



PLANNING COMMISSION

May 5, 2016

CITY OF PORTAGE PLANNING COMMISSION

A G E N D A

**May 5, 2016
(7:00 p.m.)**

Portage City Hall Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES:

- * April 21, 2016

SITE/FINAL PLANS:

PUBLIC HEARINGS:

- * 1. Preliminary Plat: Whispering Meadows No. 4, 6513 Angling Road
- * 2. Preliminary Report: Rezoning Application #15/16-5, 715 West Osterhout Avenue
- * 3. Special Land Use Permit: KEPS Technologies (Verizon antenna collocation), 6301 South Westnedge Avenue

NEW BUSINESS:

OLD BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

April 25, 2016 City Council pre-meeting minutes
April 12, 2016 City Council regular meeting minutes
March 28, 2016 Zoning Board of Appeals meeting minutes

Star (*) indicates printed material within the agenda packet.

PLANNING COMMISSION

 DRAFT

April 21, 2016

The City of Portage Planning Commission meeting of April 21, 2016 was called to order by Chairman Welch at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. No citizens were in attendance.

PLEDGE OF ALLEGIANCE:

Chairman Welch led the Commission, staff and citizens in the Pledge of Allegiance.

IN ATTENDANCE:

Christopher Forth, Deputy Director of Planning, Development and Neighborhood Services; and Michael West, Senior City Planner.

ROLL CALL:

Mr. Forth called the roll: Patterson (yes), Bosch (yes); Stoffer (not present), Welch (yes), Dargitz (yes), Somers (not present) and Richmond (yes). A motion was offered by Commissioner Patterson, seconded by Commissioner Dargitz, to approve the roll excusing Commissioner Felicijan and Schimmel. The motion was unanimously approved 5-0.

APPROVAL OF MINUTES:

Chairman Welch referred the Commission to the April 7, 2016 meeting minutes contained in the agenda packet. Commissioner Patterson stated he would like to have the minutes amended to identify Commissioner Bosch as excused (email received from Commissioner Bosch prior to the April 7th meeting indicating he would not be in attendance). Commissioner Dargitz indicated that she would like to have the minutes amended (bottom of page 1, under Specific Plan for Wal-Mart) to include a statement from Mr. Forth that the city administration could also conduct annual inspections of the storm water system. Mr. Forth confirmed that he did indicate the city administration could also conduct an annual inspection. A motion was then made by Commissioner Patterson, seconded by Commissioner Dargitz, to approve the minutes as amended. The motion was unanimously approved 5-0.

SITE/FINAL PLANS:

None.

PUBLIC HEARINGS:

None.

NEW BUSINESS:

None.

STATEMENT OF CITIZENS:

None.

 DRAFT

7:05 p.m. - The Commission took a short recess. 7:10 p.m. - The Commission reconvened the meeting in City Hall Conference Room No. 1

- Commissioner Stoffer arrived at 7:12 p.m.

OLD BUSINESS:

1. Recommended FY 2016-2017 Planning Commission Goals and Objectives. Chairman Welch referred the Commission to the Planning Commission goals and objectives that were recommended to City Council for FY 2015-2016 and asked if there were any suggested changes for the proposed FY 2016-2017 goals and objective. After a brief discussion, the Commission concurred to recommend the same goals and objectives for upcoming FY 2016-2017. A motion was made by Commissioner Patterson, seconded by Commissioner Bosch, to recommend to City Council the FY2016-2017 Planning Commission Goals and Objectives as outlined in the draft communication. The motion was unanimously approved 6-0.

2. Community Impact Projects Grant Fund – additional discussion. Chairman Welch indicated that a draft memo from Commissioner Felicijan has not yet been received and asked if Commissioners had any additional thoughts regarding this topic. Commissioner Dargitz circulated and briefly discussed an article related to community and neighborhood improvement grant programs that have been implemented in other communities. Mr. Forth provided another article regarding projects for public places. Commissioner Dargitz asked if staff could scan and email these articles to the entire Commission for review and discussion at a future meeting. Mr. Forth indicated that he would scan and email the article to the entire Commission.

Mr. West briefly suggested a possible alternative for Commission consideration that could hopefully accomplish the same goals that Commissioner Dargitz is envisioning for a community impact projects grant fund without development and administration of a new program/process. Mr. West stated that specific neighborhood groups and community organizations could be contacted in the summer/early fall to submit project ideas and proposals that could be discussed and considered through the existing CIP process. Commissioner Patterson asked how a new grant fund program would be designed and implemented and stated expanding community outreach and participation within the existing CIP process may be a simpler approach. Commissioner Dargitz stated there were different approaches on how to set up and administer grant application programs and she did not believe it had to be overly complicated. Mr. Forth discussed the competitive grant process that is utilized by the Human Services Board when reviewing human/public services applications submitted by various service organizations. Mr. Forth stated the evaluation process takes several months and involves a thorough review and recommendation by the Human Services Board and City Administration, and final decision by City Council. Mr. Forth indicated the process typically begins in December and concludes when the City Council approves the annual budget for the upcoming fiscal year.

After additional discussion, the Commission concurred to continue discussion of this topic at the May 19, 2016 Planning Commission meeting.

 **DRAFT**

ADJOURNMENT:

There being no further business to come before the Commission, the meeting was adjourned at 7:25 p.m.

Respectfully submitted,

Christopher T. Forth, AICP
Deputy Director of Planning, Development and Neighborhood Services

TO: Planning Commission

DATE: April 29, 2016

FROM: Vicki Georgeau, ^{VG} Director of Community Development

SUBJECT: Preliminary Plat: Whispering Meadows No. 4, 6513 Angling Road.

I. INTRODUCTION:

The preliminary plat of Whispering Meadows No. 4 has been submitted for review and approval. The fourth and final phase of the Whispering Meadows subdivision proposes construction of 15 single family residential lots on approximately 12.78 acres. Based on information provided by the applicant, the existing 2-story farmhouse and detached garage located on the property, opposite Arbutus Trail, will be relocated to the northwestern portion of the site (0.4 acre parcel) and will be exempted from the plat. The existing barns will be moved to an off-site location.

Applicant	Lots/Area	Location
Glas Associates	15 lots/12.78 acres	Southeast ¼ of Section 7, East of Angling Road and north of Mullein Lane.

In conjunction with the proposed preliminary plat, the applicant is also requesting variances from the Subdivision and Land Division Regulations involving extension/connection of public streets (Section 42-803) and installation of sidewalks along both sides of all streets (Sections 42-804). Consistent with Section 42-713 (Variances) of the Subdivision and Land Division Regulations, the applicant has submitted a written communication in support of the requested variances.

II. BACKGROUND INFORMATION:

The following is important background information and summarizes the requirements that are applicable to the preliminary plat application. All required improvements will comply with Article 5 – Subdivision and Land Division Regulations of the City of Portage Land Development Regulations.

Street Access	Northerly extension of Bunchberry Drive (public street) and construction of a new public cul-de-sac street (Boxwood Court). Existing access to Angling Road and Romence Road provided through existing public streets located with previous phases of the Whispering Meadows subdivision.
Storm Water	Directed to an existing private storm water basin located to the south, along the east side of Bunchberry Drive, within Whispering Meadows No. 3.
Public Improvements	Public streets, curb-gutter, municipal water, sanitary sewer, streetlights will be provided pursuant to established ordinance requirements.
Zoning	R-1B, one family residential: Minimum 80 foot lot widths (100 feet for corner lots); minimum lot size of 9,600 square feet; and minimum setbacks of 30-feet (front), 10-feet (side) and 40-feet (rear).

Environmental impacts	No wetlands, floodplain or other environmental issues are present on the subject property. Existing mature trees located across the property and along Angling Road will be preserved, to the extent possible, to serve as an amenity to the development and to provide screening/buffering to future residents.
Traffic	A total of 15 single-family residential dwellings can be expected to generate approximately 75-90 vehicles per day (equivalent to 150-180 vehicle trips per day).

III. PUBLIC NOTICE REQUIREMENTS:

In accordance with the Michigan Planning Enabling Act (Public Act No. 33 of 2008, as amended), a public notice was published in the local newspaper and notice was mailed to owners of land immediately adjoining the proposed plat 15 days prior to the date of the public hearing.

Submission of the preliminary plat is intended to provide the community with the opportunity to examine existing and proposed conditions pertaining to the development of the subdivision. After approval by the City Council, preliminary plat approval is effective for 12 months. During the 12 month period, detailed engineering drawings will be prepared and submitted to City Council for review and approval. Following construction of the plat improvements, the developer will request that City Council grant final plat approval.

IV. VARIANCE REQUESTS:

Section 42-803(j) of the Subdivision and Land Division Regulations (Streets - Location and Arrangement), states, in part, that “The street layout shall provide for the continuation of collector streets in the adjoining subdivision or for the proper projection of streets when adjoining property is not subdivided, or shall conform to a plan for a neighborhood unit drawn up and adopted by the planning commission.” Immediately east of the subject property is the Robinswood subdivision that includes a public street stub (Camelot Street) that extends to the eastern boundary of the proposed Whispering Meadows No. 4 subdivision. In written correspondence dated April 27, 2016, the applicant discusses the rationale for this variance request including the desire to preserve home values and privacy, and the secluded neighborhood character of the Whispering Meadows subdivision, which has no public street interconnections to the east in the previous three phases to discourage vehicular through traffic to Angling Road.

Section 42-804 of the Subdivision and Land Division Regulations (Sidewalks) establishes a requirement that a four-foot wide concrete sidewalk be provided on both sides of all local streets, including the full length and bulb of any cul-de-sacs. In the attached correspondence, the applicant discusses the rationale for this variance request including the lack of existing sidewalks in Whispering Meadows No. 1, No. 2 and No. 3, along with the lack of continuous sidewalk in the surrounding area (Angling Road and adjacent residential neighborhoods to the east and west).

Neighborhood connectivity and installation of pedestrian facilities have been encouraged and required, when and where possible. As explained by the applicant, the Whispering Meadows development was originally planned and the first three phases constructed without pedestrian or public street connections to adjacent neighborhoods. For Commission information, Towhee Court was originally stubbed to the south property line of Whispering Meadows No. 3, between 3382 and 3440 Davcliff Avenue. During the planning and construction phase of Whispering Meadows No. 3, Towhee Street was not extended at the request of the developer. Since it was not extended, the street improvements were removed by the developer and the area

restored to greenspace. Additionally, the west end of Davcliff Avenue was stubbed to the Whispering Meadows development site. This street was also not extended into Whispering Meadows and instead, the developer constructed a small, six residential lot cul-de-sac.

In lieu of a public street extension/connection to Camelot Street, the applicant is proposing to install a pedestrian walkway, between Lots 71 and 72, which would provide for pedestrian connectivity between neighborhoods, without an increase in vehicular traffic through the Whispering Meadows subdivision. This public walkway would also provide a pedestrian linkage to Amberly Elementary School to the east and West Middle School/Moorsbridge Elementary School to the south. Also, the applicant will remove the west 62 feet of the existing Camelot Street improvements (asphalt and curb/gutter) and restore this area to greenspace.

With regard to sidewalks, during development of the first three phases of Whispering Meadows, the Land Development Regulations did not require sidewalks if the lots were greater than 100 feet in width. Since the Whispering Meadows lots are greater than 100 feet in width, installation of sidewalks was optional. The Land Development Regulations were changed in 1998 to require sidewalks on both sides of all new residential subdivisions. As noted above, the applicant is proposing a pedestrian connection to the neighborhood to the east in the final phase of Whispering Meadows, and a bikeway along Angling Road and Romence Road is provided along the major street frontage for the development.

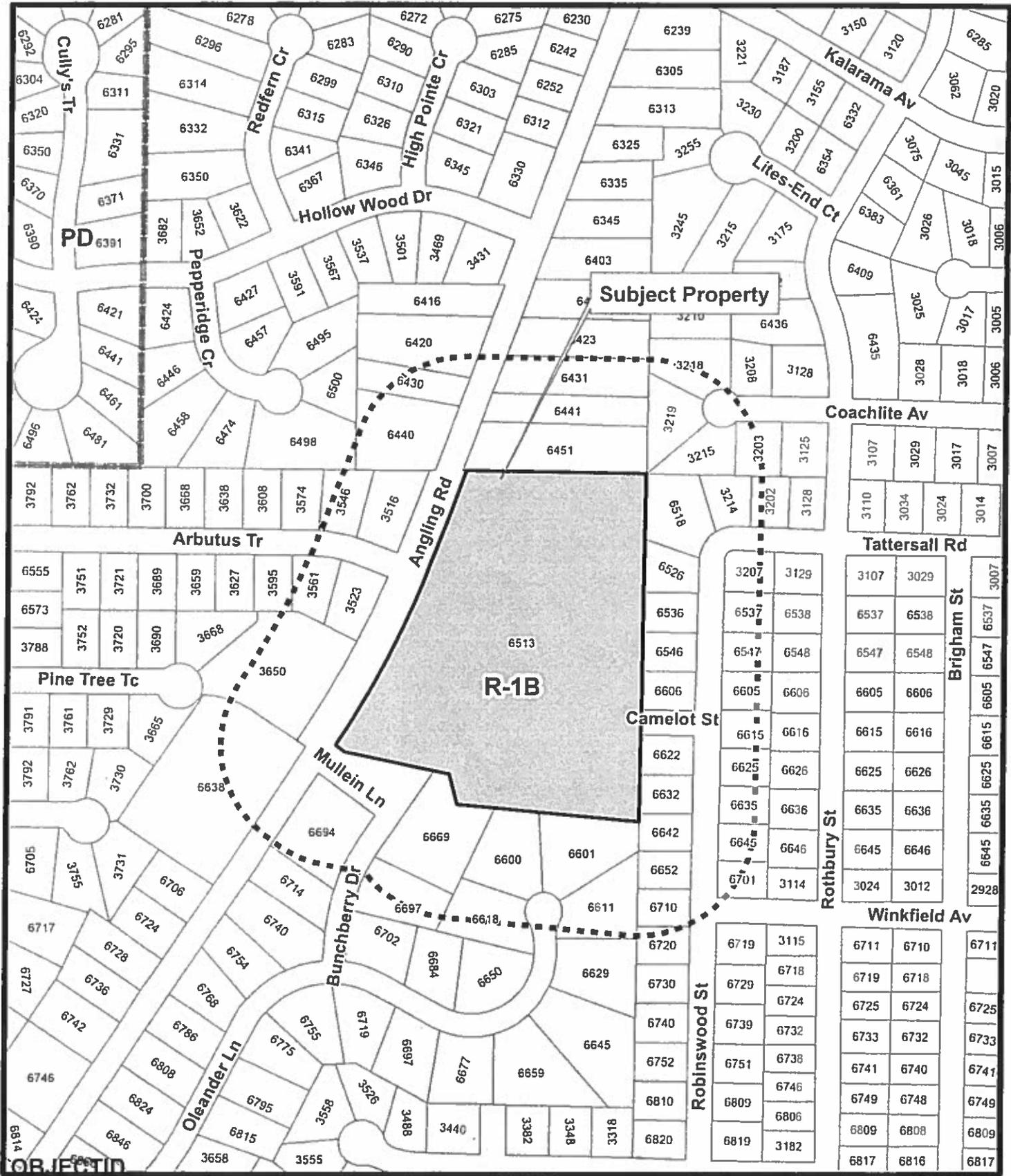
V. RECOMMENDATION:

The proposed plat has been reviewed within the context of the Comprehensive Plan, Land Development Regulations and other applicable ordinance requirements. Based on the above information and subject to any additional information received during the public hearing, staff advises the Planning Commission recommend to City Council that the Preliminary Plat of Whispering Meadows No. 4, 6513 Angling Road, be approved subject to the following conditions:

1. Variance Requests – The applicant is requesting to complete the final phase of the Whispering Meadows development project consistent with approval of the first three phases. As such, approval of the variance requests involving extension/connection of public streets (Section 42-803) and installation of sidewalks along both sides of all streets (Sections 42-804) with a finding that the criteria outlined in Section 42-713 (Variances) of the Subdivision and Land Division Regulations have been satisfied: (1) There are special circumstance of conditions affecting the property such that the strict application of this article would deprive the applicant of the reasonable use of his land; (2) The variances are necessary for the preservation and enjoyment of a substantial property right of the petitioner; and (3) The granting of the variances will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.
2. Public Streets, Walkway and Utilities – The proposed street system, municipal water and sanitary sewer are acceptable in concept. Final design, location and related issues will be addressed upon submittal of the detailed engineering drawings. Any public utility located outside of the street right-of-way (water main between lots 71 and 72) will require that an easement(s) be conveyed to the city. Additionally, an easement will also need to be provided for the public walkway located between Lots 71 and 72.

3. Storm Water Retention – Storm water run-off from Whispering Meadows No. 4 will be conveyed to an existing private storm water retention basin located to the south within Whispering Meadows No. 3. This storm water basin is owned and maintained the Whispering Meadows Home Owners Association. An easement and maintenance/indemnification agreement will need to be conveyed to the city for discharge of storm water from public streets within Whispering Meadows No. 4 to this private basin before approval of the detailed engineering drawings. Final design and related issues associated with this additional storm water discharge will be addressed upon submittal of the detailed engineering drawings.

Attachments: Zoning/Vicinity Map
Aerial Photo Map
Communication from Glas Associates received April 27, 2016
Preliminary Plat Drawing



-  300' Notification
-  6513 Angling
-  Zoning Boundary

Preliminary Plat

Whispering Meadows No. 4

6513 Angling Road



1 inch = 333 feet



 6513 Angling

**Preliminary Plat
Whispering Meadows No. 4
6513 Angling Road**



1 inch = 325 feet

GlasAssociates

CUSTOM HOME DESIGNERS/BUILDERS
COMMERCIAL CONTRACTING

6339 Stadium Drive
Kalamazoo, MI 49009

ph: 269.353.7737
fax: 269.353.7316
glasassociates.com

RECEIVED

APR 27 2016

COMMUNITY DEVELOPMENT

April 11, 2016

[April 26, 2016 Revised – See Paragraph 8]

City of Portage
7900 South Westnedge Avenue
Portage, MI 49002

Attention: Mr. Christopher Forth, AICP, Deputy Director of Planning, Development and Neighborhood Services

RE: PRELIMINARY PLAT OF WHISPERING MEADOWS NO. 4, 6513 ANGLING ROAD, PORTAGE, MICHIGAN

Dear Mr. Forth:

Thank you for providing the City Administration review and comments. In response thereto, below please find comments which correspond to the item numbers contained in your April 4, 2016 letter.

