

Clearwater Township
Planning Commission
Regular Meeting of September 9, 2019
As Approved October 7, 2019

Call to Order, Pledge of Allegiance:

Chair Backers called the meeting to order at 7:06 p.m., and opened with the Pledge of Allegiance.

Roll Call of Members and Recognition of Visitors:

Commissioners present: Backers, Cassasa, Eldridge, Fields, Von See.

Township officials: Zoning Administrator Parzych

Public: Jim Lefew, Leo Fix, Lorraine Fix, Greg Hanlin, Ruthann O'Brien, Coreen Reed, Carol Backers, Tom Tucker, Mike Bieniek, Terry Wheelock, Sandra Wheelock, Karen McKenzie, Dave Findley, Karen Findley, Deputy Clerk Jule Moore.

Approval of Agenda:

MOTION by Von See, second by Casassa, to accept the agenda as presented. Motion carried.

Call for Disclosure of Conflicts of Interests:

Chair calls for commissioners to disclose any real or potential conflicts of interests. All members of the Commission declared no conflicts of interests.

Approval of Minutes:

MOTION by Von See, second by Casassa, to accept the minutes of August 5, 2019 as presented. Motion carried.

Public Comment for Matters Not on the Agenda:

None.

Commissioner Comment for Matters Not on the Agenda:

None.

Correspondence:

None.

Public Hearing on proposed text amendment to Ordinance #22 – Zoning:

Greg Hanlin has proposed the following amendment language:

Spacing – Telecommunication towers and antennas shall be located no closer than one (1) mile from an existing telecommunication tower or alternate tower structure, as measured in a straight line between the base of the existing tower and proposed base of the proposed tower, unless a propagation map can be

provided by an independent third party showing the need for additional reception. Third party propagation research would be hired by the township and paid for by the applicant.

This public hearing was noticed in the Elk Rapids News of August 22, 2019, with the full text of the proposed amendment included. It was also posted on the township website, and on the doors of the township hall and the community center.

Chair Backers opened the public hearing at 7:12 p.m., and explained the procedures to be followed. He asked Greg Hanlin to speak first.

Greg Hanlin – explained what had prompted him to propose this amendment. He commented that telecommunications technology is advancing and expanding rapidly and that local municipal governments have had difficulty keeping up. The intention of this amendment, he said, is not to restrict the advent of telecommunications, but to keep us acting within the guidelines of our Master Plan to faithfully preserve our natural scenic features. This is to add “one more layer to require the telecommunication companies and the hard asset companies to go through the necessary steps.” The basic wording for this proposed amendment came from Mayfield Township in Grand Traverse County. Hanlin added one sentence to allow the township some flexibility in its application.

Chair Backers – asked him to read the proposed amendment.

Hanlin – read the proposed amendment (text above). He further commented that if a tower is needed, and can be proven to be needed, the township would have the ability to approve the tower even if it did not meet the one mile separation requirement.

Chair Backers – invited persons in favor of the amendment to speak. There appeared not to be anyone wanting to speak, so he moved on to invite persons opposed to the amendment to speak.

Mike Bieniek – said he would like to speak, but not necessarily in opposition, rather to offer a couple of points to be considered. He said he agreed with the one mile separation, but that propagation maps are generally done by the individual carriers for the reason that their RF engineers have all the specific information that is pertinent to the particular proposed installation. Using sophisticated mapping technology, they input that information in order to produce the maps.

Chair Backers – asked if all that information would already be provided to the FCC in the issuance of a license.

Bieniek – said no, it would not. The license is obtained before the network is designed. He also said that it's quite common for jurisdictions to require a third party review of propagation maps provided by the carrier. He further commented that a structural analysis should be a component of whatever the township requires. He offered this observation in support of that comment: a tower that is 350' tall may have open space at say the 320' level, and a propagation map could indicate plenty of coverage, but the tower might not be structurally capable of supporting more antennas at that level.

Chair Backers – asked if there were any further public comment on the matter.

