proposed use will not cause substantial injury to the value of other property in the neighborhood on which it is to be located and will not be detrimental to existing and/or other permitted land uses in the zoning district because the substantial investment to be made in the new hotel and the design of the hotel is consistent with or exceeds other investment in the CBD area and should generally enhance other property values in the area, and the conditions to be imposed by the Planning Commission are designed to reduce any impact to neighboring properties to that which would be reasonable within the downtown, and the structures to be built on the property are no more intrusive from a side yard setback standpoint than those that are permitted under existing zoning, and because a property owner does not inherently own a right to a view across his neighbor's property.

IT IS, THEREFORE, RESOLVED AS FOLLOWS:

The Planning Commission hereby approves the application for Special Land Use to establish a Condo-Hotel on parcel number 24-51-15-13-176-123 and 24-51-15-13-165-001; such approval being subject to:

1. All applicable provisions of the City of Harbor Springs Zoning Code and the terms and conditions of the RESOLUTION RECOMMENDING APPROVAL OF THE CONDITIONAL REZONING OFFER TO REZONE PROPERTY FROM TR – TRANSITIONAL RESIDENTIAL DISTRICT TO CBD – CENTRAL BUSINESS DISTRICT and the RESOLUTION RECOMMENDING APPROVAL OF THE APPLICATION TO APPLY PLANNED DEVELOPMENT STATUS of today's date.
2. The site plan package with a cover sheet revision date of January 30, 2007.
3. Various supplements and written and drawn materials supporting the site plan package.
4. **Further Conditions of Approval.** In addition, the following terms and conditions shall be met and maintained by the Special Land Use:
  - (a) The architectural details shown within the site plan package with a cover sheet date of January 30, 2007, and the architectural details shown on the 8½ inch by 11 inch sheets titled, "View from Main Street" and "View from Bay Street," dated December 21, 2006, shall be adhered to. Articulation, modulation, window placement, roof lines, building color, and other features shall be consistent with the most recent illustrations submitted to the City by the applicant.
  - (b) Exterior construction materials shall be natural, including asphalt roof shingles; composite wood appearance siding; stone; and brick.
  - (c) All exterior illumination, including any signage illumination, shall consist of low-intensity white light, and fixtures shall be fully shielded and downward facing. The applicant shall receive approval from the City Manager and City Planner prior to light fixture installation. Further, after installation, if the City Manager or City Planner find that the lighting is too harsh, out of character with surrounding land uses or otherwise not consistent with the intent of the Special Land Use approval, the City Manager shall order the applicant to replace or reconfigure the lighting fixtures.

- (d) The applicant shall prepare final signage plans and submit them to the City. Signage shall comport to the Zoning Code. The City Manager and City Planner must approve any signage prior to installation.
- (e) The applicant shall develop a detailed landscape plan for approval by the City Manager and City Planner. The City Manager and City Planner shall forward the landscape plan to the Planning Commission for approval.
- (f) Refuse collection and permitted associated activities shall take place indoors.
- (g) The outdoor fireplace shall be supervised by hotel staff at all times while in use.
- (h) Parking.
  - i. Thirty-three on-site parking spaces shall be provided on the Bay Level and all parking spaces and elements shall comply with the Zoning Code; provided, that the proposed designation of two parking spaces specifically for compact motor vehicles is hereby declared approved.
  - ii. Spaces shall be open to guests of the Hotel facility and no assigned parking shall be permitted.
  - iii. Access to the parking area shall be provided by electronic keypad, access card, or other similar means approved by the City Manager.
  - iv. The design, layout, number and location of on-street parking spaces on Main Street shall be coordinated and approved by the City Manager and Police Chief, subject to City Council approval.
  - v. The City Manager and Police Chief shall investigate the elimination of parking along the east side of the subject property within Gardner Street because of the narrow street configuration and potential for increased vehicular traffic associated with usage of the Condo-Hotel. The City Manager and Police Chief may determine that elimination of said parking is in the best interest of the City or making Gardner Street one-way south from Main Street, subject to City Council approval. Such a determination may result in the removal of some or all of the parking spaces.
- (i) Roof Deck.
  - i. Roof deck usage shall be limited to customers of the Hotel facility for casual use only and for functions for customers of the Hotel facility and non-cutomers with a maximum capacity of 75 people.
  - ii. The roof deck facility shall not be used between the hours of 11:00 PM and 7:00 AM with an exception for the July 4<sup>th</sup> celebration altering the hours to 12:00 PM to 7:00 AM.
  - iii. Any use of instrumental music shall be limited to acoustical music and music shall not be audible from adjacent properties; amplifiers are not permitted for voice or musical instruments.
  - iv. Groups or gatherings in excess of 75 people consisting of local non-profit groups and/or use of amplified music shall require a permit from the City Council;