Community Development Department

1. An executed affidavit of ownership is enclosed for your review and approval.
2. Please accept this correspondence as a written request for a variance from the neighborhood interconnection requirements with the adjacent Robinswood subdivision to the east. Justifications for this request, in accordance with the criteria outlined in Section 42-713 of the Subdivision Regulations, are as follows:
 - a. General Overview
 - i. Whispering Meadows No.s 1, 2 and 3 were recorded in 1992, 1994, and 1997, respectively, all of which predate the current ordinance provisions adopted in 1998. The first three phases created a secluded neighborhood character with high value homes. The road network specifically focused on discouraging the use by through traffic, which is still consistent with current ordinance provision 42-803.(1) for street location and arrangement. This was also desired since the market value of the Whispering Meadows homes in comparison to those in adjoining neighborhoods are nearly 300-400% higher as supported by current SEV and taxable value information found on the City GIS web site. The lack of interconnectivity helps preserve the privacy and values of these property owners. Whispering Meadows No. 4 is proposed as a final extension of this existing neighborhood and aims to create a cohesive character and environment for the sake of both existing and new home/property owners.
 - b. Section 42-713
 - i. Condition 1 – There are special circumstances or conditions affecting the property such that the strict application of this article would deprive the applicant of the reasonable use of his land.
 1. The street layout of the previous three phases provides no interconnectivity, or proposed connection, to adjoining subdivisions for reasons stated above. This development pattern was set in place before much of the recent emphasis on

comprehensive planning connectivity and Complete Streets policies. Imposing the current ordinance provisions creates a special circumstance/condition which deprives the applicant from reasonably developing this final phase in a nature consistent with the existing phases. It would detract from the existing home values and lessen the market viability of the developers proposed use of the land for the final phase. Finally, the currently adequate interconnectivity among adjacent subdivisions to the same major thoroughfares to which Whispering Meadows No.s 1-4 connects does not significantly benefit vehicular circulation in the vicinity when contrasted with the detriments to the neighborhood character.

- ii. Condition 2 – The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
 1. The variance is necessary to preserve the same and substantial property rights of the petitioner previously afforded for the betterment/enjoyment of the eventual home/property owners and development character. It is also necessary to preserve the property rights of homeowners of the previous three phases.
 - iii. Condition 3 – The granting of the variance will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.
 1. To the contrary, the granting of variance will warrant against injurious conditions to the other existing properties in the territory/Whispering Meadows No.s 1-3 and will preserve the public safety/welfare by limiting through traffic within these quiet neighborhoods.
3. Please accept this correspondence as a written request for a variance from the four- and five-foot sidewalk installation requirements throughout the development and along Angling Road. Justifications for this request, in accordance with the criteria outlined in Section 42-713 of the Subdivision Regulations, as well as the City Complete Streets Policy, are as follows:
- a. General Overview
 - i. The lack of sidewalks in all phases of the Whispering Meadows subdivision is purposeful for the same reasons stated above for the roadway interconnectivity. The addition of sidewalk in Whispering Meadows No. 4 would be a gap filling measure at best given a lack of any other major network in the vicinity, especially in Whispering Meadows No. 1 through 3. In the west and east neighborhoods, the sidewalk network is very sporadic and incomplete. Without a documented capital improvements plan demonstrating a timely feasible financial plan to implement sidewalk installation throughout the area, we further believe it would be in the public's best interest to prolong installation in Whispering Meadows until such a time. This approach would prevent premature deterioration (and sooner than necessary rehabilitation/replacement) of the sidewalk in an immediate time frame when it would be highly under-utilized. A sidewalk to a "nowhere" terminus could also create potential safety issues by entering/existing pedestrians and non-motorized traffic to/from a vehicular network not designed for this mixed-use pattern.
 - b. Section 42-713
 - i. Condition 1 – There are special circumstances or conditions affecting the property such that the strict application of this article would deprive the applicant of the reasonable use of his land.
 1. See above item 2 and 3.a.i.
 - ii. Condition 2 – The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
 1. See above item 2 and 3.a.i.

- iii. Condition 3 – The granting of the variance will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.
 1. See above item 2 and 3.a.i.
- c. Complete Streets
 - i. The City of Portage Complete Streets Policy provides the City Administration the discretion to permit exceptions from the policy if meeting one or more of certain provisions. The following are two such provisions applicable to the Whispering Meadows application:
 1. Provision 2 – An alternative route, such as a multi-use trail in the immediate vicinity provides an option for non-motorized transportation.
 - a. An alternative non-motorized transportation route in the immediate vicinity is available by means of the existing designated widened shoulder trail along Angling Road.
 2. Provision 9 – The adopted Comprehensive Plan, or other present and/or anticipated market conditions that can be documented, indicate an absence of existing or future need (e.g. sparse population), for a Complete Street element or elements.
 - a. As mentioned in item 2 and 3.a.i above, market and character conditions within all Whispering Meadows phases support the absence of sidewalk throughout the development. The absence of such a transportation element in the general area, as aforementioned, also supports the lack of current need without significant area wide investment and support, all while avoiding placing unneeded replacement operation, maintenance and replacement costs for a highly under-utilized asset onto future users.
4. The variance request for the Lot 1 front yard building setback along the south property line is hereby withdrawn. Thank you for coordinating the request requirements between your office and the City attorney.
5. A signed letter from the Whispering Meadows Home Owners Association concerning the ownership and use of this basin for Whispering Meadows No. 4 is enclosed for your review and approval.
6. It is our intent to preserve the mature tree line to the greatest extent possible in the area from the existing overhead electric utility lines towards Angling Road to preserve the desired private and naturally wooded character of this development. Any clearing which may occur would consist of removing fallen trees/limbs or underbrush which inhibit the health of the mature tree line. In this stretch, we will supplement landscaping and/or berming as appropriate adjacent to Lots 1 through 6 to comply with Subdivision Regulation requirements.
7. The proposed setbacks have been dimensioned for the relocated structures shown on the land division application for the 0.40 acre exempted parcel. The updated plat drawing is enclosed.
8. *[April 26, 2016 Revision]*
Additional comment not in City review letter dated April 4, 2016 – A subsequent phone conversation with Ms. Vicki Georgeau, Director of Community Development, indicated City staff would be agreeable to recommending the above stated variance requests (see items 3 and 4) with the stipulation a 10' wide dedicated public walk be installed from the cul-de-sac of proposed Boxwood Court to the revised asphalt limits of Camelot Street. We are agreeable to this stipulation and commit to providing the dedicated public walk and coordinating the removal of asphalt (as shown on the updated plan) and abandonment of the Camelot Street right-of-way.

Fire Department

1. The "no parking-fire lane" sign posting requirement is noted on the enclosed updated preliminary plat drawing.

Transportation and Utilities Department

1. We understand the cut/fill requirements associated with this site. The site design construction drawings submitted to the City for approval between Preliminary and Final Plat approval will consider this comment and aim to mitigate any adverse effects associated therewith to the greatest extent possible.
2. A 20 foot easement for water main looping has been added between lots 12 and 13 on the enclosed updated preliminary plat drawing.

We believe the above responses address the City Administration comments. Accordingly, also enclosed please find eight copies of the revised plans at an 11" x 17" reduction in effort to be scheduled on the May 5, 2016 Planning Commission meeting agenda.

Thank you and other City staff in advance for your diligent efforts on the review of our application. If you have comments or questions, please do not hesitate to contact me at any time.

Sincerely,

GLAS ASSOCIATES DESIGNER/BUILDER LLC

A handwritten signature in black ink, appearing to read "Charlie Glas", written over the company name.

Charlie Glas, Member

WPA
 WORTHMAN &
 ASSOCIATES, INC.
 ARCHITECTURE
 1000 WEST 10TH AVENUE
 SUITE 1000
 DENVER, CO 80202
 PHONE: (303) 733-1000
 FAX: (303) 733-1001
 WWW.WORTHMAN-PA.COM

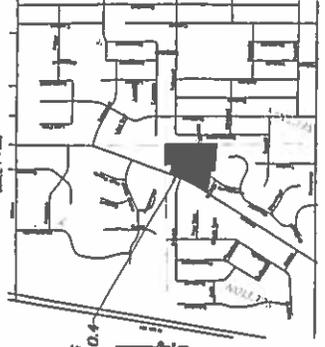
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 WWW.QUASASSOCIATES.COM

PROPOSED WHISPERING MEADOWS NO. 4
 PROJECT NO. 1000
 11 WEST, CITY OF PORTAGE,
 KALAMAZOO COUNTY, MICHIGAN

RECEIVED
 APR 9 9 2016
 KALAMAZOO COUNTY CLERK
 1000 WEST 10TH AVENUE
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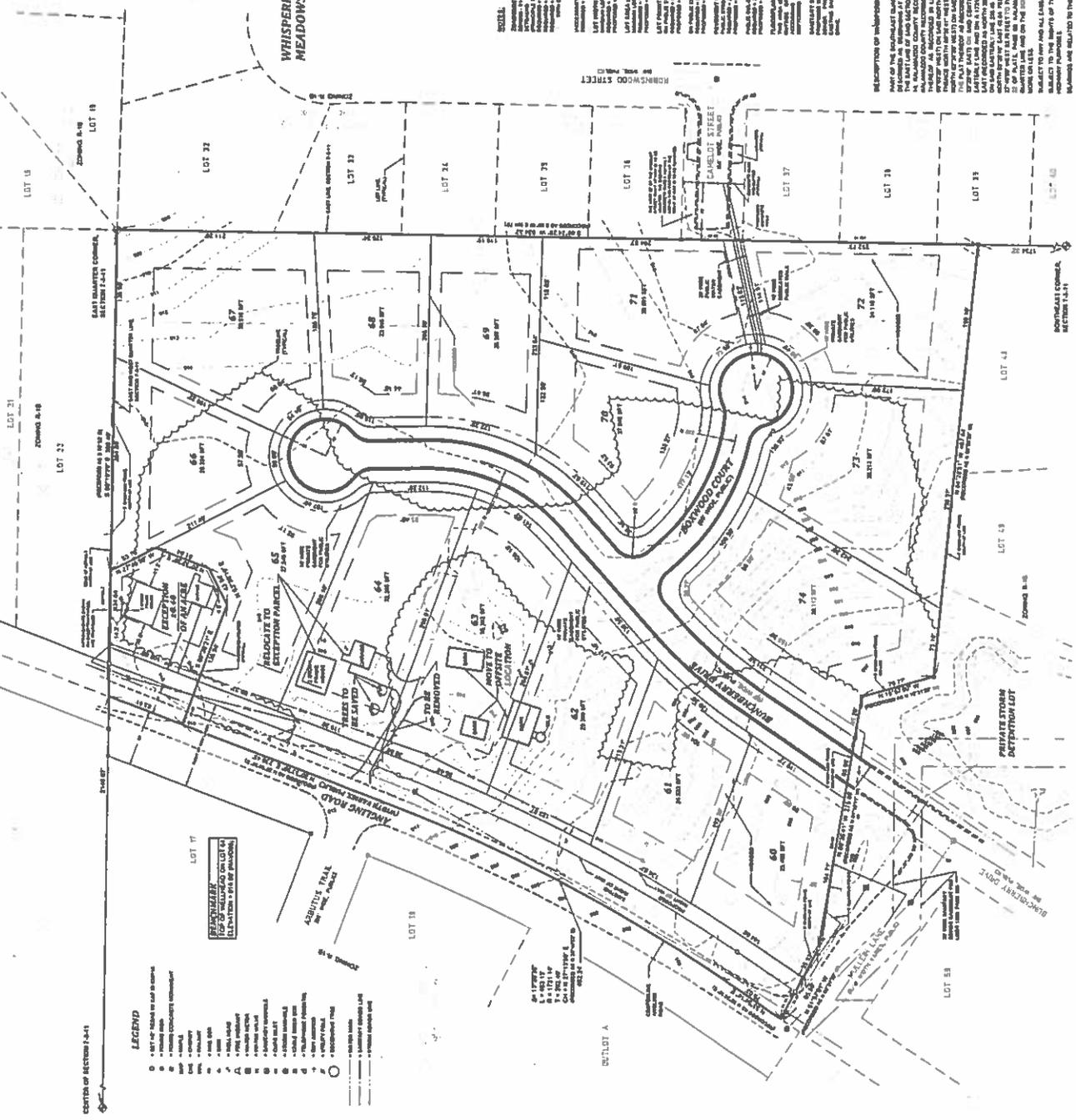
WHISPERING MEADOWS NO. 4
 BEING A SUBDIVISION IN THE
 SOUTHEAST QUARTER OF FRACTIONAL
 SECTION 7, TOWNSHIP 3 SOUTH, RANGE
 11 WEST, CITY OF PORTAGE,
 KALAMAZOO COUNTY, MICHIGAN.

OWNER: WHISPERING MEADOWS LLC
 11 WEST, CITY OF PORTAGE,
 KALAMAZOO COUNTY, MICHIGAN
 ARCHITECT: WORTHMAN & ASSOCIATES, INC.
 1000 WEST 10TH AVENUE, SUITE 1000, DENVER, CO 80202
 QUAS ASSOCIATES
 1000 WEST 10TH AVENUE, SUITE 1000, DENVER, CO 80202



NOTES:
 1. THE CITY OF PORTAGE HAS REVIEWED THIS PLAN AND HAS ISSUED THIS PERMIT UNDER THE CITY OF PORTAGE ZONING ORDINANCE. THE CITY OF PORTAGE DOES NOT WARRANT THE ACCURACY OF THIS PLAN OR THE INFORMATION CONTAINED HEREIN.
 2. THE CITY OF PORTAGE DOES NOT WARRANT THE ACCURACY OF THIS PLAN OR THE INFORMATION CONTAINED HEREIN.
 3. THE CITY OF PORTAGE DOES NOT WARRANT THE ACCURACY OF THIS PLAN OR THE INFORMATION CONTAINED HEREIN.
 4. THE CITY OF PORTAGE DOES NOT WARRANT THE ACCURACY OF THIS PLAN OR THE INFORMATION CONTAINED HEREIN.
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TO: Planning Commission

DATE: April 29, 2016

FROM: Vicki Georgeau, ^{VJ} Director of Community Development

SUBJECT: Preliminary Report: Rezoning Application 15/16-5, 715 West Osterhout Avenue (PD – residential condominium)

APPLICATION INFORMATION:

A PD, planned development rezoning application has been received from Landmark Development Partners, LLC involving an approximate 39 acre parcel addressed as 715 West Osterhout Avenue. Landmark Development Properties has entered into a tentative sales agreement to purchase the subject property and construct a mixed housing (single family, attached residential and duplex) condominium development project. Attached is the rezoning application, narrative and tentative plan.

Applicant	Property Address	Parcel Number	Zoning	
			Existing	Proposed
Landmark Development Properties, LLC	715 West Osterhout Avenue	00033-160-O	R-1C	PD
One parcel: 39 acres				

EXISTING CONDITIONS:

The table below summarizes the existing conditions in this general area.

Existing Land Use/ Zoning	<ul style="list-style-type: none"> • Rezoning Site: The approximate 39 acre subject property is occupied by a 1,072 square foot two-story single family residence that was constructed in approximately 1930. The residential structure is currently vacant and has been unoccupied since approximately November 2014. This residential dwelling has been identified as an unsafe structure will be demolished with construction of the proposed residential condominium project or by July 15, 2016, whichever occurs first. • North: Across West Osterhout Avenue, single family residences and Schrier Park zoned R-1C, one family residential. • South: Gourneck State Game Area zoned R-1C, one family residential. • East: A single family residence (443 West Osterhout Avenue) and vacant land zoned R-1C, one family residential. • West: A single family residence (951 West Osterhout Avenue) and vacant land zoned R-1C, one family residential.
Zoning/Development History	No recent rezoning activities in the surrounding area.
Historic District/ Structures	The subject site is not located within a historic district and does not contain any historic structures.
Environmental	The eastern/southeastern portion of the subject property (approximately 6.3 acres) has been identified as regulated wetlands. The applicant hired a wetland consultant who performed a wetland assessment of the property and the wetland boundary is identified on the tentative plan drawing. No encroachment into the wetlands is proposed with the residential condominium development.

Public Streets	West Osterhout Avenue is classified as a 2-lane minor arterial roadway with a 2012 average daily traffic count of 4,436 vehicles. The capacity of this section of West Osterhout Avenue is 16,500 vehicles per day (level of service “D”).
Public Utilities	Sanitary sewer and municipal water are available within the West Osterhout Avenue to serve the proposed development project.

ZONING CODE/PLANNED DEVELOPMENT PROCEDURES/REGULATIONS:

The PD, planned development chapter establishes a two-part review and approval process: Tentative plan review and final plan review for each phase of the development. The applicant is required to submit a tentative plan that outlines the development concept (phases) for the entire project. Although conceptual in nature, specific statements, proposals, plans and a schedule for development of the site are required. The tentative plan is scheduled for Planning Commission review and a public hearing. The submission of both written and graphic information constitutes a tentative plan.

The Planning Commission will provide a recommendation to City Council regarding the tentative plan. If approved, the planned development must proceed in accordance with the tentative plan. Approval of the tentative plan by Council constitutes rezoning of the land to PD and allows the submission of a final plan for Administrative, Planning Commission and City Council review. A final plan is submitted in detailed form and is subject to a review process similar to a site plan. If no final plan for development is submitted within two years from the date of approval of the tentative plan, Council may either extend the approval for a period not to exceed two years or initiate rezoning proceedings to re-designate the property to an alternate zoning classification. Under the terms of the ordinance, any change to the tentative plan, such as modifying an approved land use class or adding a land use class, will require formal review and approval, with public hearings, in a manner similar to a rezoning procedure.

Section 42-374 of the Land Development Regulations contains the PD district development standards. This section provides flexibility in the types of land uses of which up to 20% of the total land area available can be utilized for nonresidential uses. The planned development is required to provide public water, public sanitary sewer and a pedestrian system. The applicant must demonstrate that the plan cannot be developed under other sections of the Zoning Code or must provide a mixture of housing types. The overall density of the project may not exceed seven units per acre and density in any one phase may not exceed 12 units per acre. Single family “lots” cannot average less than 6,500 square feet with a minimum of 5,000 square feet. Building setbacks, building height, open space and screening are also regulated under the ordinance.

