

# PLANNING COMMISSION

## Minutes

September 21, 2006

### I. ROLL CALL

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

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

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

### II. MINUTES

Motion by Sears, seconded by McCleery, to approve the minutes of the August 17, 2006 special meeting and the August 17, 2006 regular meeting, as presented. Motion carried.

### III. PUBLIC COMMENT AND CORRESPONDENCE

None (see individual items).

Enter Deegan.

### IV. NEW AND OLD BUSINESS

- A. Consider of Planning Commission Recommendations to City Council on proposed Zoning Code Amendments which would define a Condo-Hotel; Create a CBD Overlay District; and related Amendments

Sears noted that his son works as architect for the Cottage Company, but that he has no financial interest in his son's architectural business.

Bowman noted that he is a real estate agent for the Cottage Company and will not vote on the issues, but did say he would participate in the discussion if there were no objections. There were no objections voiced.

The City Manager reviewed the proposed ordinances that were being considered. The City Attorney and the City Manager were suggesting that the topic be split into two ordinances. The first ordinance would define the condo-hotel and related issues; the second ordinance would deal exclusively with the overlay district.

Walstrom suggested that the ordinance recommendations be considered one at a time, starting with the one that defined condo-hotels.

Sara Smith asked if there were any limits on the number of days that the owner could use the hotel. She was advised by the City Manager that there were no limits to the number of days, but when the owner was not using the unit, it would have to be in the rental pool.

Laura Kors asked if the new ordinance would have any effect on the current operation. The City Attorney said it would not.

The City Attorney explained the difference between a hotel and a condo-hotel. A condo-hotel is a type of hotel.

The City Attorney addressed the issue of fractional ownership. He explained that under the state condominium laws, a sale of a unit could be split into ownership interests, each interest divided into 4 separated time periods, without being deemed to be a time share unit.

The City Attorney explained that if the City's objective was to ensure that the hotel be available for overnight lodging, the City might want to limit the ability to have fractional shares.

The original draft of this ordinance would require that two persons be designated as owners, regardless of how many owners there were, for purposes of the lodging rights. When those two named individuals were not present, the unit would be available to the public.

The City Attorney felt that if you allow fractional ownership, it would be harder to audit the availability of the units for overnight lodging.

The City Attorney said that if more than four separated time periods are created, a time share unit is created. He noted that there is a debate in the legal community as to whether fractional ownership, with rolling time periods, constitutes a time share, per se.

The City Attorney noted that his solution to the issue was to include language in the ordinance that would not permit fractional ownership. While it may be harder for the units to be marketed, it would likely be easier for the City to enforce its rules, if they are created.

Jeff Ford asked if "Unit" was defined.

The City Attorney said "Unit" would be defined by what the State Condominium Act says, and suggested that such language be added to the ordinance.

Jack Deegan asked whether there was conflict between sections in the proposed ordinance as to ownership.

The City Attorney explained that under the current draft of the Ordinance, "multiple" ownership is permitted but not "fractional" ownership.

The City Attorney also noted that if you accepted the definition of “Unit”, then you would know if you were dealing with fractional ownership (up to 4 separated time periods) or time sharing (5 or more separated time periods).

Bowman asked whether the original language was intended to preclude fractional ownership.

The City Attorney noted that as originally drafted fractional ownership would have been allowable, but not time shares. If you add the definition of “Unit”, and designate two (2) owners, then even if you had fractional ownership, the unit would have to be placed in the rental pool if neither of the two designated owners was in residence. The other owners of fractional interests would not be entitled to any special treatment as compared to the general public in renting that unit, and the other owners involvement could be for investment purposes only.

Deegan asked whether it could be policed, and the City Attorney said policing the hotel would be difficult.

Sears noted that the books could be examined.

Sheryl McCleery asked whether lock-outs could be used. It was noted that lock-out bedrooms would be included in a site plan for a hotel-condo, and could be reviewed at that time.

Walstrom asked the City Planner Larry Nix if he was familiar with this type of operation (a condo-hotel).

Nix replied that he was familiar with the concept, but had not personally worked with this type of project.