consideration shall be given to the type of gathering to ensure said gathering would be amenable with adjoining properties and the intent of the Special Land Use approval, guests involved, parking need and provision, hours of the event and other elements as deemed appropriate by the City Council.

v. Functions on the Roof Deck shall be limited to no more than two (2) per week.

(j) Lawn Area.

i. Lawn area usage shall be limited to customers of the Hotel facility and non-customers that are permitted to visit the area by invitation.

ii. The lawn area shall not be used between the hours of 11:00 PM and 7:00 AM with an exception for the July 4<sup>th</sup> celebration altering the hours to 12:00 PM to 7:00 AM.

iii. Up to 100 people may use the lawn area.

iv. Any use of instrumental music shall be limited to acoustical music and music shall not be audible from adjacent property; amplifiers are not permitted for voice or musical instruments.

v. Groups or gatherings in excess of 100 people consisting of local non-profit groups and/or use of amplified music shall require a permit from the City Council; consideration shall be given to the type of gathering to ensure said gathering would be amenable with adjoining properties and the intent of the Special Land Use approval, guests involved, parking need and provision, hours of the event and other elements as deemed appropriate by the City Council.

vi. Functions on the Lawn Area shall be limited to no more than two (2) per week.

(k) Parameters for the use of the Roof Deck and Lawn Area described in (i) and (j) above shall be reviewed by the Planning Commission on an annual basis. If on such review the Planning Commission finds that the use of the Roof Deck and Lawn Area has created nuisances or unreasonable disturbances in the neighborhood, or that additional restrictions are necessary or advisable for the purposes of health, safety or welfare, the Planning Commission shall have the right to impose new and additional restrictions, including off-site parking requirements, on the use of the Roof Deck and Lawn Area.

(l) The applicant shall coordinate water, storm sewer, sanitary sewer, and electric service to the Condo-Hotel with the City Engineer and City Manager; and both shall approve said provision for utility service.

(m) All aspects of the Special Land Use shall continue to be subject to the terms and conditions of this Resolution, the Zoning Code, and any subsequent amending resolutions.

(n) Establishment of the Condominium and Condominium Association. The Hotel shall contain 19 Condominium Units, to be established pursuant to a master deed, bylaws and condominium subdivision plan for the Hotel (collectively, the "Master Deed"), which, before recording, shall be first approved in writing by the City as being in compliance with this Resolution, and the Harbor Springs Zoning Code. The Master Deed shall require that each Co-owner within the Hotel be bound by and observe the applicable terms and

- provisions of this Resolution, the CBD PD Agreement and the City Zoning Code. All amendments to the Master Deed shall require the prior written consent of the City.
- (o) Requirements of Condo-Hotel. The Hotel shall always be subject to the rules of a Condo-Hotel as defined in Section 50.202(11) of the Harbor Springs Zoning Code, and shall in all respects maintain each and every of the features specified in Section 50.302(7) for a Condo-Hotel under the Harbor Springs Zoning Code, including but not limited to the requirement that the Condominium shall not include timeshare estates or timeshare licenses of Condominium Units as defined in the Condominium Act.
  - (p)The name “Hotel” shall appear prominently in the name and signage on the buildings to be constructed on the Property, and in all marketing literature;
  - (q)Primary ingress to and egress from the Condominium Units shall be made only through an inside office or lobby supervised at all hours of the day and night by an employee of the owner or operator of the Hotel (there shall be no direct outside access to Condominium Units);
  - (r)There shall be electronic card access only to Condominium Units (no keys), and the card access codes shall be changed at least weekly;
  - (s)There shall be no assigned parking in the Hotel parking lot for Condominium Units in the Hotel;
  - (t)There shall be no regular mail service available to Condominium Unit owners in the Hotel;
  - (u)There shall be no direct telephone, cable, or internet service available to Condominium Unit owners in the Hotel;
  - (v)There shall be a standard furniture package in place and in use in all Condominium Units in the Hotel, and unique furniture or unique furniture arrangements in Units shall not be permitted;
  - (w)There shall be daily maid service provided to all Condominium Units in the Hotel;
  - (x)All Condominium Units in the Hotel shall be available for rental to the general public for overnight lodging facilities through the rental pool as required by the Zoning Code whenever the Owner of a Condominium Unit in the Hotel (as defined in the Zoning Code) is not occupying the Condominium Unit;