PROPOSED TENTATIVE PLAN:

As indicated by the applicant in the attached written narrative, the objective of the planned development is to create an attractive, high quality neighborhood of single family detached and attached homes with private streets, sidewalks, on-site trails and preservation of natural areas for the enjoyment of the residents. A total of 102 residential dwelling units are proposed resulting in an overall development density of approximately 2.6 units/per acre. The applicant anticipates that approximately 66% of the residential structures will be single-family detached dwellings and the remainder will be single-family attached dwellings (approximately 30%) and possible duplex dwellings (approximately 4%). Each home will feature quality construction, interior fire sprinklers, maintenance free materials and energy efficient features. Single family residential condominium units will include two and three bedroom floor plans with between 1,550 – 1,950 square feet of living area, excluding any basement area, and an attached two-car garage. According to the applicant, most of the homes will also have a front porch and either a deck, patio or 3-season porch attached

to the rear of the dwelling. Pricing for these residential condominiums is anticipated to begin around \$210,000 and range upward to \$350,000. Other features of the proposed planned development project include:

- Pedestrian Walkway/Trailway – Concrete sidewalks will be constructed on at least one side of the interior private streets. Additionally, a walking trail (stone or wood chip) will also be constructed on an upland area along the east side of the property between the east property line and identified wetland area. This trail will also provide pedestrian access to the Gourdneck State Game Area located to the south. Additionally, a pedestrian connection is planned to connect this development to a future phase of the Stateland Park subdivision located immediately to the west. The walking trail will be constructed with Phase 1 and the pedestrian connection to the future phase of Stateland Park will be constructed with Phase 2.
- Open Space Features – Open space will be preserved to serve as an amenity to the development and to provide active and passive recreation options for the residents. Primary natural areas that will be preserved include the approximate 6.3 acres of wetlands located along the northeast and southeast portions of the property and an additional approximate 3.9 acres of upland located east and southeast of the wetland areas. In addition to the walking trails described above, the applicant is also proposing to construct a picnic/pavilion building between the two wetland areas. Finally, the applicant has also indicated that mature trees and natural areas present around the perimeter of the property will be preserved to serve as a natural buffer and to provide visual screening.
- Storm Water Management - Storm water runoff associated with the project will be collected and conveyed to a series of settling basins and/or treatment cells located throughout the development with discharge to the natural wetland areas. Additional information concerning the design of the storm water system, along with any necessary permits/approvals from the Michigan Department of Environmental Quality will be submitted with the final (site) plan.
- Vehicular Access/Private Streets – Access to the development will be provided through a single, boulevard access drive from West Osterhout Avenue driveway, generally situated opposite the Schrier Park service drive located on the north side of West Osterhout Avenue. A network of curbed private streets will be provided within the interior of the development with a minimum pavement width of 24-feet (28-foot wide back-of-curb to back-of-curb). All interior private streets will be owned and maintained by the condominium association.
- Building Setbacks – A minimum 40-foot building setback will be maintained around the perimeter of the property. Additionally and to provide a peripheral transition area to future phases of the Stateland Park subdivision to the west, the applicant has agreed to only construct single family detached condominium units along the western portion of the planned development. Residential condominium buildings will maintain a minimum 24-foot separation and will be setback at least 25-feet from the interior private streets.
- Project Phasing – The applicant envisions that the overall development project (102 units on 39 acres, 2.6 units/acre) will be constructed in four phases spanning approximately 7-9 years with approximately 24-28 dwelling units construct each phase:
 - Phase 1: 24 units on 7.9 acres (3.0 units/acre) 2016-2018
 - Phase 2: 25 units on 6.3 acres (3.9 units/acre) 2018-2021
 - Phase 3: 25 units on 7.1 acres (3.5 units/acre) 2021-2023
 - Phase 4: 28 units on 17.6 acres (1.6 units/acre) 2023-2025

PRELIMINARY ANALYSIS:

The preliminary analysis has been prepared based on the Comprehensive Plan, traffic conditions, surrounding development patterns and general land use considerations. Issues to be analyzed include consistency with the Future Land Use Plan Map and Development Guidelines, suitability of the existing zoning classification and the impacts of the proposed zoning classification.

Comprehensive Plan

Prior to recommending a zoning amendment, a determination that the proposed change is consistent with the Comprehensive Plan is appropriate. In the case of a rezoning, consistency is evaluated based on the Future Land Use Plan Map and also the Development Guidelines.

Future Land Use Plan Map -- The Future Land Use Plan Map component of the Comprehensive Plan designates the subject property, along with the majority of the surrounding properties, as appropriate for Low Density Residential land use. The adjacent State-owned property to the south is designated as the Gourdneck State Game Area, while the adjacent city-owned property to the north (Schrier Park) is designated for Park/Recreation land use. The Comprehensive Plan identifies the purpose of the Low Density Residential classification (1 to 4 units per acre) to establish areas for future low density, single family residential development, to protect existing established residential neighborhoods from the intrusion of incompatible land uses and to encourage new housing development to take advantage of available attractive natural features and other amenities. The Low Density Residential classification generally corresponds to the R-1B, R-1C, R-1D, R-1E and PD zoning districts.

Development Guidelines -- The Development Guidelines are intended to be used by the Commission and staff when reviewing private development projects, infrastructure improvement programs (i.e. public expenditures on streets, sewers, water mains and others that influence the location, intensity and timing of development) and public programs that affect the physical environment. The guidelines also provide direction and underpinning for regulations that affect land use (e.g. zoning, subdivision, parking, landscaping and others), may suggest incentives to influence community development and preservation and may suggest adjustments to other policies which influence the use of land for consistency with community development and preservation objectives. An evaluation of the Development Guidelines will be provided with the final staff recommendation.

Suitability of Existing R-1C Zone /Impacts of Proposed PD Zone

Both the existing R-1C zoning and the proposed PD zoning/tentative plan are consistent with the Comprehensive Plan/Future Land Use Map and suitable for the subject property. Traditional single family residential developments (subdivisions/plats) under the R-1C zoning district are required to provide a minimum lot size of 12,000 square feet (14,400 square feet for corner lots). This minimum lot size requirement generally results in a development density between 2-3 units/acre. Based on approximately 29 acres of usable land area available for development and the location of the wetland areas, the R-1C zone would yield approximately 78 single-family lots (2 units per acre). As proposed by the applicant, 102 dwelling units are planned if the property is rezoned to PD, planned development and tentative plan approved. The approximate 30% increase in the number of dwelling units under the PD district is primarily attributed to the proposed mixture of housing types (single-family attached, single-family detached and a limited number of duplexes) and more narrow, private streets (public streets require a 60-foot wide right-of-

way) within a condominium form of development. While the PD ordinance establishes a maximum overall development density of 7 units/acre, the proposed PD rezoning and tentative plan/narrative proposes an overall development density of approximately 2.6 units/acre consistent with a low density residential development pattern in the vicinity.

Traffic Considerations

According to The ITE Trip Generation Manual, Eighth Edition, a single family residence will generate between 5-6 vehicle trips (10-12 vehicle trip ends) on an average weekday, 24-hour period. A full build-out, a total of 102 single family residences will generate between 510-612 vehicle trips on an average weekday, 24-hour period (1,020-1,224 vehicle trip ends). For Commission information, vehicle trip ends count each car that visits a site twice, once for entering and once for exiting. In conjunction with this development project, a left-turn lane in West Osterhout will be required.

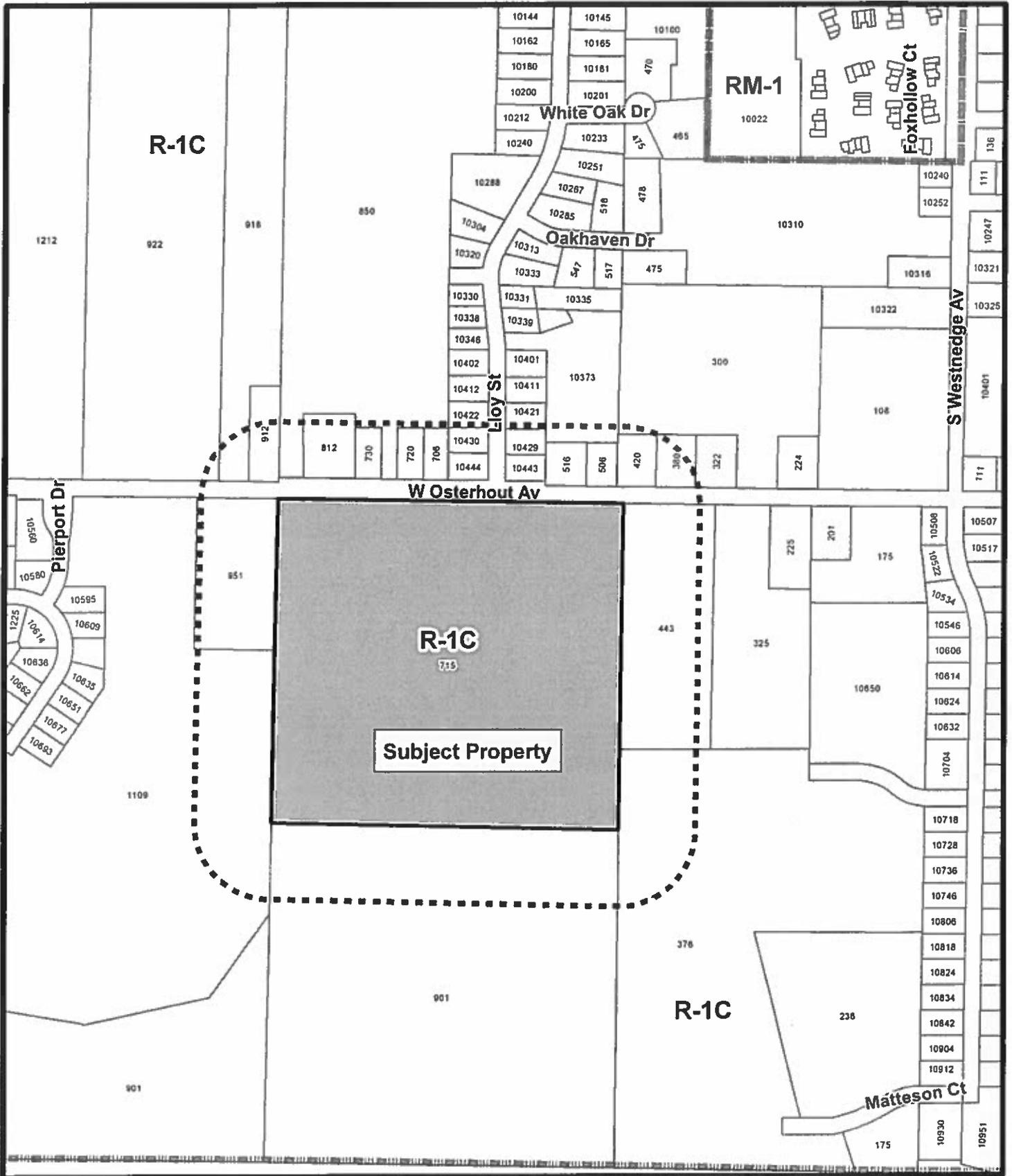
Environmental Impacts

As indicated previously, approximately 6.3 acres located along the eastern portion of the subject property have been identified as regulated wetlands. The tentative plan does not identify any construction activities (homes, private streets, utilities) occurring within designated wetland areas. Additional review of regulated wetlands, including any proposed discharge of storm water from the development, will be considered with submittal of the final (site) plan for each phase of the project.

RECOMMENDATION:

In accordance with the Planning Commission policy of accepting public comment at the initial meeting and concluding the rezoning at a subsequent meeting, it is recommended that public comment be received during the May 5, 2016 meeting and the public hearing be adjourned to the May 19, 2016 meeting.

Attachments: Zoning/Vicinity Map
Future Land Use Map
Aerial Photo Map
Rezoning Application
Narrative and tentative plan layout revised April 27, 2016

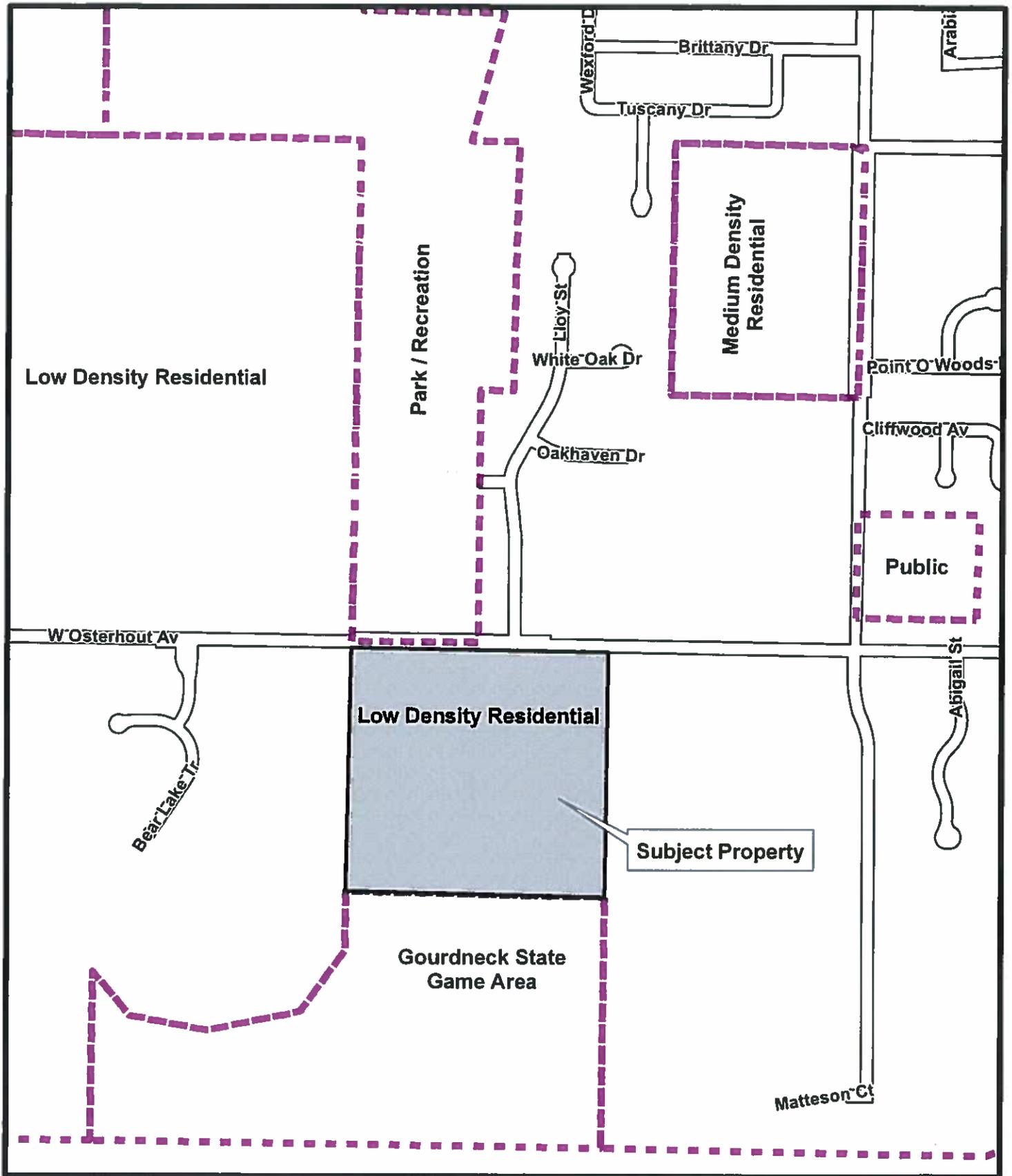


-  300' Notification For Subject Property
-  Subject Property
-  Zoning Boundary

Rezoning: 15/16 - 5
715 West Osterhout Avenue



1 inch = 500 feet

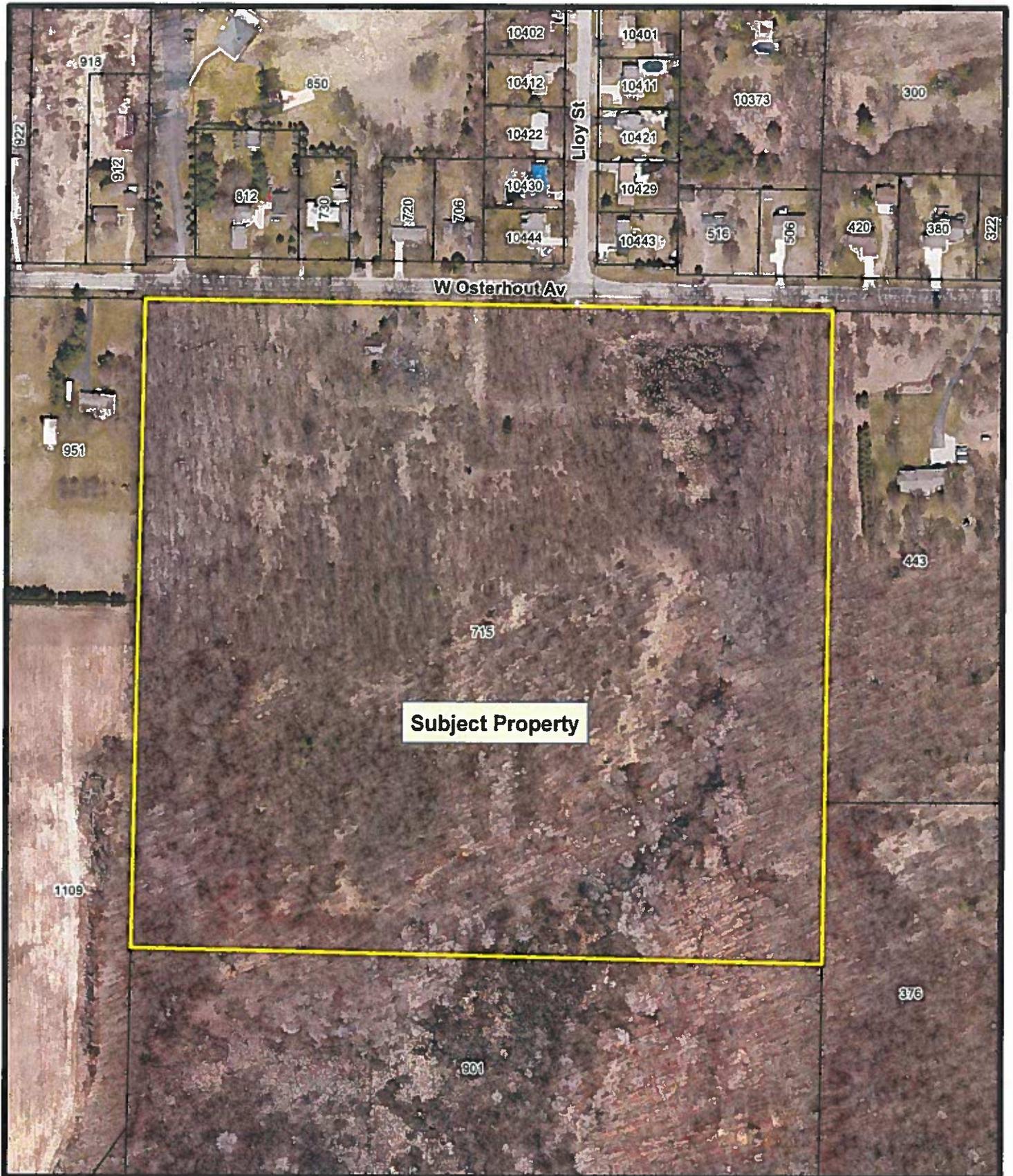


 715 Osterhout

Rezoning: 15/16 - 5
715 West Osterhout Avenue
Future Land Use



1 inch = 667 feet



Rezoning: 15/16 - 5
715 West Osterhout Avenue

 Subject Property



1 inch = 250 feet

APPLICATION FOR ZONING AMENDMENT

Application number #15/16-4

Date 3-31-16

APPLICATION INFORMATION:

Meetings of the Portage Planning Commission are held on the first and third Thursday of each month at 7:00 p.m. in the Council Chambers of Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan. All zoning amendment applications must be properly filled out and submitted to the Department of Community Development and the zoning amendment fee paid at least 15 working days prior to the meeting at which the public hearing is held. The applicant will be notified in writing of all such public hearing/meetings.