Sandra Wheelock – said she was in favor of the amendment, but hadn't got her hand up in time. She commented that a company coming into the area, wanting to put up a tower, most likely has its own interests in mind, not necessarily the interests of the community. Being willing to work with the township and an independent third party would show that the company might be trustworthy. She stated that we just don't want something pushed on us without our consent. For that reason, she expressed her opinion that propagation maps should be drawn by a third party, and not by the interested company.

Chair Backers – explained his understanding that the intent of the amendment is to give the Planning Commission the ability to have a third party review to determine whether or not the area of propagation is, indeed, what the company said it was, and whether the proposed tower would be in conflict with another tower within the one-mile radius.

Secretary Fields – suggested the following modification to the language of the amendment:
. . . unless an appropriate propagation map can be provided showing the need for additional reception. An independent third party would be hired by the township to review that propagation map, and be paid for by the applicant.

Coreen Reed – asked if the reviewer says “no” and the contractor argues the point, does that give it back to the contractor?

Bieniek – responded “no” directly to Reed, initiating crosstalk in the public. Chair Backers restored order.

Chair Backers engaged in conversation with Hanlin about trying to prevent an antenna farm from appearing in Clearwater Township, especially along M-72. Hanlin expressed his concern that the proposed language would create a loophole for the telecom companies to prevail by simply exhausting the township's resources, and suggested simply limiting the language to imposing the one-mile distance.

Bieniek – stated that removing that final sentence would violate the federal Telecommunications Act, by not allowing some flexibility. He also re-emphasized that the township would have the authority to accept or reject the findings of the third party reviewer.

Clerk Eldridge – asked for assurance that this spacing amendment did not negate the existing setback requirements. Hanlin responded to her that this was quite independent of the existing setback requirements; this dealt only with the distance between towers.

Jim Lefew – stated that he really like making it just the one mile limit. He further suggested adding a requirement that future towers be built to a higher standard, to avoid the concern Bieniek had voiced earlier about the need for structural analysis when adding antennas at an open level.

Hanlin – requested that Secretary Fields read again her suggested modification to the amendment language. Following the reading, he indicated his acceptance of the modification in spite of his concern that it might provide a loophole for the tower companies. He also rebutted Bieniek's claim that the township could be in violation of the Telecommunications Act, saying that we were not prohibiting the placement of towers, only regulating where and how many towers could be place in our township.

Chair Backers – closed the public input portion of this hearing at 7:38 p.m.

Commission Deliberations

Secretary Fields – expressed concern that setting a fixed distance requirement for towers would eliminate the ability of the township to be able to respond to the demands of the coming technology. For instance, 5-G cells are likely to be only blocks apart, not miles. Therefore, she would support keeping the ability of the township to be flexible in its application of the Zoning Ordinance. She also distributed a document, on the range of cell towers, harvested from www.quora.com. That document said that the range does depend on the type of technology, interference from other RF signals, and the terrain. In hilly terrain, such as is found in our area, the range can vary from three to five miles.

Chair Backers – confirmed with Bieniek that the tower range on our area is about 3-5 miles. He also confirmed with Hanlin that the proposed modification to his proposed amendment was acceptable to him.

A motion was made to recommend adoption to the township, but upon reminder from the Zoning Administrator that we have to go through the findings of fact for a proposed amendment, per the Zoning Ordinance, the motion was vacated and the Commission proceeded to considering the findings of fact per Article XXIX Section 03.

Finding of facts

- A. What, if any, conditions related to the petition have changed which justify the amendment?

The Commission finds that the changes in conditions are the presence of multiple towers and changing technology.

- Casassa – yes
- Eldridge – yes
- Von See – yes
- Fields – yes
- Backers – yes

- B. What, if any, error in judgment, procedure, or administration was made in the original Ordinance which justifies the amendment?

The Commission finds that there is no error, just that there was no way to know the future.