5. This Special Land Use Approval for this Project is contingent upon approval by the City Council of the rezoning of the TR District Parcel to CBD; and, further contingent upon the approval by the City Council of the PD District overlay for this Project, including height and story variances to 39 feet and 3 stories for this Project.

There being no further discussion, the Chairman asked that a roll call vote on the motion to approve the foregoing Resolution be taken, and the following votes were cast:

AYES: Ford, Hughes, Kors, Sears, Smith, Walstrom, Deegan

NAYS: None

ABSTAIN: None

ABSENT: Bowman, McCleery

The Secretary /Clerk declared that the **RESOLUTION WAS ADOPTED, 7-0.**

### **Planned Development**

Nix again reviewed the rationale behind Planned Development resolution, and noted that the proposed Resolution is a recommendation to the City Council to approve the Project as Planned Development in the CBD under the Code.

Ramer suggested that in the Whereas stating that the project will not cause the interests of adjacent property owners to be damaged or injured, the Commission add that the applicant had modified his plans to address concerns raised at the public hearing by the adjacent property owners.

Nix also reminded the Commission that in the Whereas clause where the Commission finds that the request would meet the Special Land Use standards, that it be added to state “as found in the Resolution approving the Special Land Use.”

There being no further questions, upon motion made by Commissioner Kors and supported by Commissioner Deegan, it was proposed that the following Resolution be adopted:

### **RESOLUTION RECOMMENDING APPROVAL OF THE APPLICATION TO APPLY PLANNED DEVELOPMENT STATUS**

WHEREAS, Mr. Robert E. Mossburg, III of the Cottage Company (“the applicant”) has submitted an application for a Planned Development Overlay for parcels 24-51-15-13-176-123 and 24-51-15-13-165-001, commonly known as 266 East Main Street

WHEREAS, the subject site is greater than half an acre in land area;

WHEREAS, the Cottage Company would serve as a single proprietor to bring the development to fruition;

WHEREAS, the applicant has submitted an offer of conditional rezoning and subject to City Council approval of said offer, the subject site is zoned CBD – Central Business District;

WHEREAS, the offer of conditional rezoning states that, upon a rezoning, the applicant will enter into a formal written agreement with the City;

WHEREAS, the City of Harbor Springs Zoning Code allows for petition to adjust the height and story restrictions of the underlying CBD up to a maximum of 39 feet or 3 stories;

WHEREAS, the applicant is proposing to construct a Condo-Hotel up to 39 feet and 3 stories in height;

WHEREAS, the Planning Commission recommends that the City Council find that the proposed Planned Development Overlay would result in benefits to the public at large such that the proposed height variation is appropriate because the project architecture is aesthetically pleasing to guests, pedestrians, tourists and the community at large, a quality facility will offer an attractive place for guests, and vehicular and pedestrian traffic will be improved through a better organized site;

WHEREAS, the Planning Commission recommends that the City Council find that there are dedications of open space within the proposed project that make a better site development than if the strict application of the height and story limitations were adhered to because a green space planned for the southeast corner of the property will replace an existing parking area, provide a respite area for guests and visitors and provide limited restricted opportunity for social functions;

WHEREAS, the Planning Commission recommends that the City Council find that the project as a whole promotes desirable economic development in the Central Business District to such an extent, and the economics of the project are such, that a variation from a strict application of the height and story limitations is appropriate under the circumstances because year round guests and visitors will have a quality facility to stay, new jobs will be created, additional retail and service space will be added to the downtown inventory, and increased tax base for the City;