For more detailed information about the zoning amendment process, please refer to Portage Land Development Regulations, Article 4, Division 2, Subdivision 2.

RECEIVED
MAR 31 2016
COMMUNITY DEVELOPMENT

TO THE PLANNING COMMISSION:

I (WE), the undersigned, do hereby respectfully make application and petition the Portage Planning Commission to amend the Zoning Ordinance and/or change the Zoning Map as hereinafter requested. In support of this application, the following is submitted:

ZONING MAP AMENDMENT

1. a. Platted Land: n/a

The property is part of the recorded plat: The property sought to be rezoned is located at _____ between _____ Street and _____ Street on the _____ side of the street, and is known as Lot Number(s) _____ of _____ Plat (Subdivision). It has a frontage of _____ feet and a depth of _____ feet.

b. Unplatted Land:

The property is in acreage, and is not therefore a part of a recorded plat. The property sought to be rezoned is located and described as follows: (Indicate total acreage and parcel number). #715 West Osterhout Ave. / Parcel # 00033-160-0
The northwest 1/4 of the Southeast 1/4 of Section 33, Town 3 South,
Range 11 West, City of Portage, Kalamazoo County, Michigan.
Area = 40.5 acres

2. a. Do you own the property to be rezoned? Yes _____ No X (Have signed sales agreement)

b. Name of the owner of the property to be rezoned: Nancy Prough (Estate Representative)

Address 9403 Lost Trail Delton, MI 49046

3. My (our) interest in the property and purpose for submitting the proposed Zoning Amendment: Landmark Development Partners has a signed sales agreement for subject property. Property is intended to be a Planned Development.

4. CURRENT ZONING: R-1C PROPOSED ZONING: PD

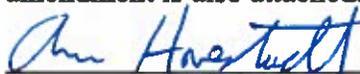
ZONING TEXT AMENDMENT n/a

1. The proposed language to be considered is (attach additional sheets as necessary):

2. The Zoning Code Chapter and Section wherein the proposed text would be modified/inserted.

3. My (our) interest in and purpose for submitting the proposed Zoning Ordinance Amendment.

We attach a statement hereto indicating why, in our opinion, the change requested is necessary for the preservation and enjoyment of substantial property rights, and why such amendment will advance the public health, safety and welfare. An assessment of the impact of the proposal on the community and property of other persons in the vicinity of the amendment or affected by the amendment is also attached.


(Signature of Applicant)

**Aaron Hovestadt,
Landmark Development Partners, LLC**

(Signature of Applicant)

**5176 Queen Victoria Lane
Kalamazoo, MI 49009**

(Address)

(Address)

(269) 806-6823

(Phone)

(Phone)

A copy of all actions taken regarding this application shall be attached and shall be considered a part of this application.

MARCH 30, 2016
(Revised April 27, 2016)

RECEIVED
APR 27 2016
COMMUNITY DEVELOPMENT

**NARRATIVE for PROPOSED
PLANNED UNIT DEVELOPMENT
on OSTERHOUT AVENUE
in THE CITY OF PORTAGE**

**DEVELOPER:
LANDMARK DEVELOPMENT PARTNERS, LLC
Attn: AARON HOVESTADT
5176 QUEEN VICTORIA LANE
KALAMAZOO, MI 49009**

INTRODUCTION:

This proposed Planned Development, or PD, is situated on the south side of Osterhout Avenue, approximately 3/8 mile west of South Westnedge Avenue in Section 33, City of Portage, Michigan. The subject property contains 39.0 acres (excluding Osterhout Avenue right-of-way) and measures one quarter mile east/west by one quarter mile north/south. The site is mostly wooded, and is surrounded by properties that are mostly wooded. Despite the property having a rural feel to it, it is located less than 10 minutes from many City of Portage businesses and other City amenities. Proposed on site are approximately 102 dwellings of high quality, energy efficient construction. Each dwelling will be served by a private road network. This PD is intended for families, couples, empty nesters, single professionals, and retirees. Also, a variety of floor plans shall be offered along with a mixture of housing types (single family detached, single family attached, and duplex dwellings).

PURPOSE & OBJECTIVES:

The objectives of this PD development are as follows:

- 1) To create an attractive, high quality neighborhood of single family homes for couples, families, and single individuals.
- 2) To eliminate many maintenance duties and responsibilities for homeowners such as mowing, weed control, raking of leaves, cleaning of gutters, snow shoveling, tree trimming, etc.
- 3) To provide a single family neighborhood with high quality, energy efficient homes, but at the same time eliminate much of the maintenance that comes with home ownership.
- 4) To create a neighborhood with typical densities, but at the same time provide permanent open space, walking trails, and on-site natural areas that can be enjoyed by the residents.

CONDOMINIUM / OWNERSHIP:

The PD will be developed as a condominium with the residents owning and maintaining the inside of the dwelling (the condominium "unit"). The condominium association will own and maintain everything exterior to each unit, including yard areas ("limited common areas") and streets / natural areas ("general common areas"). Exterior maintenance that will be provided by the Condominium Association will include the exterior of the dwellings, gutters, lawns, sidewalks, driveways, private streets, natural areas, etc. The yard area surrounding each dwelling be "limited common area" and will be for the use and enjoyment of that unit owner. The private streets, on site trails, sidewalks, and natural areas will be designated as "general common areas." These general common areas will be for the use and enjoyment of all residents.

THE SITE:

This PD is located on the south side of Osterhout Avenue in the Southeast quarter of Section 33. The property address is 715 West Osterhout Avenue. Situated east of the subject property are two large parcels, each with a home on it. South of the subject property is land owned by the State of Michigan. West of the subject property is a large parcel with a home on it, as well as some vacant land (future development area for the "Stateland Park" subdivision). North of the property, on the north side of Osterhout Avenue, are single family dwellings and Schrier Park. All adjoining properties, as well as the subject property, are currently zoned R-1C per the City's Zoning Map. Situated on the subject property is one single family home that will be removed prior to commencement of roadway and utility construction. The subject property is covered by mature trees and younger trees, with the mature trees being spread out. The site is unique with nice hardwoods and rolling terrain, and the intent is to preserve as many trees as possible. Within the southeasterly and easterly portions of the property is land that is significantly lower than the northwesterly portion of the property. A wetland assessment of the property has been completed and the conservative wetland boundary has been shown on the Tentative Plan. The Wetland Assessment report has been provided to the City for reference. The northerly and westerly portions of the property are relatively high. Along the entire north edge of the property is Osterhout Avenue, a City of Portage public street. Soils within the proposed building areas are Oshtemo Sandy Loam per the USDA's Soil Survey of Kalamazoo County.

PHASING:

It is anticipated that the development will be constructed in four phases, with each phase consisting of 24 to 28 dwellings. Construction of utilities, roadways, and dwellings for phase one is planned to commence during 2016 or 2017. Construction for each subsequent phase is anticipated to commence approximately every two years. The currently anticipated size, limits, and density of each phase has been shown on the submitted Tentative Plan. Phase one is anticipated to include 24 units on 7.9 acres. Phase two is anticipated to include 25 units on 6.3 acres. Phase three is anticipated to include 25 units on 7.1 acres. Phase four is anticipated to include 28 units on 17.6 acres. Please note that the proposed phasing could be altered based on utility routing, final design, City requirements, etc.

ON-SITE DWELLINGS:

The proposed dwellings within this PD will typically measure approximately 40 feet wide and 60 to 70 feet deep. Each dwelling will have between approximately 1550 square feet and 1950 square feet of living area (excluding any basement area), an attached two-car garage, and the dwellings will typically be single story with a basement. Note that the 1950 square foot dwellings may have a second story with two additional rooms. It is anticipated that four dwelling sizes will be offered (1550, 1650, 1800, and 1950 square feet). Most or all dwellings will have a front porch. Most dwellings will have a deck, patio, or 3-season room on the rear of the dwelling. A mixture of housing types will be included.

ON-SITE DWELLINGS: (cont.)

It is anticipated that approximately 66% of the on site units will be single family detached dwellings; that approximately 30% of the on site units will be single family attached dwellings; and that approximately 4% of the on site units will be duplex dwellings. Single family attached dwellings and duplexes shall comply with City requirements. All dwelling construction shall comply with City and State construction codes. Each home will feature quality construction, interior fire sprinklers (N.F.P.A. 13D compliant), maintenance free materials, and various energy efficient features. Preliminary Floor Plans and preliminary Front Building Elevations have been attached to this Narrative for general review. Final Building Plans will be prepared after the property has been rezoned to 'PD'. The units will be constructed to meet and exceed energy codes. Construction is expected to be framed with 2 by 6 exterior walls and 2 by 4 interior walls at 16 inches on center with engineered floor and truss roof system. Exteriors will be comprised of vinyl siding in a palette of approximately four colors (generally earth tones) in hues that compliment one another and blend in with the natural surroundings. Roofing materials will be dimensional architectural shingles that will be consistent throughout ("weathered wood" color). The front building elevations will include some element of stone or brick veneer along with vinyl shake and bead board accents. The look from the street will be a blend of craftsman, cottage, and New England styles. While the front elevations will be different, the look will have an intentional feel with design consistency among the various building fronts throughout the development. It is anticipated the dwelling prices will start in the \$210,000 range for smaller units. For the larger units with a finished walkout basement and other upgrades, dwelling costs will likely approach or exceed the \$350,000 range.

STREETS, SIDEWALKS, WALKING TRAILS, and DRIVEWAYS:

On site paved streets will be private and will incorporate concrete roll curb on each edge and will have a minimum pavement width of 24.0 feet (28.0 feet wide between back of concrete curbs). It is intended that the streets will be wide enough to allow parking on one side of the street per Fire Department requirements. All streets shall be designed and constructed in accordance with City requirements. Access to and from the site will be from one location and shall include one entry lane (24 feet wide) and two exit lanes (lane widths equal 12 feet) along with a landscaped boulevard. Street lights shall be included and will be spaced appropriately. Concrete sidewalks will be constructed on at least one side of each street, and walking trails shall be created within the undeveloped portions of the project. In addition, the walking trails shall be extended towards the westerly and southerly property lines. The on site walking trails and natural areas are intended to blend with the natural surroundings, as well as complement Schrier Park, the Eliason Preserve, and other nearby wooded areas. Individual driveways will be constructed of either concrete or pavement and will have a length of at least 25.0 feet as measured from the back of curb. The length of the driveways will allow temporary vehicle parking for one or two vehicles depending on driveway width. All streets, walks and driveways will be maintained by the Condominium Association.

STORM SEWER SYSTEM and DRAINAGE:

Crowned, paved roadways and concrete curb will direct storm water run-off to the proposed private storm sewer drains and pipes. The storm water run-off will be directed to a handful of storm water settling basins, treatment cells, or proprietary storm water treatment chambers in accordance with City requirements. From there the water will be directed to the on site lowland areas. Design of the system will be subject to City review and approval, as well as review and permitting through the State of Michigan MDEQ if required.

WATER MAINS, FIRE HYDRANTS, and SANITARY SEWERS:

Installed along all private roads will be City Portage public water mains and sanitary sewers, including house leads to each dwelling. Fire hydrants will be installed at locations approved by the City of Portage. These utilities shall be designed and installed in accordance with City requirements, and appropriate utility easements shall be granted to the City. Note that there is an existing 20 inch public water main on the northerly side of Osterhout Avenue, and an existing 8 inch public sanitary sewer near the center line of Osterhout Avenue.

PRIVATE UTILITIES:

The site will be served with underground natural gas, electric, telephone, and cable TV lines. It is anticipated that these underground lines will be situated on the side of the street opposite the public water main. There is an overhead power line within the northerly portion of the property (see Tentative Plan). We are currently working with Consumers Energy to relocate this power line underground or re-route it above ground. We are not proposing that this overhead power line be left in it's current location.

OPEN SPACE and NATURAL AREAS:

A significant portion of the property will be designated as a permanent natural area. This includes the far easterly and southeasterly portions of the property. Installed within these natural areas will be a 6-foot wide stone or wood chip walking trail. Mature trees will be preserved as much as possible, including those near proposed dwellings. The area of the subject property is 39.0 acres excluding the Osterhout Avenue right-of-way area. We currently estimate that approximately 6.3 acres of the property is wetland area, and that approximately 3.9 acres of the property (east and southeast of the wetland area) will remain as a permanent natural area. Final landscaping around each completed dwelling shall include one or more newly planted tree(s). Around the perimeter of the development, natural areas and trees will be preserved to serve as a natural buffer and visual screening.

ZONING, BUILDING SETBACKS, and DENSITY:

The property is currently zoned R-1C single family residential. Typical lot sizes within R-1C are 12,000 square feet and larger. City required building setbacks for R-1C are 30 feet (front yard), 12 feet (side yard), and 40 feet (rear yard). Typical densities for subdivisions within R-1C are 2 - 3 lots per acre. With this PD development, we are proposing a 40 foot perimeter setback (abutting adjoining properties), a minimum 24.0 feet between buildings, and a minimum distance of 25.0 feet between the back of the concrete curb and the front of the dwelling. Note that any duplex buildings, if incorporated, would share a common building wall, and that any attached single family dwellings would be connected with an architectural wall. With this PD, the density will be approximately 2.6 dwellings per acre. Per the City's Ordinance, the maximum allowable density for a PD is 7 dwellings per acre.

CONDOMINIUM MASTER DEED:

The typical "plat restrictions" or "deed restrictions" for a subdivision will be replaced with the Condominium Master Deed. The Master Deed shall also include survey plans, house plans, rules of ownership, mapping of general common areas, limited common areas, and unit areas, and other rules and regulations. Within the Master Deed, the streets and utilities for each phase will be designated as "need to be built," while each unit will be designated as "need not be built." The Master Deed will be prepared by a local real estate Attorney, and the Survey Plans within the Master Deed will be prepared by a local Land Surveying Office. The Master Deed will be subject to City review and comment prior to recording.

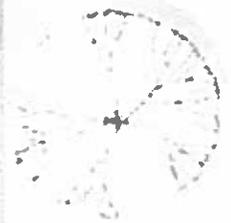
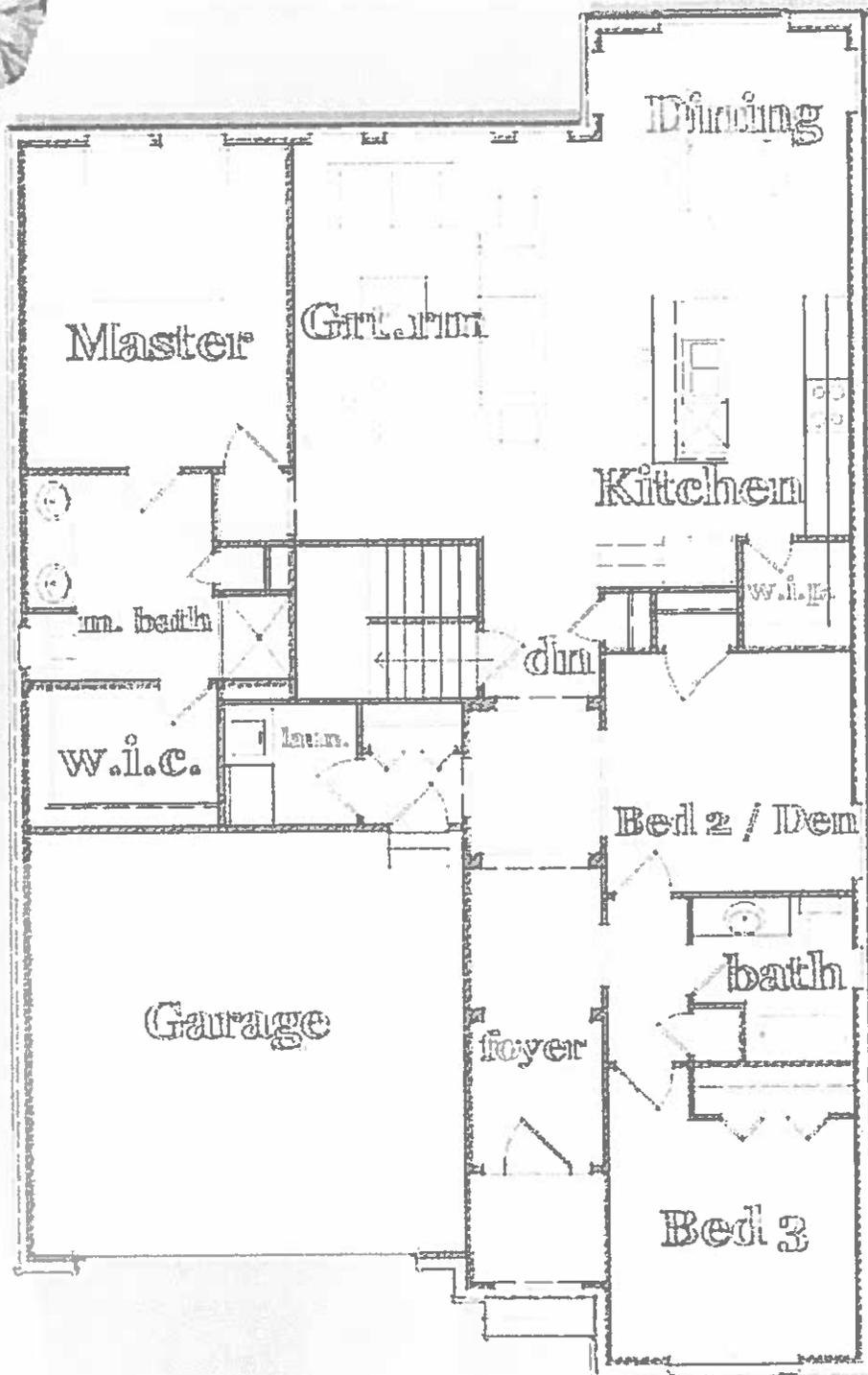
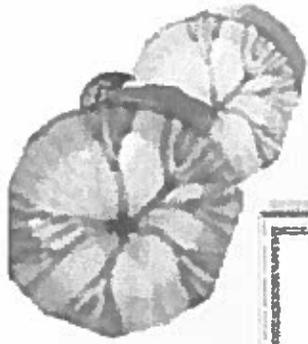