- Eldridge – yes
- Von See – yes
- Casassa – yes
- Fields – yes
- Backers – yes

- C. Would the approval or denial of this petition set a precedent? If so, what possible effects might result from this?

The Commission finds that yes, it would set a precedent. It would limit the number and placement of towers.

Backers – yes

Casassa – yes

Eldridge – yes

Fields – yes

Von See – yes

D. If approved, what impact would the amendment have on the ability of the Township and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future?

The Commission finds that there would be no likely impact.

Fields – yes

Eldridge – yes

Casassa –yes

Von See – yes

Backers – yes

E. On a rezoning petition, how would it affect the environmental conditions or value of the surrounding property if approved?

N/A – this is not a rezoning petition.

F. Are there any significant negative environmental impacts which would reasonably occur if the petitioned zoning change were approved and the resulting allowed structures were built? Such as:

1. Surface water drainage problems;
2. Waste water disposal problems;
3. Adverse effect on surface or subsurface water quality; and
4. The loss of valuable natural resources such as forest, wetlands, historic sites, wildlife, mineral deposits or valuable agricultural land.

N/A – this is not a rezoning petition

MOTION by Backers, second by Von See, to recommend to the Township Board to add this language to Article IV Section 13.A as item 4, renumbering remaining items. Motion carried.

Roll call vote:

Von See – aye

Eldridge – aye

Casassa – aye

Fields – aye

Backers – aye

The deliberations on this public hearing closed at 8:08 p.m.

Public Hearing on Rezoning Petition from Jason Morrison:

Chair Backers began this public hearing at 8:10 p.m. This is a petition from Jason Morrison to rezone his property with address of 6333 Rapid City Road, in Rapid City, from Recreational to Commercial-Light-Industry. The Commission examined the map in preparation for consideration.

As neither the applicant nor anyone acting as agent for the applicant was present, we could not take any action. We must postpone this hearing until the applicant or his agent can be present.

The question was raised by the public as to what Commercial Light Industry was. Secretary Fields read from the zoning ordinance Article XXI, Sections 01 (Purpose) and 03 (Permitted Uses). The question was asked whether we knew what use Morrison was planning to make of the property. He intended to move his electrical business to that property.

Zoning Administrator Parzych stated that Commercial zoning was limited to a 300' depth on either side of Rapid City Road. [\[Please see post meeting note beginning on page 8, concerning the boundaries for commercial zoning.\]](#)

Chair Backers entertained a number of comments before calling a halt to the process at 8:32 p.m. reminding those in attendance that we have to postpone the hearing because there is no one present to speak for the applicant.

Report of Planning Commission Chair:

Chair Backers – reported that he has eleven interested owners of 35 properties adjacent the abandoned alleyways. He has been able to meet with nine of those owners, so far. He has prepared an Alleyways Committee report. The purpose of the first meeting was to gauge the interest of the property owners in getting the project done to properly dispose of the abandoned alleyways legally. The next meeting is planned for October 21, at 11 a.m.

Report of Township Representative:

Clerk Eldridge – reported that the tennis courts removal is underway; the Township Board has sent the Mass Gathering Ordinance back to the Planning Commission for revision; the township received a letter from AT&T saying that they have canceled their contract with American Tower effective in June 2020, and that there is danger that the township will be left without AT&T coverage; there is a new variance request from Tillman Tower to be heard by the ZBA on September 13.

Report of ZBA Representative:

Commissioner Fields – confirmed that the Zoning Board of Appeals will be hearing that variance request on Friday, September 13, 2019.

Report of Zoning Administrator:

Zoning Administrator Parzych – distributed his report for July 2019, which report is hereby incorporated into the record by reference, and a copy of which is attached to the permanent copy of these minutes as [Att A]. Parzych reported issues with property owners erecting pole

barns that are too big in residential areas because we have no size limits. He also reported issues with campers and travel trailers, saying we have a need for limits on how many should be permitted on one property; he further stated that they can be in place for only 30 days. He also spoke on docks in front of homes on the lakeshore encroaching on other properties. Lastly, he suggested that the township should consider reducing the minimum housing square footage requirement.