The City Attorney noted that condo-hotels are a new trend; both Petoskey and Charlevoix are currently dealing with the issue. They are a marketing tool. What the City is proposing in this Ordinance is to strike a “balance” between the Developer’s need to market his product, and the City’s desire to have the structure be a bona-fide hotel. We have gone from permitting only a specific number of days permitted to where we are now (no limit, but requiring participation in the rental pool, when neither of the two designated owners is in residence). He noted that the condo-hotel concept could be proposed for other buildings in the CBD in the future.

Laura Kors noted that the language can be overwhelming to understand, but her question is if she calls can she reserve the room she owns (hypothetically) for her mother? The answer was “no”.

Bowman noted that when a buyer purchases one of these types of units, they understand how they work. If you want a simple condo that you can control, then you would buy something else.

Ford asked why two owners would be designated.

The City Attorney said this was so either a husband or wife could be in residence without the other, without invoking the rental pool requirement.

Ford also questioned whether the language should say “primary” access to units must be through the main entrance, rather than requiring direct access to units through the main entrance.

The City Attorney said the language was intended to insure that the building would be used as hotel, rather than as a multiple residential building; however with the special land use considerations of a hotel or condo-hotel, the Planning Commission would not be absolutely precluded from looking at a site plan that included indirect and limited access to units via decks.

Smith asked whether lock-out rooms were included in the “Unit” and the City Attorney said “yes”.

The Commission discussed the pros and cons of fractional ownership. Ford felt that “fractional” ownership (with two designated) owners would not necessarily hurt the rental pool.

McCleery asked who polices this.

The City Manager said he would be responsible, but noted that an outside auditor may have to be hired, but this would be no different than if the Police Department brought in a forensic accountant to investigate a crime.

Kors noted that a fractional ownership interest could be an investment.

The consensus of the Commission seemed to be to permit fractional ownership (but not time shares), and to add the definition of “Unit” and to leave the designation of only two persons for purposes of owner.

The City Planner also noted that the ordinance includes adding condo-hotel as a special land use in the CBD and the parking requirement changes.

Bowman asked why the definition of hotel included ten (10) units.

The City Attorney and City Manager noted that it would force a hotel to be a hotel, and in the CBD, to make sure that main floor uses were as intended.

Walstrom said he would entertain a motion.

Motion by Ford, seconded by Hughes, to recommend City Council approval of Ordinance No. 364 as presented with the following two changes: first that “Unit” be defined as outlined in the State Condominium Act and second that fractional ownership be permitted (but not time shares).

Roll Call:	Ford	yes
	Hughes	yes
	Kors	yes

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McCleery	no
Sears	abstain
Smith	yes
Walstrom	yes
Bowman	abstain
Deegan	no

Motion carried, 5-2, with 2 abstentions. Five affirmative votes are needed to officially recommend passage of a zoning code amendment, and therefore this ordinance was recommended to City Council.

The Commission then began consideration of Ordinance No. 365, which would permit the overlay district in the CBD (and three stories, up to 39' tall).

The City Manager noted that this ordinance, if adopted, would limit an overlay district to the one defined block and the proposed ordinance also includes the process involved.

The City Manager also noted that the Planning Commission members have received all the correspondence that has come in on this issue.

In response to a question from Bowman, the City Attorney noted that 39' and three stories was not limit to hotels only.

Kors noted that the ordinance contains standards that would need to be met.

Ford asked the City Attorney to review the process.

The City Attorney said the process would be as follows:

1. The City Manager would review an application, and if applicable send it on to the Planning Commission.
2. The Planning Commission would then consider it either as a simple site plan or as a special land use. A special land use requires a public hearing; a public hearing is at the Commission's discretion for a regular site plan.
3. If approved by the Planning Commission under their applicable rules, it would be referred to the City Council. The City Council would be required to hold a public hearing before acting on the request.
4. If the City Council approves the project, the City and Developer would enter into a contract for the project.

Smith asked whether a condo-hotel could meet the single proprietor requirement. The City Attorney said the developer would be the single proprietor for purposes of the overlay district consideration.

Bowman asked whether the contract was recorded.

The City Attorney said yes, and the project could be sold, but it is subject then to that contract.

Smith asked whether this is legally defensible.

The City Attorney said that zoning is inherently discretionary and yes it could be defended. He did note that it may be argued that the limiting the overlay district to one block is not fair.

Bowman asked what arguments we would have to say it is fair.

The City Attorney said that the bank is an existing taller building in the CBD, and the existing property is already a massive structure, would be two arguments.

Deegan asked whether the overlay district might be an opening in the “armor”.