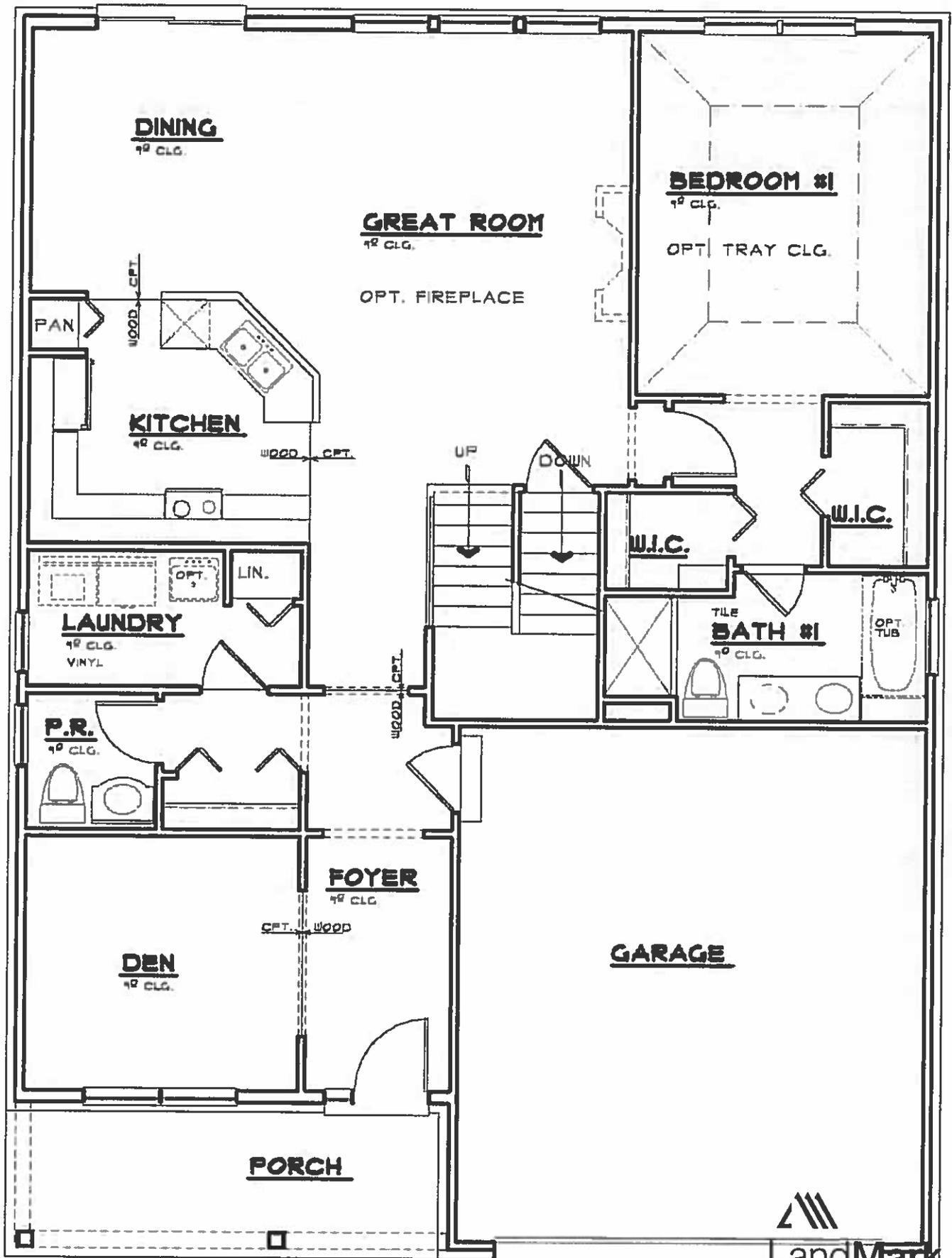


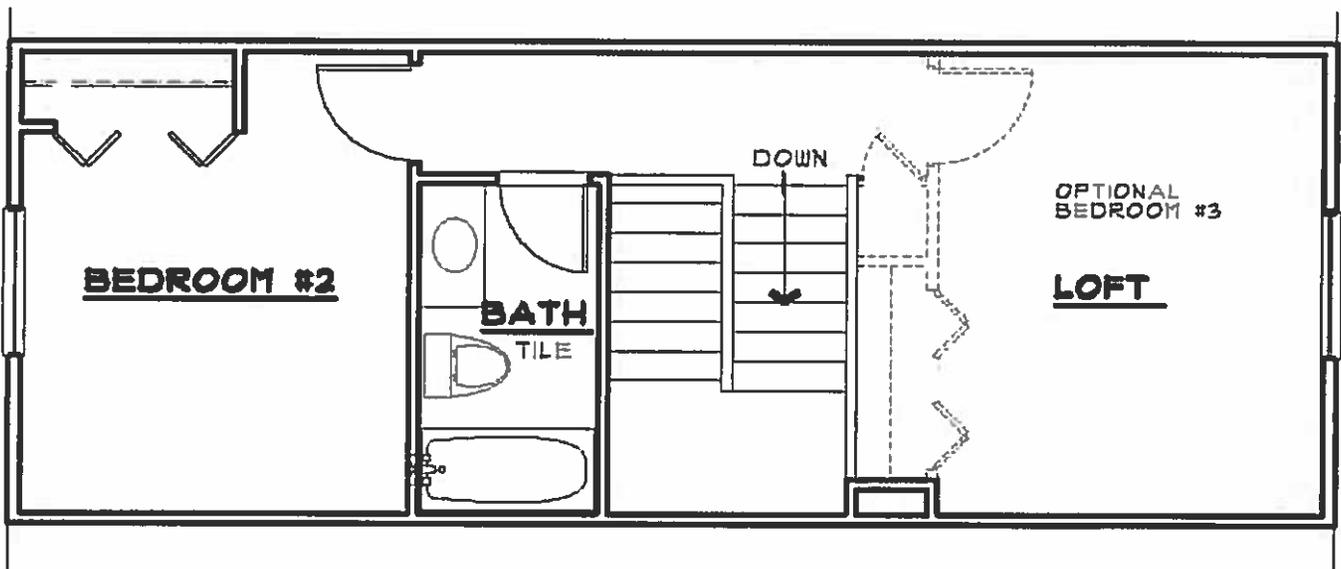


LandMark









Optional 2nd Floor

TO: Planning Commission **DATE:** April 29, 2016
FROM: Vicki Georgeau, ^{VG} Director of Community Development
SUBJECT: Special Land Use Permit: KEPS Technologies (Verizon antenna collocation), 6301 South Westnedge Avenue

I. INTRODUCTION:

An application has been submitted by KEPS Technologies requesting a Special Land Use Permit to install three (3), 10-foot tall telecommunication antennas on top of the roof of the existing Verizon Wireless facility located at 6301 South Westnedge Avenue. The approximate 0.5 acre parcel is zoned B-2, community business and is located at the east side of South Westnedge Avenue, north of Gladys Street.

II. BACKGROUND INFORMATION:

The following background information is provided for Commission consideration:

Existing Land Use/Zoning	<ul style="list-style-type: none"> • <u>Subject Site:</u> Approximate 4,540 square foot retail building and associated site improvements (occupied by Verizon Wireless) zoned B-2, community business. • <u>North:</u> Access drive and Belle Tire (6283 South Westnedge Avenue) zoned B-2, community business. • <u>East/South:</u> Parking and various commercial businesses (Aldi's, Hobby Lobby, Dicks Sporting Goods, Jared Jewelers) zoned B-2, community business. • <u>West</u> (across South Westnedge): Various commercial businesses (Taco Bell, Pizza Hut) zoned B-2, community business.
Access	<ul style="list-style-type: none"> • Existing access drives on South Westnedge Avenue (north) and on Gladys Street (south): No additional driveways are proposed.
Environmental	<ul style="list-style-type: none"> • Environmentally sensitive areas (wetlands, 100-year floodplain, etc.) are not present at the subject site.
Historic District/Structure	<ul style="list-style-type: none"> • The subject site is not located within a historic district and does not contain any historic structures.
Land Development Regulations	<ul style="list-style-type: none"> • The application has been submitted under Section 42-135.G.1.c of the Wireless Telecommunications Facilities and Towers ordinance (Special Land Uses). Subject to review and approval by the Planning Commission, this section permits "Placement or collocation of an antenna on an existing conforming tower or conforming building, light pole, utility pole or other similar facility in all districts except I-1 and I-2." Section 42-462, General Standards for Review of Special Land Uses is also applicable and sets forth the criteria for evaluating a special land use and allows conditions to be established.

III. ANALYSIS:

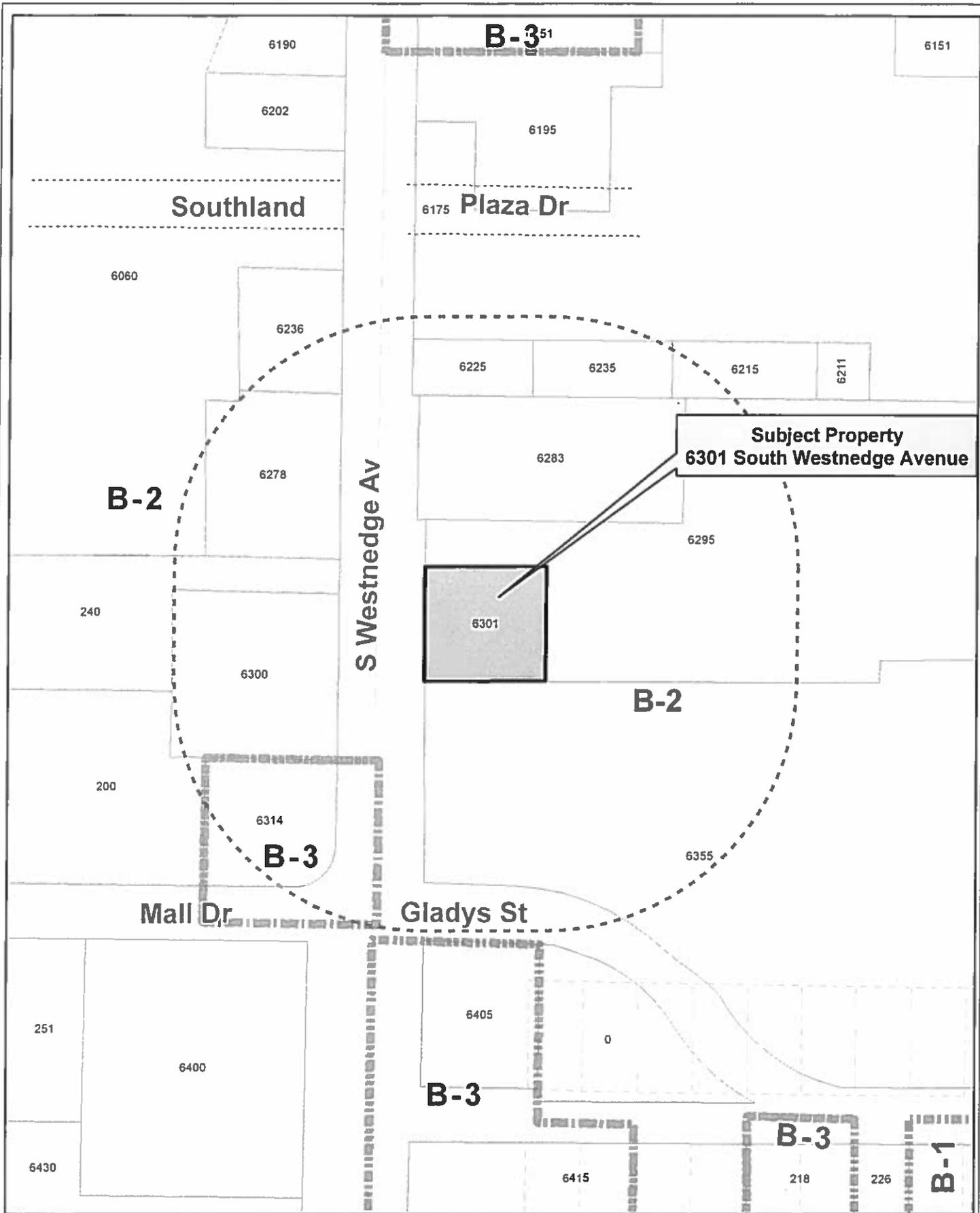
The proposal to install three (3) tripod mounted antennas on the roof of the existing Verizon Wireless building fulfills the requirements for issuance of a special land use permit. The proposed antennas will be stainless steel and will blend into the existing structure and surroundings. The antennas will extend approximately 10-feet above the top of the roof (maximum 30-foot extension above roof line of structure is permitted). The lower portion of these antennas, along with any ancillary roof mounted equipment, will be screened from South Westnedge Avenue by the existing front parapet wall of the building. Additional ground mounted equipment used to feed the antennas will be situated along the rear (east) side of the building, in line with existing utility meters. Finally, no artificial lighting of the antennas/equipment will be used and installations will comply with all applicable Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) guidelines and requirements.

Per statutory requirements, property owners within 300 feet of the zoning lot have been notified in writing of the special land use permit application and Planning Commission meeting. A notice was also published in the local newspaper.

IV. RECOMMENDATION:

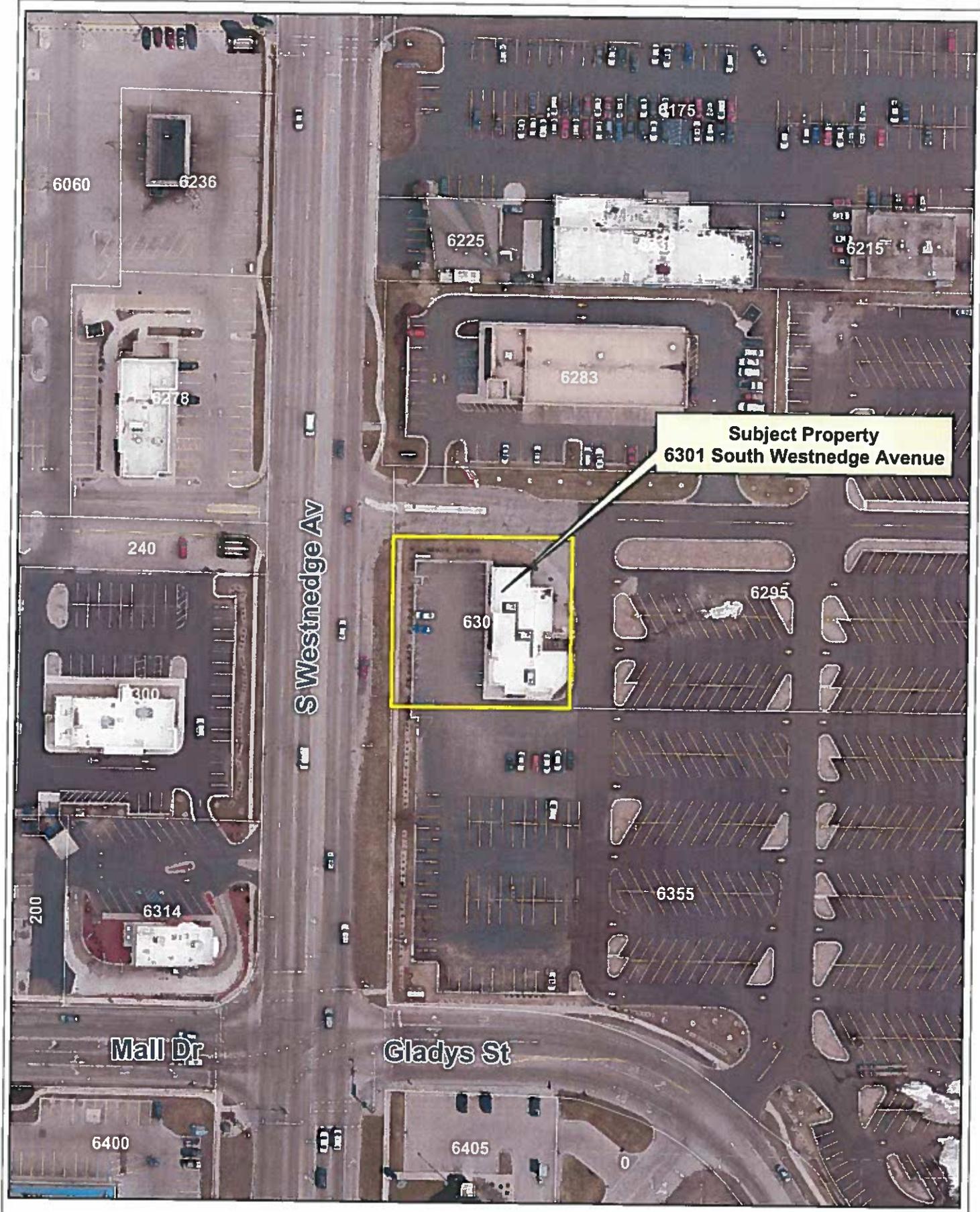
Based on the above analysis and subject to any additional information brought before the Planning Commission during the public hearing, staff recommends the Special Land Use Permit for KEPS Technologies (Verizon antenna collocation), 6301 South Westnedge Avenue, be approved.

Attachments: Vicinity/Zoning Map
Aerial Photograph Map
Special Land Use Permit Application and Related Materials



Special Land Use Permit
 6301 South Westnedge Avenue
 (Verizon)



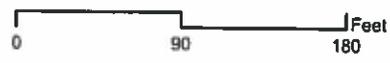


Subject Property
6301 South Westnedge Avenue

S Westnedge Av

Mall Dr

Gladys St



Aerial Photography
6301 South Westnedge Avenue





Department of Community Development

RECEIVED
APR 15 2016

APPLICANT INFORMATION

Name KEPS Technologies dba ACD.net		Telephone Number 517-999-3294	
Address 1800 N. Grand River Avenue	City Lansing	State MI	Zip code 48906

OWNER INFORMATION (if different)

Name TREYSTAR-WOODBRIDGE OFFICE BUILDING		Telephone Number 269.329.1808	
Address 7900 WOODBRIDGE RD PORTAGE	City PORTAGE	State MI	Zip code 49024

PROPERTY INFORMATION

Address of property 6301 South Westnedge, Portage, MI 49002	Zoning District B-2	Land Area (acres) .450
Legal Description (or attach separate page) Parcel 000101400. Commercial Improved. Legal description attached.		

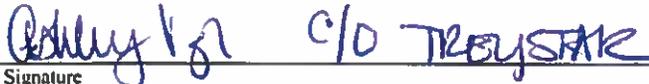
PROPOSED USE

Description of proposed Special Land Use (attach additional pages), if necessary)

ACD.net is seeking to install 3 tripod, non-penetrating balast mounted antennas on the roof of the building located at 6301 S. Westnedge, Portage, MI 49002. Equipment used to feed the antennas will be ground mounted and in line with existing utility meters at the base and rear of the building. The maximum elevation of the systems is 10' above the roof line, 26' high from ground level. Materials used will blend in or be matched in color/texture to the roof and surrounding environment in order to minimize visual blights. No artificial lighting will be used. Installations will be in compliance with all FCC and FAA guidelines.