[Post Meeting Note: here is the zoning ordinance language with regard to campers:

Residential Single Family 13.02.H. Travel trailers, motor homes, camping or recreational vehicles may be stored in a Residential District, as long as they are stored in a manner that meets the district setbacks. Such vehicles may be used as temporary housing while a permanent dwelling is being built on the property. Such vehicles must be self-contained with respect to wastes, which must be transported to an approved septic disposal system for removal. Storage is not permitted on a commercial or rental basis, and vehicles shall have tires mounted and not be skirted.

Residential Multifamily 14.02. H. Travel trailers, motor homes, camping or recreational vehicles may be stored in a Residential District, as long as they are stored in a manner that meets the district setbacks. Such vehicles may be used as temporary housing while a permanent dwelling is being built on the property. Such vehicles must be self-contained with respect to wastes, which must be transported to an approved septic disposal system for removal. Storage is not permitted on a commercial or rental basis, and vehicles shall have tires mounted and not be skirted

Agricultural 17.02.I. Outdoor storage of a travel trailer, motor home, camping or recreational vehicle is permitted in an Agricultural District, provided that it is not lived in for more than 30 individual days in any calendar year. Storage is not permitted on a commercial or rental basis, and vehicles shall have tires mounted and not be skirted.

Recreational 18.02. J. Outdoor storage of a travel trailer, motor home, camping or recreational vehicle is permitted in a Recreational District, provided that it is not lived in for more than 30 individual days in any calendar year. Storage is not permitted on a commercial or rental bases, and vehicles shall have tires mounted and not be skirted.]

Closing Public Comment:

Ruthann O'Brien – said she has had a camper in my back yard for more than 30 days. We have good rules here and that's why she wants to live here, but when people violate the rules, nothing happens. She said she filed a complaint about her neighbor who she claims is living in his pole barn, but she has not had any report back from the Zoning Administrator. Parzych responded that he went to the property and talked with the owner who denies living in his pole barn and has refused admission on his property. Parzych cannot trespass. Without a warrant, he cannot enter the property.

Greg Hanlin – said that the recommendation we passed does provide a loophole, that there are no truly independent third parties, they are all working together. This is information he was receiving on his cell phone during the meeting.

Jim Lefew – asked how the township expects to enforce a new limit on how many campers can be on a property, if you can't or don't enforce other existing offenses?

Jeff West – stated that selective enforcement of zoning is a long standing problem in the township. He said he tried to FOIA the last time the township wrote a ticket on the dead end of a dirt road, and he argued that it is inappropriate for the township to enforce zoning on property on a Class A highway but fail to drive down the dirt road to find violations. He also challenged the legality of zoning in the township, claiming that it was created in 1974 by a subcommittee of the Township Board, chaired by Mr. Hacker, meeting in the Amidon garage, responding to a threat from the State, and that the Township Board, under Virginia Lee adopted the first Zoning Ordinance without a vote of the people, which Mr. West claims made the entire action illegal.

Adjournment:

MOTION by Von See, second by Casassa, to adjourn. Adjournment at 8:50 p.m.

Assignments:

- Fields to forward the recommendation on the proposed amendment to the Township Board.
- Fields to notify Morrison that we had to postpone action until October.

Next Meeting: October 7, 2019

Respectfully submitted,



Tina Norris Fields
Secretary

[Post Meeting Note: Boundaries for Village Commercial and Commercial-Light Industry zoning districts are reproduced below. Note that there is no statement of a 300' depth limitation on commercial zoning.