WHEREAS, the Planning Commission recommends that the City Council find that the project as a whole would promote the health, safety and welfare of the City of Harbor Springs because of the significant aesthetic improvement, additional green space, indoor parking, and internal trash and recycling containers;

WHEREAS, the project will not cause the interests of adjacent property owners to be damaged or injured, as a public hearing was held on January 18, 2007 at the Harbor Springs City Hall on the project and related applications at which public comments were received; and the applicant modified his plan to address concerns raised at the public hearing;

WHEREAS, the Planning Commission has approved a Resolution titled, "RESOLUTION APPROVING SPECIAL LAND USE FOR A CONDO-HOTEL" pertaining to this application;

WHEREAS, the Planning Commission finds that the request would meet the standards of Article 21, being Special Land Use Approval, of the Zoning Code, as stated in the "RESOLUTION APPROVING SPECIAL LAND USE FOR A CONDO-HOTEL";

WHEREAS, the Planning Commission finds that the proposed Planned Development Overlay in connection with the proposed Condo-Hotel project would meet the intent of the Planned Development Overlay to promote context-sensitive development that is compatible with adjoining structures and which continues the City's historic fabric.

IT IS, THEREFORE, RESOLVED AS FOLLOWS:

The Planning Commission recommends that the City Council approve the request to apply Planned Development Overlay status to parcel number 24-51-15-13-176-123 and 24-51-15-13-165-001, commonly known as 266 East Main Street; such approval being subject to:

1. The terms and conditions of the RESOLUTION RECOMMENDING APPROVAL OF THE CONDITIONAL REZONING OFFER TO REZONE PROPERTY FROM TR – TRANSITIONAL RESIDENTIAL DISTRICT TO CBD – CENTRAL BUSINESS DISTRICT and the RESOLUTION APPROVING SPECIAL LAND USE FOR A CONDO-HOTEL of today's date; and
2. The formal written agreement required by the Zoning Code shall be written by the City Attorney in accord with the Zoning Code and must be approved by the City Council of the City of Harbor Springs prior to taking effect.

There being no further discussion, the Chairman asked that a roll call vote on the motion to approve the foregoing Resolution be taken, and the following votes were cast

AYES: Kors, Sears, Smith, Walstrom, Deegan, Ford, Hughes

NAYS: None

ABSTAIN: None

ABSENT: Bowman, McCleery

The Secretary /Clerk declared that the **RESOLUTION WAS ADOPTED, 7-0.**

#### V. MEMBER COMMENTS

None.

#### VI. ADJOURNMENT

There being no further business, the meeting was adjourned at about 8:00 p.m.. The next regular meeting is scheduled for Thursday, February 15, 2007, at 6:00 p.m.

---

Frederick W. Geuder, City Manager

Public Comments  
 Hotel  
 2007  
 Planning Commission

12-30	Jim Ellsworth/Mark Olley	10 Sayan Dr.	In Support
1-7	Rob & Emily Dube	597 E. Main	In Support
1-11	Mike & Penny Iserman	368 Church	In Support
1-12	Jim Offield	HS	In Support
1-13	Rick Baker	HS	In Support
1-14	Tim Herbert	Third St.	In Support
1-15	Gow Litzenburger	HS	In Support
1-16	Kim Buntin	HS	In Support
1-16	Neal Marzella	210 E. Main	In Support
1-15	Bob Bokram	HS	In Support
1-12	Tom Graham	198 E. Main	In Support
1-17	Tim Patton	251 E. Bay	In Support
1-17	John Marshall	HS	In Support
1-17	Cecelia Johnston	571 E. Main	In Support
1-17	John Kilborn	Lorenzo's	In Support
1-17	Kate Scollin	Preston Feather	In Support
1-17	Tom Gallagher	HS Excavating	In Support
1-17	Douglas Bacon	249 E. Main	In Support
1-17	David & Mary Wood	263 East Bay	Concerns Noted
1-18	Al Dika/Cynthia Rutherford	301 Easy Street	In Support
1-18	Chris Morley		In Support
1-17	Bill Prall	HS	In Support
*			
1-18	Dianne & Boo Litzenburger	HS	In Support
1-18	John Smith and family	HS	In Support
1-18	Roger Heimbuch	HS	In Support
1-19	Josh Withey	Withey Painting	In Support
*			
1-19	Jill Whelan	Fourth St.	Concerns
1-22	Jill Whelan	Fourth St.	Further Comments
1-23	Martin Sutter	Bay St.	In Support
*			
1-26	Dennis Bila	Spring & E. Third	In Support
1-29	Jan LePage	564 E. Main	In Support