OWNER CERTIFICATION

I hereby certify that I am presently the legal owner for the above-described property and all of the above information is true and accurate. I further acknowledge that approval of this Special Land Use Permit constitutes an agreement with the City of Portage and all conditions or limitations imposed shall be fulfilled.

 Signature	4/15/16 Date
C/O TREYSTAR ASHLEY VAUGHN	



517-999-9999
1800 Grand River Ave
Lansing MI 48906

IMPORTANT!
THIS SET OF PLANS CONTAINS CONFIDENTIAL OR PROPRIETARY INFORMATION AND THE RECIPIENT MUST NOT DISCLOSE, COPY, RE-CREATE, OR DISTRIBUTE THE PLANS OR THE INFORMATION CONTAINED HEREIN TO ANY OTHER PARTY OR INDIVIDUAL WITHOUT WRITTEN OR EXPRESS WRITTEN PERMISSION FROM ACD.NET

DRAWING DISCLAIMER
SAFETY LOCATIONS ARE GENERAL IN NATURE AND MUST BE VERIFIED BY THE RECIPIENT FOR THE ACCURACY OF THE INFORMATION PROVIDED ON THESE DRAWINGS.

RECEIVED

APR 1 9 2018

COMMUNITY DEVELOPMENT



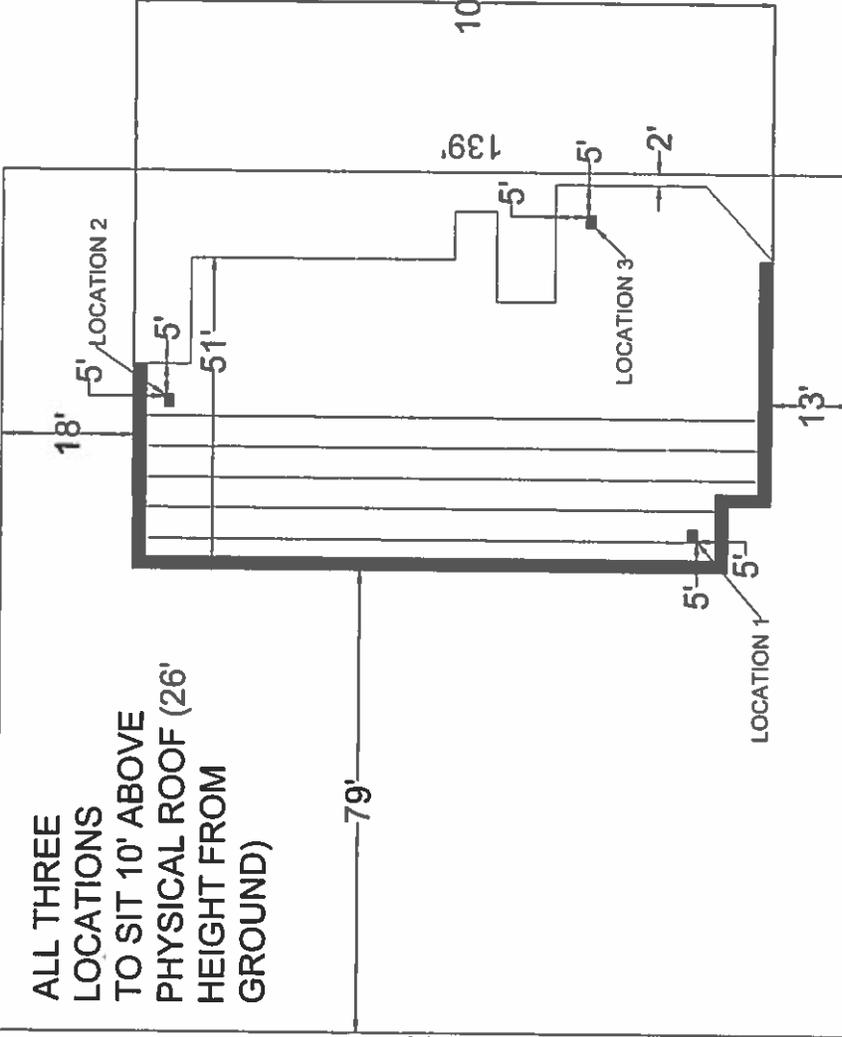
141'

ALL THREE LOCATIONS TO SIT 10' ABOVE PHYSICAL ROOF (26' HEIGHT FROM GROUND)

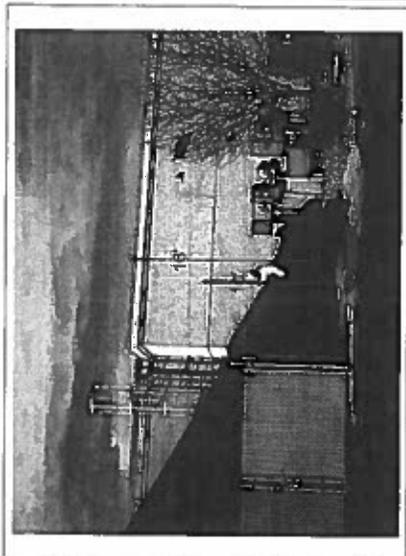
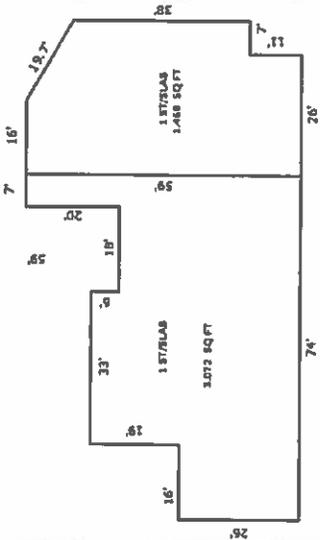
79'

139'

106'



1:20



Example 1



Example 2



Property Address

6301 S WESTNEDGE AVE
PORTAGE, MI 49002

Owner Address

WOODBRIDGE OFFICE BLDG, LLC
7950 MOORSBRIDGE RD
PORTAGE, MI 49024



General Information for Current Tax Year

Parcel Number: 000101400
Property Class Name: Commercial Improved
ECF Neighborhood: 3000
School District: Portage
State Equalized Value: \$389600
Taxable Value: \$389600
Exemption Percent: 0.0%

Land Information

Acreage: 0.45000000000000001
Year Built: 0.0
Total Floor Area: 0.0 sq. ft
Lot Area (GIS): 20111 sq. ft

Legal Information

SEC 10-3-11 BEG AT A PT 1548.84 FT S OF NW COR SECTION 10, TH E 201 FT, TH S 139 FT, TH W 201 FT TH N 139 FT TO PL OF BEG. EXC W 60 FT FOR HWY

Disclaimer

These maps are intended to be used for generalized citywide planning and there are no warranties that accompany this product. City of Portage recommends that users of this product confirm the data used in production of this map by visual inspection of the geographic area. In no event shall City of Portage be liable to the user or any third party for errors, omissions or positional accuracy of this product, regardless of the form of claim or action, whether in contract or tort, including negligence, in the amount that exceeds the sum paid by the user for the product. City of Portage reserves all rights of authorship granted under U.S. and International copyright laws and agreements.

MATERIALS TRANSMITTED

**MINUTES OF THE SPECIAL PRE-MEETING
OF THE PORTAGE CITY COUNCIL
OF APRIL 25, 2016**

Mayor Peter Strazdas called the meeting to order at 9:01 a.m. The following Councilmembers were present: Councilmember Randall. Councilmembers Jim Pearson and Councilmember Claudette Reid were present via the conference phone line. Those not present were: Councilmembers Richard Ford and Terry Urban, and Mayor Pro Tem Nasim Ansari. Also in attendance were City Manager Larry Shaffer, Deputy City Manager Rob Boulis and City Clerk James Hudson.

There being no quorum, Mayor Strazdas asked if there were any questions for the Administration regarding items on the Agenda. Councilmember Pearson indicated that he did not receive Materials Transmitted of April 22, 2016, and asked whether they could be re-sent and Mr. Shaffer said absolutely. Mayor Strazdas asked him to address the Committee of the Whole segment of the materials Transmitted, and he indicated that he had a meeting with Heather Baker of Southwest Michigan First, along with Rob, Devin and Vicki, who were active with the last Branding effort, and he indicated that the consensus was to stay with the Branding we already have and to support that brand. At the request of Mayor Strazdas, Mr. Shaffer said he would remind City Council of the tree-planting ceremony at 5:45 p.m. prior to the COW Meeting that would take place on the north side of City Hall.

Councilmember Pearson asked that the minutes of the April 12, 2016 Regular City Council Minutes on Page 6, Paragraph #2, read that the Assistant City Attorney, not the Deputy City Manager, ask applicants for sworn statements, and that the moratorium would be introduced on April 26, not May 26, 2016.

Councilmember Randall asked that Item F.5, Cooley Drive and West Centre Avenue Traffic Signal, and Item L.1, Traffic Signal Equipment and Material Purchase, be distinguished. F.5 is part of the Greenspire PD, planned development, and the development agreement with Lakewood (American Village Builders) and the City, and L.1 is a release of funds for purchase of mastheads for various planned traffic signal upgrades within the City.

Councilmember Reid asked for a discussion from the Engineering Staff regarding what changed from a discussion at least nine years ago as far as traffic flow and traffic safety to now be able to install a signal within close proximity to an existing signal there. Mayor Strazdas offered his recollection that it had to do with traffic counts so the installation of a traffic signal was premature at that time, and Councilmember Randall mentioned the warrant requirement. Mr. Shaffer noted that American Village Builders was required to provide a traffic report and the updated traffic counts supported a warrant with the new units on Greenspire, the proposed new units, the new commercial businesses, plus the traffic coming from the new medical and banking concerns on the other side of the roadway, making left hand turns difficult if not dangerous and Deputy City Manager concurred and indicated turning left off of Old Centre was equally dangerous. Councilmember Randall asked that staff keep the situation with the lights on South Westnedge Avenue between Milham Avenue and Kilgore Road in mind owing to the difficulty of motorists trying to take left hand turns onto South Westnedge Avenue from the side streets along there.

Regarding Item F.4, Emergency Vehicle Apparatus Maintenance Contract – Sole Source, Councilmember Pearson asked for a more extensive bidding process as there was only one bid and two verbal quotes for hourly rates over the phone: why was there only one bid and why were the vendors contacted by phone with no opportunity to submit a bid?

Noting that Council did not actually get the bid, Councilmember Reid asked why Items F.4 and F.5 aren't included in Bid Tabulations since that is what they are? She also asked did the City do due diligence with F.6, Firefighter Physicals, because in the memo from the City Manager there is mention of one other quote, so why wasn't the information listed in a separate bid document? Also, why weren't the two area hospitals included in the bid process?

Councilmember Pearson asked: Was on-site testing a bid requirement? What did it take to qualify to bid? Why not shop around?

Mayor Strazdas summed up:

1. Can we place these bid "things all in one bucket" on the Agenda?
2. Attempt to get many bidders, or explain why. If it is sole source, tell why.
3. This will carry over into the Committee of the Whole on "Purchasing."
4. The cost of physicals is high, why?

Deputy City Manager Boulis indicated that the firefighter physicals are extensive, and he would provide a list of everything that is being done, such as the EKG, Pulmonary Test, Hearing, Respiratory Fit, TB Test, etc. which is sent to the Primary Physician which meets FPA recommendation to keep firefighters healthy and safe.

Councilmember Pearson asked whether Portage has to go all the way to a company in Pennsylvania for this service? Mr. Boulis responded that this company has a mobile unit; they travel around; they do Oshtemo Fire Department; they come on site. He offered to get Stacey to give him the details of who was contacted to get quotes; they were already in the area; another advantage is Portage will do their physicals in the Spring, and Oshtemo does theirs in the Fall, so if someone missed their physical or needs one earlier, there is an opportunity for reciprocity. Councilmember Pearson asked how long this unit was on site and Mr. Boulis responded two or three days. Councilmember Pearson asked, there is no firm in the State of Michigan that is willing to take all of this money? Mr. Boulis confessed we could not identify a firm. In deference to the two area hospitals, Councilmember Randall asked whether on-site physicals were a requirement of the bid? Mr. Boulis responded it was his recollection that both hospitals were contacted, only one responded with a quote and on-site was not a bid requirement, and he indicated he would get Stacey to confirm. Councilmember Reid asked for the specifics of the bids to help in these analyses, and Councilmember Pearson asked if Council be provided with what it takes to qualify for a bid? What is necessary?

Councilmember Pearson asked Mr. Shaffer to summarize why he is recommending the rezoning that is different from what was put forth by the Zoning Board of Appeals? Mr. Shaffer responded that he talked with Vicki, toured the site, conference called three property owners, met with one property owner and spoke briefly with Todd Scott. With that, he said it made sense to truncate the area to the north of Admiral and Cameo to allow for the maximum of two duplexes, even though the

neighbors are going to be angry. He mentioned three options: approve the recommended approach, send it back to the Planning Commission or do nothing. He commented that the issues are too polarized and light industrial is completely inconsistent with the zoning of the surrounding properties. He reviewed the history of the request and recommendation as presented in the April 12, 2016 City Council Agenda Packet and noted that this is a compromise of all things considered.

Mayor Strazdas cited the easement along the southern segment of the property owned by Mr. Scott, mentioned the high water table of the overall property, and noted that this is the only piece of the property that is "high and dry" and buildable. Mr. Shaffer concurred and admitted that the City has an easement "back there" that is used extensively for drainage purposes and that the City needs to clear the drain at this time.

Mr. Shaffer confirmed for Councilmember Randall that the buildable area in question is the northerly most portion of the property, and she indicated that upon visiting the property, it was just saturated with water. He also answered that he does not need an access from Cameo as he owns the property that would be used as an extension of the road. With that, Councilmember Randall indicated her support for the recommendation as this neighborhood would not be negatively impacted by any new construction. She also asked how long has the Scott family owned the property? How much have they paid in taxes? And, what kind of business will the current light industrial zoning allow? Mr. Shaffer said he would get the information for her.

In answer to Councilmember Randall, Mr. Shaffer and Mr. Boulis informed her that Judy Anderson is from the Ringdale Plat on Bratcher with a different issue where she paved some of the right-of-way in the terrace area for pull-off parking which is not permitted.

Councilmember Randall asked if Council is going to have an issue with Item F.3, Medical Marihuana, and asked whether the public will be allowed to speak. Mayor Strazdas indicated that the public can make comment, voice his or her opinion, as it is on the agenda, and some people may confuse setting a public hearing with actually having a public hearing. However, he pointed out that the only decision Council is making is whether to have a public hearing or not.

With regard to the Medical Marihuana Moratorium, Councilmember Reid asked why would the City allow the business owners to continue to do business when the businesses are illegal, as they knew what the rules were and went in there anyway and set up business? Mr. Shaffer conjectured that it depends upon whether the Dispensary Program is going to become a significant part of our marihuana profile going forward, and whether or not we are indeed in a transition period from a home-based industry to a dispensary-based industry. She explained her question by saying that the City Council has to make a decision on all of these things, but as of today, these are illegal businesses, so why are they being allowed to continue? She expressed her concern that she thought the moratorium meant the City would not prosecute them during this period, but they would not continue doing business, and is this not encouraging people to break the law? He noted that the moratorium in and of itself does not stay the enforcement of the existing Ordinance since the City Council would have to specifically approve staying the enforcement of the existing Ordinance; and, if the Ordinance is in place, by oath he has to enforce the Ordinance unless the Council says that during the pendency of the

moratorium, they want to stay the enforcement of the Ordinance upon the two existing dispensaries. He said without that, he could not stay the enforcement since the moratorium in and of itself does not do that; City Council has to speak to the moratorium and whether or not they want the Administration to continue to enforce the Ordinance.

He indicated that the Ordinance has been enforced; tickets and citations have been issued; the petitioners have already been in front of the Zoning Board of Appeals (ZBA); they received a decision from the ZBA which upholds the Ordinance; and, the process is that they can now appeal that decision before the Circuit Court.

Councilmember Reid asked what happens if a third dispensary decides to open up? Mr. Shaffer responded that the business owners get a citation similar to the ones already issued. In answer to Mayor Strazdas, Mr. Shaffer assured him that there are time constraints for them to act.

Councilmember Reid asked whether either of these business has gone through the plumbing or electrical permitting process? Mr. Shaffer pointed out that they are not growing marihuana there, they are selling marihuana. Mayor Strazdas asked the question for Council consideration of, "What are we setting the public hearing to do?" since the Administration has not put the "stay the enforcement of the Ordinance" in the conversation; so there is a potential to stay; a potential of the moratorium; and during the moratorium, a time to create some language.

Councilmember Reid asked under current procedures, at what point would the matter go to Court? Mr. Shaffer indicated that the petitioner has a certain amount of time to file a challenge to the ZBA decision, then it is up to the judge, so who knows because the Judge could stay the enforcement of the Ordinance until the moratorium is done. He mentioned that there are two pieces of legislation currently in front of the State House of Representatives, either one would change the dynamics of marihuana in the State of Michigan, and the anticipation of the referendum on full legalization that will be on the November 8, 2016 General Election ballot. He noted that it is not accidental that the six-month moratorium takes us through the referendum in November.

Councilmember Reid asked if this is the same process if a liquor store moved in next to an elementary school? He reflected that there is probably some analogy there that would "hold up;" so, what the moratorium suggests is we need time to study what the world might look like should the Council decide the dispensary type of system is the appropriate type of system in Portage to utilize for the sale of marihuana. He pointed out that currently it is a home-based industry, and the code enforcement issues with electrical and plumbing comes into question, along with the sale of marihuana from the home; so the moratorium is designed to give the Council some space to study the issue, determine best practices, see what other cities have done, then propose a dispensary Ordinance to City Council. Afterwards, the question becomes what to do with the two dispensaries that are in place; however, without cover from City Council, he indicated that he has to continue to enforce the Ordinance.

Councilmember Randall asked if Council could put a stay in place, and would that be done Tuesday, or two weeks from now? Mayor Strazdas opined that it could not be done tomorrow because a stay of the enforcement of the Ordinance is not even on the agenda for consideration. Mr. Shaffer indicated that if it is the will of Council that it be

a part of the public hearing, then he would craft language to accommodate that, and ask the City Attorney to monitor the Court proceedings, and there is no real reason to do anything yet until they get their case in front of the Judge.

Councilmember Reid asked for an explanation of Item L.2, Independent Audit Service, if the number of hours estimated in the Yeo & Yeo bid was several hours less than the Rehmann bid and, if additional hours are required by Yeo & Yeo, will that impact the cost because the per hour cost was less with Rehmann? If so, how is that taken into consideration? Deputy City Manager Boulis said that they are providing the services quoted; they have to get the job done regardless of the number of hours it takes. He indicated that unless the company can justify something the City missed, the quote is the quote, and this what we pay. She asked what the \$3,750 was for that was listed as Accounting Assistance included in the bid analysis presented by Rehmann? Mayor Strazdas indicated that it appeared in year three they would have someone help them with the Audit, and Mr. Boulis offered to get the answer for her.