20.05 BOUNDARIES

The Village Commercial District (C-Vil) shall consist of:

- Section 4 Corner of Crystal Beach Rd. & Rapid City Rd.
(Tax Parcel No. 004-004-014-00);
- Section 6 Block 1, lots 1-3 Persons Addition to Persons Harbor, Tax Parcel Numbers 004-475-001-00 and 004-475-002-00;
- Section 9 (1) Plat of Village of Van Buren: Blocks 1 (tax group 825), 2 (tax group 826), 3 (tax group 8270, and 4 (tax group 828)
(2) Property numbers 004-009-039-00, 004-009-040-00, 004-009-041-01, and 004-009-041-05

- (3) Plat of Rapid City;
- (4) Blocks A and B of Smith & Rickers Addition to Rapid City;
- (5) Lots 1-17 of Anderson's Addition;
- (6) Lots 1-7 of Foster's Addition;
- (7) Property numbers 004-009-051-10, 004-009-051-20, 004-009-051-30, 004-009-051-35, 004-009-051-40, 004-009-051-45, and 004-009-058-000;
- (8) Smith's Addition: Lots 1-8 and 29-54

Section 16 (1) on the West side of Rapid City Road, that land between the centerline of Rapid City Road and the Western boundary of the abandoned C&O Railroad Right-of-Way and between the Northern boundary of Tax Parcel No. 004-016-017-10 and the Southern boundary of Tax Parcel No. 004-016-032-10;

(2) on the East side of Rapid City Road, that land comprising Tax Parcel IDs. 004-016-002-00, 004-016-001-20, 004-016-001-10, 004-016-003-00, 004-016-004-00, 004-016-020-00, 004-016-535-42, 004-016-535-41, 004-016-535-40, 004-016-011-30, the westerly 330 feet of 004-016-011-20, the westerly 330 feet of the untaxed 30 foot easement lying between Parcels 004-016-011-30 and 004-016-011-20, and the parcel not on the tax rolls which occupies the Southeast corner of Rapid City Road and South Street.

21.10 BOUNDARIES

The Commercial-Light-Industry District shall consist of:

- Section 16; (1) East 450 feet of NW ¼ EXCEPT: the land lying between Rapid City Road and the Western boundary of the abandoned C&O Railroad R-O-W and between the Northern boundary of tax parcel No. 004-016-017-10 and the Southern boundary of tax parcel No. 004-016-031-00.
- (2) All of tax parcel 004-016-033-00.
- (3) NE ¼, Lot 1 of Patterson Acres
- (4) SW ¼, the land lying between the centerline of Rapid City Road and the western boundary of the abandoned C&O Railroad R-O-W, EXCEPT for tax parcel 004-016-047-00.
- (5) SW ¼, the east approximately 6 acres of tax parcels 004-016-035-10 and 004- 015-035-20
- (5) SE ¼, tax parcels 004-016-051-50, 004-016-051-00, & 004-016-051-45
- (6) SE ¼, the land lying East of Rapid City Rd., between Orchard Acres & Schneider Rd. extending Eastward to a line coinciding with the Eastern boundary of Lot 1 of Patterson Acres. EXCEPT that land elsewhere defined in this Article as Residential, Industrial, or Agricultural.
- Section 21; In the E ½ of NW ¼, that strip lying between the western edge of the abandoned railroad R-O-W & Rapid City Road, and Schneider Road and the north boundary of the DNR Skegemog trailhead.]

Clearwater Township Zoning Administration Monthly Report

Month/Year July 2019

<u>5</u>	Land Use Permits Issued
<u>1</u>	Garages, Sheds
<u>2</u>	Residences
<u> </u>	Residences w/Attached Garage
<u>1</u>	Pole Barns
<u>1</u>	Resident Additions
<u> </u>	Decks, Porches, etc.
<u> </u>	Miscellaneous, Other Buildings

<u>40</u>	Field Checks
<u>0</u>	Attorney Contacts
<u>0</u>	Planning Commission Meetings
<u>0</u>	ZBA Meetings and/or Township Board Meetings
<u>15</u>	Contacts with Public, Home or Land Owners
<u>0</u>	Training Sessions

Date: Aug 14-2019

Signature: 
Zoning Administrator