Planning Commission Minutes

January 30, 2007

Page 22

1-30 Pam Pfeifle  
1-30 Mike Corcoran

Island Bean  
On Behalf of  
the Woods

In Support  
Opposed

HARBOR SPRINGS HOTEL, LLC  
131 East Bay Street  
Harbor Springs, MI 49740  
231-526-2537  
231-526-2546

### **Offer of Conditional Rezoning**

The undersigned, Harbor Springs Hotel, LLC, ("HSH"), owner of the parcel which is the subject of this offer, hereby makes the following voluntary offer to the City of Harbor Springs ("City") to limit the use and development of a portion of the parcel described below, commonly know as the Northwest corner of Gardner and Bay Streets, City of Harbor Springs, as a condition on the rezoning of a portion of the subject parcel from TR (Transitional Residential) to CBD (Central Business District).

1. HSH is making this offer in accordance with the Municipal Zoning Act and applicable City ordinances.

2. This offer covers that portion of the existing "Parking Lot" parcel located in the TR zone, which "Parking Lot" is located in the City of Harbor Springs, Emmet County, Michigan, and described as:

Commencing at the West ¼ corner of Section 13, Township 35 North, Range 6 West; thence along the West line of said Section 13, North 0°05'30" East 801.46 feet; thence South 89°54'30" East 2522.91 feet to the intersection of the East line of Block 12 of Isaac Whicher's Plat as recorded in Liber 5 of Plats, Page 4, Emmet County Records with the South line of Main Street; thence along the South line of Main Street South 72°25'45" West 118.12 feet; thence South 12°54'55" East 105.00 feet to the Place of Beginning; thence South 72°25'45" West 10.00 feet; thence South 12°54'55" East 108.31 feet; thence along the North line of Bay Street North 71°28'40" East 114.23 feet; thence along the West line of Gardner Street North 12°38'30" West 94.80 feet; thence South 76°50'35" West 104.17 feet; thence North 12°54'55" West 3.60 feet to the Place of Beginning.

3. HSH, for itself, successors and assigns, hereby offers and agrees that the above-described parcel shall be used and developed only as follows:

(a) As part of a Condominium Hotel with related ancillary and permitted mixed uses and as part of a planned development project described and shown on the related application, as amended and supplemented.

(b) The uses shall be subject to a Special Land Use, PD Overlay and Zone Change review by the City Planning Commission and City Council under the terms of the applicable provisions of the City Zoning Code.

(c) No building or structure will be constructed or located above ground level within ten feet of the West property line of the subject parcel or as illustrated in the revised site plan package with a cover sheet date of January 30, 2007.

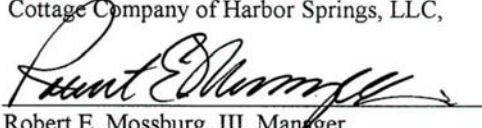
4. HSH acknowledges and agrees that if the site is rezoned and HSH receives the related Special Land Use and PD Overlay approvals as described above, that the parcel site will be used and developed only in conjunction with a Condominium Hotel and related ancillary and permitted mixed uses, and that all structures and buildings will be constructed, located and used only in accordance with the site plan package with a cover sheet revision date of January 30, 2007.

5. If the parcel is rezoned as stated above, HSH agrees to promptly enter into a formal agreement with the City confirming the terms of the applicable zoning.

6. HSH understands and agrees that the acceptance of this offer by the City and the rezoning of the lands as offered herein does not reduce or eliminate the need to obtain all other required permits and approvals, including though not limited to, Special Land Use, PD Overlay and applicable building permits.

7. HSH acknowledges that this offer is made on a voluntary basis and the City did not require this offer as a requirement for rezoning.

HARBOR SPRINGS HOTEL, LLC,  
By: Cottage Company of Harbor Springs, LLC,

By:   
Robert E. Mossburg, III, Manager

The City of Harbor Springs received the above voluntary offer this 30<sup>th</sup> day of January, 2007.