Councilmember Randall asked why BDO Seidman did not bid, and Mr. Boulis indicated that they chose not to bid because they were not going to be the low bid.

In answer to Councilmember Randall, City Clerk Hudson indicated that Rehmann was a regional firm (Grand Rapids office) and seemed to be the auditor for a number of townships in the region.

ADJOURN: Mayor Strazdas adjourned the meeting at 8:50 a.m.

James Hudson, City Clerk

CITY COUNCIL MEETING MINUTES FROM APRIL 12, 2016

The Regular Meeting was called to order by Mayor Strazdas at 7:30 p.m.

At the request of Mayor Strazdas, Ms. Sujatha Krishnamurthy of the Indo American Cultural Center and Temple of Portage gave the invocation and City Council and the audience recited the Pledge of Allegiance.

The City Clerk called the roll with the following members present: Councilmembers Richard Ford, Jim Pearson, Patricia M. Randall, Claudette Reid and Terry Urban, Mayor Pro Tem Nasim Ansari and Mayor Peter Strazdas. Also in attendance were City Manager Laurence Shaffer, City Attorney Randy Brown and City Clerk James R. Hudson.

PROCLAMATIONS: Mayor Strazdas issued a Fair Housing Month Proclamation and Mayor Pro Tem Ansari issued a Child Abuse Prevention Month Proclamation.

APPROVAL OF MINUTES: Motion by Ansari, seconded by Ford, to approve the the Special Meeting Minutes of March 22, 2016, and the March 22, 2016 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0.

Motion by Pearson, seconded by Reid, to approve the Pre-Council Meeting Minutes of April 11, 2016, as presented. Upon a voice vote, motion carried 6 to 0 with Councilmember Ford abstaining.

* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember Urban to read the Consent Agenda. Councilmember Reid asked that Item F.3, Kalamazoo County Brownfield Redevelopment Plan, be removed from the Consent Agenda. Mayor Strazdas removed Item F.2, 2016 Utility Rate Financial Study, from the Consent Agenda. Motion by Urban, seconded by Reid, to approve the Consent Agenda motions as amended. Discussion followed. Upon a roll call vote, motion carried 7 to 0.

* **APPROVAL OF ACCOUNTS PAYABLE REGISTER OF APRIL 12, 2016:** Motion by Urban, seconded by Reid, to approve the Accounts Payable Register of April 12, 2016. Upon a roll call vote, motion carried 7 to 0.

PETITIONS AND STATEMENTS OF CITIZENS: Glen Smith, 1591 West Centre Avenue, stated he is an Attorney representing two clients who are caregivers under the Michigan Medical Marihuana Act (MMMA) passed by the voters of Michigan. He cited Ter Beek v. Wyoming (City of) and argued that the Portage Ordinance is too restrictive because it limits a dispensary to have only home occupations in Portage. ZHe mentioned that according to the 2010 Census, there are 700 licensed caregivers in Kalamazoo County and conjectured that as many as 300 homes in Portage are dispensaries. He pointed out that the MMMA is not pre-empted by the Federal Controlled Substance Act and argued that most homes are not ADA accessible, not ventilated properly, do not have the necessary water supply, that dispensaries do not grow the product, that the five (5) patients per caregiver is not practical, and that his clients are in an I-2, industrial, zoning district implying that is more conducive to this type of operation. He asked that City Council stay the enforcement of the ordinance until the City Council can act on a new ordinance. He indicated that he knows of ten other municipalities that have changed from a home only occupation scheme to a dispensary scheme and argued the legal principles do not comport with the economic principles. He again asked that City Council stay the enforcement of the ordinance until the City Council can act on a new ordinance.

At the request of Mayor Strazdas, City Manager Shaffer indicated that the Administration has discussed this matter extensively and will ask City Council to consider a moratorium at the next Regular Meeting and take under advice to consider setting a public hearing to consider enacting a six month

moratorium. He mentioned there is pending legislation at the State level that may or may not have an impact on a Council decision in this matter, and a referendum and vote in November for full legalization of Marihuana would render the Portage Ordinance obsolete. The moratorium would allow the Administration to bring forth some best practices of other communities in the State and to garner input from the advocates of medical marihuana. Relative to staying any action, he indicated discussions with the City Attorney revealed that City Council has the authority and could stay any actions with regard to the two existing dispensaries in the City, including any citations.

Travis Copenhaver, Associate Attorney, Cannabis Attorneys of Michigan, 4312 East Grand River Avenue, Howell, stated he is representing one of the caregivers and that a moratorium is appropriate. He also indicated it would be appropriate to consider an ordinance change to allow these dispensaries to exist, asked for a stay of action and indicated that what his client is doing is well within the MMMA and explained. He handed out packets of information and outlined its contents. At the request of Mayor Strazdas, City Manager Shaffer indicated that he did not take any exception with any of the comments from Attorney Copenhaver, and expressed his appreciation for the two draft ordinances he provided.

Jevin Weyenberg, 5817 Cheshire Street, indicated marihuana is a very safe product and mentioned that there is a very competent lab in Kalamazoo with state of the art equipment to test everything. He described his experience with the product outlining its efficacy and spoke in favor of it and having a Portage Ordinance that expands beyond the home occupation option. He gave further testimony and discussion followed.

Brianna Hill, 4709 Fox Valley Drive, Apt. 1A, indicated that she was a caregiver, that her business address was 5092 Sprinkle Road, and spoke of the need for a dispensary option in the Portage Ordinance. She asked for a quality controlled product and safe access to a caregiver, pointed out that Kalamazoo County is short 300 caregivers and spoke in favor of the MMMA. Discussion followed.

Devin Loker, 1595 West Centre Avenue, Suite 100, spoke in favor of a moratorium and a stay of enforcement of the ordinance as a good idea to allow public a chance to think about what can be done.

Robert Blackford, 23305 Sherer Street, Mattawan, from Colorado, spoke in favor of quality controlled marihuana and safe access to the product.

REPORTS FROM THE ADMINISTRATION:

PRESENTATION OF PROPOSED FISCAL YEAR 2016-2017 BUDGET: City Manager Larry Shaffer indicated that the Proposed Budget is the culmination of three months of effort by Staff and Department Heads that includes a comprehensive analysis of City revenue streams going forward, reviews all of the needs of the City as defined by the departments of the City and the future needs of the community. He indicated the Budget contains 22 separate funds with a budget amount of \$67,168,585 which represents a 1.3% increase over last year. He said virtually all of the increase is found in the Capital Improvement Plan (CIP) line and debts in our community, or about \$850,000 - for a total CIP Budget of \$14 million. He noted that the Budget also includes funding for three additional police officers and three firefighters to address the increase in the number and severity of the calls. He indicated that City Council will be asked to meet with staff in Conference Room No. 1 on Tuesday, April 19, 2016, and Tuesday, May 3, 2016, from 4:30 p.m. until 8:30 p.m. Mayor Strazdas explained that these are open meeting sessions and the public can participate at the end of the sessions. Discussion followed.

At the request of Councilmember Randall, Mr. Shaffer assured Council and the public that the Budget will be available to everyone on line by this week. In response to Councilmember Pearson, Mayor Strazdas asked that all requests concerning the Budget be in writing though the City Manager for dissemination. Discussion followed.

In answer to Councilmember Urban, Mr. Shaffer assured him that Council would receive a line item budget as provided in the past. Discussion followed.

Motion by Reid, seconded by Ford, to receive the Presentation of Proposed Fiscal Year 2016-2017 Budget from City Manager Larry Shaffer. Upon a voice vote, motion carried 7 to 0.

2016 UTILITY RATE FINANCIAL STUDY: Mayor Strazdas asked for a response to the following questions from the City Manager and City Engineer: How is our water quality? How is our present maintenance? How is the future of our water system? What is the increase? Is it a good value? Mr. Shaffer provided a brief overview of Portage water. He said that lead pipes are not at issue for the City of Portage because the age of our City is such that water was brought in well after the use of lead pipes ceased. He also noted that there are no lead mains and no lead pipes servicing those mains, except for the occasional soldering that was done. He referred to the Suez Report where Suez Environmental performed 6,700 water testing, or 20 per day, with no “hits” proving that Portage water is excellent.

Mr. Shaffer recognized that the real issue is perception and announced that there is another open house at the Water Treatment plant on April 23, 2016, and that the City offers free water testing which have all turned out negative. With regard to future needs, he indicated that the water and sewer funds are healthy with significant cash to address capital needs in the system along with an aggressive CIP process where needs are predicted ahead of time. He said any rate increase is something to be concerned about, but the total rate increase this year is only 0.75% for both water and sewer.

In answer to Mayor Strazdas, Transportation & Utilities Director Chris Barnes shared that we are always planning for the future and the projected needs as a community with exploring new resources and protecting our water with the Wellhead Protection Program. He cited the new water mains and new hydrants installed on South Westnedge last year with the road improvements for reliability and dependability. Discussion followed and Mayor Strazdas thanked the Water and Sewer Rate Committee Members and mentioned that the City is poised to pay cash for a very large project, a new water tower, with no need for bonding. Mr. Barnes noted the importance of the hydrant flushing program to keep the water fresh for the end user. Discussion followed.

Motion by Pearson, seconded by Randall, to establish a public hearing for April 26, 2016, at 7:30 p.m. or as soon thereafter as may be heard, to consider resolutions to: adopt the recommendation that the sewer commodity rate remain at \$4.60 per 1,000 gallons of metered water; adopt the recommendation that the water commodity rate remain at \$3.19 per 1,000 gallons of metered water; adopt the recommendation that adjustments be made to both the sewer and water base quarterly charges as noted in the 2016 Utility Rate Financial Study; adopt the recommendation that the new rates become effective on October 1, 2016; and adopt the recommended water and sewer franchise area fees and other service fees and charges as outlined in the 2016 Utility Rate Financial Study. Upon a roll call vote, motion carried 7 to 0.

KALAMAZOO COUNTY BROWNFIELD REDEVELOPMENT PLAN:

Councilmember Reid introduced this Brownfield Redevelopment Project and indicated that it will require \$190,540 to address the contamination issues in order to develop the land of this tax exempt property. She mentioned that taxes will be forgone by the various jurisdictions, not just Portage, by adopting the proposed Resolution. So, she asked for more information on this project so the citizens will know what City Council is doing.

District 11 Kalamazoo County Commissioner Scott McGraw, 10608 Dandale Street, encouraged City Council to adopt the resolution of support for the Brownfield Redevelopment Plan and commented that it is a “win-win-win” because it is not often that we can take tax exempt property, place it on the tax rolls and bring jobs to the community.

Joe Agostinelli, Associate Vice President, Southwest Michigan First, 1906 Forest Drive, and Chair of the Kalamazoo County Brownfield Redevelopment Authority, applauded this as the second project in collaboration with the City of Portage and thanked City Council for their consideration. He indicated that the company is RAI Jets, LLC, and is a second location for them. Discussion followed.

Councilmember Reid noted that the City of Portage is foregoing \$40,098 and asked what are the other jurisdictions foregoing? Mr. Shaffer deferred to Community Development Director Vicki Georgeau, who referred City Council to Table 3 in the City Council Agenda Packet, reviewed the total

amounts for each jurisdiction listed and explained. Councilmember Reid spoke in support of the project, but did want to point out that there are costs associated to be borne by various jurisdictions. Discussion followed.

Motion by Randall, seconded by Reid, to adopt the resolution of support for the Kalamazoo County Brownfield Redevelopment Authority Brownfield Redevelopment Plan for 5825/5901 Willoughby Drive for tax capture in the maximum amount of \$190,540 over a period of up to 15 years (including five years for the Local Site Remediation Revolving Fund) or when eligible activities have been fully reimbursed, whichever occurs first. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on page 151 of City of Portage Resolution Book No. 46.

* **SPECIAL MEETING FOR BOARD AND COMMISSION APPLICANTS:** Motion by Urban, seconded by Reid, to set a Special Meeting on Tuesday, May 10, 2016, beginning at 5:15 p.m., to interview Board and Commission applicants. Upon a roll call vote, motion carried 7 to 0.

* **MINUTES OF BOARDS AND COMMISSIONS MEETINGS:** City Council received the minutes of the following Boards and Commissions:

Portage Public Schools Board of Education Regular of February 22, Special of February 29 and Committee of the Whole of March 14, 2016.

Portage Historic District Commission of March 2, 2016.

Portage Planning Commission of March 3 and 17, 2016.

Portage Human Services Board of March 3, 2016.

COUNCIL COMMITTEE REPORTS:

DISCOVER KALAMAZOO: Councilmember Randall reported on her meeting on Monday, April 11, 2016. She said that the presenter, Rebecca Kick, was from the City of Kalamazoo, who disclosed the specifics of their process utilized for their imaginary program on visioning. She mentioned the ten minute survey which is an attempt to poll the masses downtown for input regarding the future direction of the City. Motion by Ford, seconded by Reid, to receive the report from Councilmember Randall on the Discover Kalamazoo Meeting of Monday, April 11, 2016. Upon a voice vote, Motion carried 7 to 0.

CENTRAL COUNTY TRANSIT AUTHORITY (CCTA): Councilmember Urban reported on the meeting with the CCTA on Monday, April 11, 2016, where work continues that is necessary to transfer all of the Metro Transit System from the City of Kalamazoo to the CCTA by the closing date of October 1, 2016. He mentioned that of significant interest, and with much past discussion in the community, the CCTA approved the service agreement with Texas Township and Kalamazoo Valley Community College (KVCC) to continue the route that serves KVCC from downtown. He pointed out that the final portion of that route was outside the CCTA District in which Texas Township chose not to participate, but that a service agreement is available under CCTA Policy for a one time duration of our millage, so there is no danger of the service being interrupted. He noted that it is one of the most popular routes in the system, and approximately 17% of the ridership got off at KVCC and approximately 22% got off at Texas Township. Discussion followed. He also mentioned that the minutes of the CCTA are on line. As a member of the CCTA, Councilmember Pearson concurred and recognized the exceptional work by Executive Director Sean McBride and Chairperson Linda Teeter. In answer to Councilmember Ford, Councilmember Urban indicated that no agreement has been reached by neither Oshtemo Township, nor Pavilion Township. Discussion followed. Councilmember Urban indicated that even though there was no interest in working with a service agreement by Oshtemo Township, Mr. McBride will be circulating back around since there are new discussion points, but such an agreement cannot be anticipated at this point.

Motion by Ford, seconded by Reid, to receive the report from Councilmembers Urban and Pearson on the Central County Transit Authority Meeting of Monday, April 11, 2016. Upon a voice vote, motion carried 7 to 0. Discussion followed.

NEW BUSINESS:

MEDICAL MARIHUANA: Councilmember Randall indicated that she viewed the Zoning Board of Appeals Meeting last evening with interest and noted that the issues expressed were beyond the purview of the ZBA, but not that of City Council. She expressed an interest in hearing more about the proposal from City Manager Shaffer regarding a six month moratorium, as well as a stay in enforcement of the current City of Portage Ordinance during that six month period.

Mayor Strazdas asked if anyone has any specific questions that they direct them to the City Manager for response, and Mr. Shaffer indicated that he would appreciate it if the questions could be submitted by Wednesday, April 20, 2016. He pointed out that the one remaining issue is the request for a stay of the enforcement of the Ordinance and, unless the City Council directs otherwise, consideration of the moratorium question will be on the April 26, 2016 Regular City Council Meeting Agenda. He said he was not predisposed to look for other opportunities to cite someone else, or other practitioner, until the Council has completed their discussion on the moratorium and the potential for a stay of the enforcement of the Ordinance. Mayor Strazdas reminded City Council that under New Business, the only question is whether the Council wishes to direct the City Manager to research a topic and bring back a recommendation or report.

City Attorney Randy Brown indicated that his office is preparing a lengthy opinion that will be ready for the next meeting that describes the law in this area and asked Council to direct any questions to him regarding the opinion. He noted that Council has been through the Michigan Medical Marihuana Act (MMMA) before, so it is not a surprise that it has been found to be confusing and complicated by those citizens who spoke earlier. He acknowledged that it is complicated and courts have struggled with it since it was passed. He indicated that there are many Court of Appeals cases that have interpreted provisions of the Act and several important Supreme Court Cases that have interpreted the Act, but there is a long way to go yet. He pointed out that the Courts have not discussed the dispensary issue point blank and the Act does not permit, nor does it prohibit what would be considered a dispensary – the free flow of marihuana – through caregivers and patients.

However, Mr. Brown indicated that he did not wish Council to think that Ter Beek v. Wyoming (City of) authorized dispensaries because it did not. It held that if a person is in compliance with the MMMA; that that if a person is in compliance with the MMMA, i.e. if that person is in compliance with the close relationship that is the intent of the Act between the caregiver and his or her five (5) qualified patients who are registered with the State of Michigan, then that person is legal, and a Zoning Ordinance cannot prohibit that activity. He indicated that to comply with the Act in that way makes it very difficult to have a dispensary because by nature a dispensary would take it outside the 5:1 ratio. He stated we still have the MMMA which is law that we are bound to follow and a home occupation ordinance which we are bound to enforce. He pointed out that enforcement has gone forward because evidently what is happening at these locations in question are not in compliance with the Act. He disclosed that since the ZBA denial of the request last evening to stay the enforcement of the ordinance, even though it was stayed while the appeal was pending, that allowed the City to continue the enforcement. He anticipated there might be further interest to stay the enforcement of the ordinance, so he has prepared a motion for Council which he admitted is rather long because of the details required to stay the enforcement of an ordinance.

Councilmember Reid objected because she has not seen any of the proposed language and stressed that she is not prepared to act on something on such short notice without the chance to review it, first. Discussion followed and Mr. Brown indicated that the proposed ordinance does not contain a stay of enforcement provision because it just prohibits the establishment of any future facility.

In answer to Councilmember Reid, Mr. Shaffer indicated that it is premature to take any action on this matter until the Council has a full opportunity to discuss it, the petitioners have a chance to

appeal the action of the ZBA, and/or a resolution might be reached in court; so, he plans to take no action until Council has the opportunity to discuss this matter at the next Regular Council Meeting.

Councilmember Pearson indicated that he watched the ZBA Meeting and, like Councilmember Urban, as a former Chair of the ZBA, he never remembered having the Assistant City Attorney ask applicants to take sworn statements before they could present their case, so he took this as "collecting evidence" for prosecution. He agreed with Councilmember Reid that it is premature to take any action on this matter until the Council has a full opportunity to discuss it, and wanted assurances that there would be no prosecutions during the next ten days using this evidence. Mr. Brown indicated that Legal Counsel does not proceed with enforcement action without the direction of the City Administration. In answer to Councilmember Pearson, City Manager Shaffer indicated that the moratorium would be introduced on April 26, 2016; Council would be asked to hold a public hearing on May 10, 2016; and Council would have a chance to vote on the matter thereafter.