The City Attorney said adopting the overlay district may well trigger other requests for similar treatment in other areas in the CBD and other zoning districts.

McCleery asked how the bank was built that tall.

The City Manager noted that the bank was constructed long before the zoning code existed. The existing code has its roots to 1976.

Ford acknowledged that this might be opening, but that zoning is always evolving, and he is comfortable with the tools in place.

Walstrom noted that this process is unique in that it goes to both appointed officials (the Planning Commission) and elected officials (the City Council).

Hughes said she feels the controls are in place.

Walstrom said that community pressures come to bear in this process.

Deegan said he is looking at the long term, and he would err on the side of caution.

Motion by Hughes, seconded by Sears, to recommend City Council approval of Ordinance No. 365, as written.

Roll Call:	Hughes	yes
	Kors	yes
	McCleery	no
	Sears	abstain
	Smith	yes
	Walstrom	yes
	Bowman	abstain
	Deegan	no

Ford abstain (Ford noted that he may be involved in a portion of the project, so he must abstain)

Motion carried, 4-2, with three abstentions, however since there are not five positive votes for the recommendations, the results of the motion could not be considered a positive recommendation to the City Council.

B. Reppard Property Topography Issue

The City Manager explained that when the Reppard property split had been approved, it was for four building parcels. The existing house had been moved to the extreme north parcel (parcel 3).

Recently John Kane purchase Parcel 1 (one of the bluff lots) and Robert Foote purchased the other two lots—Parcels 2 and 4. Mr. Kane presented a basic site plan, which noted that the old retaining wall would be removed and Mr. Foote would be using Parcel 4 as a driveway to Parcel 2 from the north. No changes in topography were noted on the plan.

In removing the retaining wall, the excavator did move that dirt back, actually lowering the bluff parcels by 1-2 feet. However, a massive amount of fill was brought into Parcel 4 primarily and the northeast portion of Parcel 2. This would impact neighbors to the parcels and no permit had been obtained to alter the topography, so the City Manager had issued a stop work order.

The City Manager also noted the letter he had received from the neighbor to the east, Marlyn Graham. He suggested that John Kane explain what he had in mind before proceeding with the discussion.

John Kane acknowledged that a permit had not been obtained., but that he wanted to get work done before school resumed after Labor Day.

Kane did present a plan that may or may not be acceptable to the Commission. His plan showed potential grades and possible perimeter landscaping.

Kane asked that they be able to take out the fill necessary to meet their proposed grades, and then let the Commission (and neighbors) review the grade. At that point, landscaping for the perimeter could be approved. Kane was asking that this be permitted, without a guarantee from the Commission that this was an approved plan. If necessary, it would be regarded further.

Planner Larry Nix said that the intent behind the ordinance was to prohibit filling in order to artificially raise grades to build houses upon, and also to protect neighbors.

Nix noted that the grading that took place on Parcel 1 appeared to be fine. Most of Parcel 2, except for the northeast corner was okay also, but Parcel 4 had significant changes..

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Nix asked whether Parcel 4 would be eliminated as a building site, and also suggested the City require cash or a letter of credit to guarantee work.

Bowman asked whether the neighbors would be satisfied with this.

Marlyn Graham said that removal of fill would be in the right direction, but reserved judgment on the plan.

Kane asked whether the stop work order could be rescinded to allow the tentative regrading to continue (though not yet approved) and he further asked whether Parcel 1 could be released from further restrictions and be considered ready for building.

Ford noted that he did not feel a bond was needed from Mr. Kane. He also asked whether Mr. Kane was acting as agent for Mr. Foote.

Mr. Kane said he was the agent for Mr. Foote, and Mr. Foote knew that regrading would be done a his own risk.

Motion by Kors, seconded by Hughes, to allow Mr. Kane to remove fill and re-grade Parcels 2 and 4, without granting final approval; to grant final grading approval to Parcel 1 per the plan submitted; and to note that restrictions will likely be placed on Parcel 4 as to what the final grade for a home site will be in the approval of any grading plan. Motion carried.

This item will be reviewed at the October meeting.

V. MEMBER COMMENTS

None.

VI. ADJOURNMENT

There being no further business, the meeting was adjourned. The next regular meeting is scheduled for Thursday, October 19, 2006, at 6:00 p.m.

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Frederick W. Geuder, City Manager