Councilmember Urban asked what exactly does the moratorium contemplate. Discussion followed. Mr. Shaffer indicated that the moratorium would be designed to take a look at the present home occupation marijuana zoning ordinance and to take the opportunity to create a new ordinance or to add to the current ordinance in order to take into consideration some of the issues raised. He explained that it is the chance to give space in time to craft a new ordinance; to step back for a period of time in order to take a look at what happens at the State level and at the referendum level and to ascertain how those activities might inform Council regarding a potential ordinance. He summed up and emphasized that the moratorium would provide the time for consideration of the details of a new ordinance or the expansion of the current home occupation ordinance.

In answer to Councilmember Urban's quest for clarity of what the moratorium would contemplate, City Attorney Brown indicated that the moratorium ordinance actually excludes the home occupation type of medical marijuana transaction; that will not be prohibited at all because it is an exclusion; however, the moratorium will prohibit any establishment of a medical marijuana use if it does not fall within the Act requirement. In answer to Councilmember Urban, he said that this requires action because there are arguments that what they are doing is legal. The moratorium ends that discussion and the establishment of new marijuana facilities like the ones in question will not happen because they are prohibited during the moratorium period, and this allows us to obtain some clarity during the moratorium period. Discussion followed.

Councilmember Ford listed some of the pending legislation to be considered when considering a new ordinance, and City Attorney Brown welcomed discussion of any sample ordinances from anyone. Councilmember Pearson reminded Council that he suggested that Council needs to meet as a Committee of the Whole on this issue and asked that Council take it into consideration May 10, 2016. Mayor Strazdas responded that this would be a pre-judging of the decision of Council and expressed a preference for a public hearing for citizen input, then have a work session and explained that the timing is an important consideration here. Councilmember Pearson offered that he would be proposing a Committee of the Whole in the near future for a discussion of the medical marijuana issues.

Councilmember Ford noted that Council set a Special Meeting on Tuesday, May 10, 2016, beginning at 5:15 p.m., to interview Board and Commission applicants and, in that case, Councilmember Pearson deferred to May 24, 2016, as a possibility.

Councilmember Urban commented that members of the audience admitted establishing a business knowingly illegal in the State of Michigan or the City of Portage, and said he was disturbed that City Administrators were not going to continue enforcement since they lost their appeal last night. He said he has no sympathy for people who knowingly flaunt the law; but, he does have sympathy for patients and people who are using medical marijuana, but little sympathy for businesses who flaunt the law willingly. He restated his disappointment that City Administrators were not going to continue enforcement. Mayor Strazdas summed up.

BID TABULATIONS:

*** 2016 LOCAL STREETS RECONSTRUCTION PROJECT – BID TABULATION:**

Motion by Urban, seconded by Reid, to award a construction contract for the 2016 Local Streets Reconstruction Project to Rieth-Riley Construction Company, Incorporated, of Kalamazoo, Michigan, in an amount not to exceed \$1,639,086.77 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

*** SOUTH SHORE DRIVE SANITARY SEWER PROJECT #416-S– BID TABULATION:**

Motion by Urban, seconded by Reid, to award a construction contract for the South Shore Drive Sanitary Sewer Improvements Project #416-S to Balkema Excavating, Incorporated, of Kalamazoo, Michigan, in an amount not to exceed \$481,463.06 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

*** SCOTT BREATHING AIR SYSTEM – BID TABULATION:** Motion by Urban, seconded by Reid, to approve the purchase and installation of a Scott Breathing Air System Hush/Revolveair in the amount of \$62,439 from Argus-Hazco of Chesterfield, Michigan, and authorize the City Manager to execute all documents related to this matter on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

*** DEPARTMENT OF PUBLIC SAFETY - POLICE DIVISION VEHICLE**

MAINTENANCE – BID TABULATION: Motion by Urban, seconded by Reid, to award a two-year contract, with the option for up to three one-year extensions, to the low bidder Michigan Municipal Police & Fire Repair, LLC, for maintenance of all Department of Public Safety Police Division vehicles at a labor rate of \$45.00 per hour and authorize the City Manager to execute all documents related to this action on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

OTHER CITY MATTERS:

STATEMENTS OF CITIZENS: Travis Copenhaver of Cannabis Attorney of Michigan, representing one of the Medical Marijuana caregivers, indicated that he does not believe the Home Occupation Ordinance of the City of Portage is valid and will continue to challenge that ordinance. He indicated that he does not encourage people to break the law, but in this case, there is no law being broken owing to the ordinance being invalid.

Attorney Glenn Smith asked whether the City Attorney opinion is public record and City Attorney Brown indicated that it is covered under Attorney-Client privilege and does not have to be released; however, a majority of Council can vote to release it.

STATEMENTS OF CITY COUNCIL AND CITY MANAGER: Councilmember Urban reiterated his comments regarding CCTA that the process has been an effort of the entire County that has been 15 years in the making; that the Committee was concerned when Texas Township chose not to be a part of the District since it would have meant the end of service to KVCC if something had not happened; but, they chose to take advantage of the CCTA provision that facilitated retention of that route. He expressed his hope that service to the other entities continues similarly for those who need it.

Councilmember Reid expressed her appreciation for the discussion of the Medical Marijuana issue and asked for input from people who are working within the home occupation ordinance. She noted that because of HIPPA requirements, there is no list of the homes that have care providers, so she asked current caregivers to provide their side of the situation. She reminded citizens of the electronic collection and recycling event, April 16, 2016, from 10 a.m. until 2 p.m. at the Department of Public Services, 7719 South Westnedge Avenue, and the latex paint collection and recycling event on May 14, 2016. She mentioned that this past week she attended the American Occupational Therapy Conference

with over 10,000 attendees in Chicago which will celebrate its 100th Anniversary next year, and she recognized the practitioners by indicating April is Occupational Therapy Month.

Councilmember Randall thanked the citizens and the members of the Zoning Board of Appeals for attending the ZBA Meeting April 11, 2016, for four hours. She said, "Progress takes time, but we will do it slowly and we will do it together." She expressed her empathy for people who use this product and need it to maintain both physical and mental health. On a lighter note, she mentioned the Deer Management Forum, April 14, 2016, at 7 p.m., Portage City Hall. She also mentioned the upcoming City Spring Cleanup and the Brush and Bagged Leaf Collection.

Councilmember Ford indicated that he cannot make the pre-Council meetings and asked if something could be done with regard to his having to abstain from the approval of the minutes of that meeting each time. Mayor Strazdas indicated he would work with Staff, Mayor Pro Tem Ansari and the City Attorney to make that better.

Councilmember Pearson reviewed item L.1, 2016 Local Streets Reconstruction Project, and indicated that more than \$3 million in street work would be taking place this summer. He noted that Council freed up over \$1million from City surplus funds to pave 50 streets. He said a fresh coat of asphalt would be constructed on 9 miles of roadway on 37 local streets and an additional 20 neighborhoods will see greater than 4 miles of roadwork in Spring 2016. He also mentioned that Martin Luther King, Jr. Drive would finally be reconstructed and turned over to the City. Mayor Strazdas concurred and discussed the process.

Mayor Pro Tem Ansari noted the surplus and mentioned that the Portage priority is our streets. He thanked Maliha Khan, Chair of the Kalamazoo County Child Abuse and Neglect Prevention Council, and Director Karen Hayter for their focus and work on child care in our community.

Mayor Strazdas reflected upon his recent trip to Europe and commented that Portage roads are appreciated as compared to the 600 year old infrastructure of France and the United Kingdom. He emphasized that Council needs to continue focus on safety, water, sewer, roads and the basics.

MATERIALS TRANSMITTED:

* **MATERIALS TRANSMITTED OF MARCH 22, 2016:** Motion by Urban, seconded by Reid, to receive the Materials Transmitted of Tuesday, March 22, 2016. Upon a roll call vote, motion carried 7 to 0.

ADJOURNMENT: Mayor Strazdas adjourned the meeting at 9:48 p.m.

James R. Hudson, City Clerk

*Indicates items included on the Consent Agenda.

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – March 28, 2016

The City of Portage Zoning Board of Appeals meeting was called to order by Jeffrey Bright at 7:00 p.m. in the Council Chambers. Eleven people were in the audience.

MEMBERS PRESENT: John Byrnes, Phillip Schaefer, Michael Robbe, Jeffrey Bright, Chadwick Learned, Lowell Seyburn, Randall Schau, Jay Eichstaedt, and Alexander Philipp.

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator, Mike West, Senior City Planner, and Charlie Bear, Assistant City Attorney.

APPROVAL OF THE MINUTES: Schau moved and Learned seconded a motion to approve the February 8, 2016 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #15-13, Mavcon Properties, 9110 Portage Road: Mais summarized the variance requests: a) for a four-foot wide greenstrip where a minimum ten-foot width is required; b) to provide 603 square feet of interior parking lot landscaping where a minimum 1,252 square feet is required; and c) from the requirement to provide a loading/unloading area. Steve Sielatycki, James Dally, and Pat Flanagan were present to answer questions. Mr. Sielatycki stated the variances were needed to accommodate more parking, and the plan to have a four-foot wide greenstrip with knee wall and hedge was consistent with the Lake Center Subarea Plan. Robbe inquired where the sidewalk was on the plans. Mr. Flanagan responded the plans before the Board are conceptual at this stage and did not show the sidewalk, but the formal site plan will show the sidewalk at the north end of the property. Robbe requested clarification of the knee wall and hedge placement. Mr. Flanagan responded it would be along the Portage Road frontage, but the specifics concerning the placement or type of hedge would be reviewed as part of the finalized site plan approval. Bright inquired what purpose the knee wall and hedge served. Mais stated to serve both as a means to separate the parking lot from the street and also for aesthetics. Seyburn inquired if the site plan would be reviewed by staff or by the Planning Commission. West stated that was yet to be determined. Seyburn inquired if the Board could include Planning Commission review of the site plan as a condition. Mais responded yes. Seyburn noted docks appear on the conceptual plan and inquired if the placement of docks was subject to city approval. Mais stated approval of docks on lakes is typically a function of the State. Mr. Sielatycki stated the docks were intended to provide West Lake residents an additional means to park boats at the restaurant without using off-street parking, and was, as already noted, conceptual. Seyburn inquired if the applicant had considered a different configuration for the off-street parking near the north end. Mr. Flanagan stated they had considered a number of different configurations, but settled on the proposed design, as it provided the most spaces while maintaining the required 22-foot maneuvering lane width. Byrnes inquired if the number of traffic lanes along Portage Road might be reduced in the future. Mais responded Portage Road was one of the streets being examined as part of the 'road diet' study, but as yet there were no plans to do so.

The public hearing was opened. A letter from Jean Truitt, 9029 Portage Road was read. The public hearing was closed.

A motion was made by Seyburn, seconded by Schau, to grant variances for: a) a four-foot wide greenstrip where a minimum ten-foot width is required; b) to provide 603 square feet of interior parking lot landscaping where a minimum 1,252 square feet is required; and c) from the requirement to provide a loading/unloading area conditioned upon: 1) installation of a 3-foot high knee-wall and landscape hedge as illustrated on the concept plan; 2) installation of a sidewalk to connect the northeast corner of the parking lot to the southeast corner of the Ames Drive/Portage Road intersection; and 3) that finalized plans for the aforementioned knee-wall/hedge and sidewalk be subject to review and approval by both city staff and the Planning Commission, for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the size and configuration of the property and its previous use; the variance is necessary for the preservation and enjoyment of a substantial property right, the right use the property as it presently exists which is similar to

that possessed by other properties in the same zoning district and in the vicinity; the immediate practical difficulty causing the need for the variance was not caused by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood, and; the variance will not materially impair the intent and purpose of the Zoning Ordinance; and that nothing in this motion shall imply any approval related to the dock depicted in the conceptual plan. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-17, Bickford Cottage Assisted Living and Memory Care, 4707 West Milham Avenue: Mais summarized the variance request to retain an approximate 8,400 square foot building addition along the west side of the existing Bickford Cottage facility to within 10-feet of the west property line (side yard) where a 30-foot setback is required. Bill Crandall was present on behalf of the property owner, Richard Eby, to answer questions. Schau inquired which portion of the building encroaches into the 30-foot setback. Mr. Crandall stated the 80-foot wide addition currently under construction and also where a new dumpster is located. Mr. Crandall added they are about four weeks from completion. Learned inquired if there was need for any traffic on the west side of the addition apart from lawn maintenance. Mr. Crandall responded no. Seyburn inquired how far the addition was from residences to the south. Mr. Crandall stated about 130 feet. Bright inquired if the applicant had approached the property owner to the west about purchasing a portion of the property. Mr. Crandall stated Mr. Eby did approach the owner about purchasing a 20-foot wide portion but the owner was not interested in selling at that time. Bright inquired if the applicant was aware of whether the neighbor had any objections to the 10-foot setback. Mr. Crandall stated the project had already gone through the Planning Commission and the neighbor had not objected during the process at any time. Learned inquired of staff if any objections from the neighbor had been received during the Planning Commission review. Mais stated no.

A public hearing was opened. Phillip Reed, counsel for Michael Busche, the property owner to the west (4721 West Milham Avenue) stated that while an offer had been made to purchase a portion of Mr. Busche's property, he had not responded yet because he was busy trying to evaluate what impact the sale would have on the development of his property. Mr. Reed stated his client approached Mr. Eby with a counter-proposal on March 25, 2016 and suggested a land swap involving a 20-foot wide portion of the southern half of Mr. Busche's property in exchange for a 20-foot wide portion of the northern half of Mr. Eby's property. Mr. Reed stated that while a variance might be the most convenient way to deal with the encroachment, he thought a remedy other than a variance should be the starting point to deal with the situation. Mr. Reed stated his client was not necessarily opposed to the building addition, but wanted the opportunity to explore what impacts a variance or a land exchange would have on the value of his property before the Board moved forward with the variance request. Mr. Reed added that Mr. Eby advised him a 10-foot wide area along the west side of the Bickford Cottage property is zoned B-2 and he questioned if it was accurate. Robbe stated Mr. Busche did not object when the Planning Commission approved the rezoning and the site plan. An error had been made and there were two remedies: obtain a variance or acquire additional land. Robbe indicated it is possible that Mr. Busche's sudden objection to the 10-foot setback (as soon as he learned a variance was needed) might be intended to hold Mr. Eby hostage during negotiations. Mr. Reed disagreed and stated his client was only asking for more time so he could better understand the issues. Seyburn clarified the chronology of events, beginning with the rezoning on January 20, 2015, the special land use permit and site plan approval on March 19, 2015 and notification for the variance request on March 11, 2016. Seyburn inquired when the setback error was discovered. West stated it was discovered about three weeks ago and that most uses in OS-1 have a 10-foot setback as shown in the Schedule of Regulations. However, special land uses in the OS-1 district have a 30-foot setback. The Zoning Code was amended in 1983 to provide greater setbacks for large and more intensive land uses of an institutional nature, such as hospitals and colleges, but also included less intensive uses like child daycare centers or assisted living facilities. West added that exceptional circumstances are present and the Board should consider the unique circumstances associated with this request. With regard to Mr. Reed's earlier comment, West confirmed the west 10 feet of

the Bickford Cottage property is zoned B-2 and was done purposefully to preserve the building area on Mr. Busche's property, which eliminated the requirement for a 75-foot building setback.

Learned stated that although Mr. Busche had no objections earlier, perhaps he may not have known or understood he had an earlier opportunity to object to a 10-foot setback and maybe the Board should consider tabling the request to give both parties an opportunity to reach a compromise. Attorney Bear asked Mr. Reed to clarify what action he was requesting of the Board. Mr. Reed stated his client was asking for more time before the Board moves forward with the request. Bright inquired when the next meeting was scheduled. Mais responded April 11, 2016, but encouraged the Board to move forward with the request tonight and consider whether a side yard setback variance is warranted. Mr. Busche stated he was confused by what was going on and wanted the item tabled to give him more time to understand the issues. Seyburn inquired if the applicant thought there was information being withheld. Mr. Busche said he did not know, but thought the situation was strange. Learned inquired if a postponement to the April 11th meeting would adversely affect the applicant. Mr. Crandall said no, but anything affecting their certificate of occupancy would be a hardship. Schau inquired if staff could issue a certificate of occupancy given the pending nature of the case. Mais stated a permanent certificate of occupancy could not be issued without zoning compliance. Mr. Crandall stated he did not see their position changing even if the Board tables the matter and asked the Board to move forward with the request tonight. The public hearing was closed.

A motion was made by Seyburn, seconded by Learned to postpone the item until the April 11, 2016 meeting. Upon roll call vote: Philipp-Yes, Robbe-No, Seyburn-Yes, Bright-Yes, Learned-Yes, Schau-No, Schaefer-Yes. The motion passed 5-2.

ZBA #15-18; Dockerty Memory Care, 710 & 732 East Centre Avenue: Mais summarized the requested variances to allow construction of an approximate 31,900 square foot 42-bed memory care facility to a) within 12-feet of the east property line (side yard) where a 30-foot setback is required, and b) within 25-feet of the south property line (rear yard) where a 30-foot setback is required. Tim Dockerty stated in May of 2015 he submitted a conceptual plan for a memory care facility that showed a 10-foot setback. Staff advised that a zoning change from B-1 to OS-1 would be needed and he subsequently requested the property be rezoned to OS-1 in November 2015. It was not, however, until last month when it was discovered a 30 foot setback is needed for a special land use. Robbe inquired what the maximum permitted height and number of stories a building could be in an OS-1 zone. West replied 25 feet and one story.

A public hearing was opened. Gary Crankshaw, 810 East Centre Avenue and Kate Dunckel, 719 Pasma spoke in support of the request. The public hearing was closed.

A motion was made by Learned, seconded by Schau, to approve variances to allow construction of an approximate 31,900 square foot 42-bed memory care facility to a) within 12-feet of the east property line (side yard) where a 30-foot setback is required, and b) within 25-feet of the south property line (rear yard) where a 30-foot setback is required for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district which include the unusual shape of the zoning lot and the surrounding zoning/land use pattern; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity; the right to develop a property with setbacks similar to other uses in the district; the immediate practical difficulty causing the need for the variance request was not created by the applicant; and the variance would not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Abstained, Bright-Yes, Robbe-No, Schau-Yes, Schaefer-Yes, Byrnes-Yes. The motion passed 6-1-1.

OTHER BUSINESS: Bright stated he understood there may be as many as ten items on the April 11, 2016 agenda and asked which Board members might be available for a special meeting on April 18, 2016 in the event another meeting would be needed to accommodate all the applicants. Schau and Learned indicated they would not be available on that date but all other Board members would be available. Seyburn indicated he will likely not be available for the May 9, 2016 regular meeting.

Learned stated he thought the Board should consider amending its rules of procedure concerning potential conflicts of interest and provided proposed language to each Board member for consideration at a future meeting, perhaps in May or June 2016.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator