FRANKFORT PLANNING COMMISSION
Meeting Minutes
July 8, 2008

Call to Order 7.00 pm

Roll Call –

Present: Commissioners Duncan, Larsen, Johnson, Ogilvie, Storrer, Clingman, Condon, McLaughlin, Hommel. Superintendent Mills
New Commissioner Julie Clingman of Frankfort was welcomed to the Commission.

Approval of Minutes – June 10, 2008

Moved by Storrer to approve 6/10/08 minutes, with corrections, seconded Johnson. Ayes: All. Nays: None.

Approval of Agenda

McLaughlin would like a policy of arranging agenda so that public business is placed at beginning of agenda. Ogilvie responded that within the guidelines of the statute for public meetings, such accommodations will be incorporated. In the current situation, the Public Hearing on a Zoning Change properly comes under New Business of the Planning Commission.

Moved by McLaughlin to approve agenda as presented, seconded Hommel. Ayes: All. Nays: None

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Public Input - General Issues

Discussion regarding "Public Input Procedure Statement" on back of agenda.

Bonnie Warren, 590 Corning Avenue: Confused about words surrounding public input and presentation. Are there instances where presentation could be denied?

Ogilvie: Presentations concern people requesting specific time on the agenda to make a presentation. If a presentation was not covered under Planning Commission's duties, it could be denied. A presentation consists of specific information, on a specific subject or project.

Thelma Ryder-Novak, 1019 River Rd.: Is each speaker limited to 5 minutes? How can the Chair lower this time?

Ogilvie: A person's time limit may be limited if a large number of people wanted to speak. The Chair might rule that because of the unusual numbers wanting to speak, and the limited time, that all persons be limited; but not just one person. This is in the interest of fairness to all potential speakers.

Thelma Ryder-Novak, 1019 River Rd.: Was the Planning Commission aware of the fence for Jacobson's Marina. It is understandable they want privacy; however the Planning Commission could look at more creative ways to beautify the bay instead of blocking it.

Ogilvie: Yes, the fence was described accurately in the plans, your concerns are noted.

Sub-Committee Reports – Issues affecting Master Plan, Land Use, and Zoning Ordinances.

a. Ordinances Drafting Subcommittee: Johnson advised no report.

b. Community Fact Book Subcommittee: Hommel advised no report.

c. Grant Writing & Fundraising Subcommittee:

McLaughlin reported that the subcommittee has met once. Andrew Martin attended the meeting. It is essential to have a budget when seeking funds. It may be necessary to see several small grants instead of a couple very large grants. They have not yet created a budget.

d. Storrer, Public Forum Report Subcommittee:

Storrer is working with Julie Clingman to combine all of the public input into one file. The public hearings were well attended and many question and issues were raised. Clingman is identifying the underlying issues. Many issues are area specific, specific to the development of a new Master Plan. They would like to combine the input into area specific issue and general issues. The public has done a great job of getting involved and expression their opinions. Johnson asked for copies upon completion. Storrer said copies would be dispersed.

e. Budget Subcommittee:

Duncan reported that a tentative budget has been created. There are constraints. Unsure if grants will come through. The City Council is under heavy pressure. The number still sits between $50,000 and $100,000 for the new Master Plan, including surveys. They are not ready to adopt a budget. Money will be needed from the city. A new Master Plan cannot be done without spending money on outside assistance.

Discussion surrounding budget issues.

Old Business:

Report to City Council on "Interim Zoning" and Zoning Moratoria. This report was read at 4/29/08 meeting and hard copy of the (same) report was delivered in 5/13/08 packet.

The City had asked the Commission to look at whether any interim zoning or temporary ordinance should be created.

McLaughlin: The Mayor's concern was, since we are still two years out from having a Master Plan, that we might have to respond to developer requests before the new Master Plan is in place. .

Ogilvie: We are operating in a period between a new State of Michigan Zoning Enabling Statute (2008) and the adoption of a our own new zoning ordinance. The current statute does not allow interim or

moratoria, but does allow temporary ordinances, with a time limit. Having a temporary ordinance is not recommended or that it should be directed to a specific area of the City. The City Council could approve such an ordinance, if prompted the Planning Commission created it. The Tobin Project conflict raised issues that showed a conflict with current Zoning Ordinance and Master Plan.

Duncan: Are our current ordinances so out of date that they are not useful? We should press forward and not do interim ordinances. The Tobin conflict is one instance that should not determine all of our future actions.

Johnson: The letter from Keith Schindler, Wexford County MSU Extension Director, speaks for itself. Read letter regarding the lack of statutory support for interim zoning or zoning moratoriums and the need to get advice from an attorney before enacting these types of zoning.

Ogilvie: It is a significant issue how to protect this City from aggressive developers acting against public wishes. We are seeking to create a unified plan supported by the public and consistent with their input. Courts have repeatedly supported Planning Commissions making plans in compliance with citizen wishes.

Interim Zoning could be interpreted as Spot Zoning. This can be an issue if a specific spot receives special treatment which is egregious with regard to current public policy. It is clear that state courts may decide to that spot zoning as non-compliant with the wishes of the citizens, as stated through public hearings and the written Master Plan and Zoning Ordinances. Such a ruling has been repeated in this State and others.

There was a motion that was tabled at the 4/29/08 meeting to approve a temporary zoning ordinance in the City of Frankfort and to retain an attorney to help draft a temporary zoning ordinance.

Ogilvie brought the motion off the table. Called for discussion on the original motion.

Duncan: Clarification would be that no action would be taken until legal opinion is given.

McLaughlin: This would be dependent on the Council's decision to get a legal opinion.

Johnson: The Council is already pressed for funds, should we ask the City to spend more money on attorney's fees.

McLaughlin: The motion is asking the Council to make a decision on seeking an opinion and then the Planning Commission could make a decision based on the Council's action.

Johnson: Feels there is enough information to make a decision.

Supplemental motion by McLaughlin to recommend that City Council to request opinion from city's zoning attorney, seconded Johnson. Ayes: 4 (Duncan, McLaughlin, Storrer, Clingman). Nays: 5 (Hommel, Ogilvie, Condon, Johnson, Larson.) Motion Failed.

Main motion from 4/29/08 to create a temporary zoning ordinance. Ayes: None. Nays: 6 (Hommel, Duncan, Ogilvie, Larson, Johnson, Condon). Abstain: 3 (McLaughlin, Storrer, and Clingman). Motion Failed.

Open Public Hearing – Application for Amendment request from NRTW Properties, LLC; Dale V. Wentzloff; and Manu-Forti, LLC; regarding Tax Id's 10-51-010-316-00, 10-51-010-234-00, and 10-51-010-234-01.

Motion by Duncan, seconded Johnson to open public hearing.

Ogilvie: This hearing refers to an application to change the zoning on property on M-22 also known as 7th St. and the property at 709 Leelanau Ave.

Joan McKay, 664 Denton: Spoke for Manu-Forti, as the originator of the application. Manu-Forti proposes to buy the property owned by Lee and Roger Mix on corner of Leelanau and 7th St. She will not go through all the facts on the application. The Wentzloffs and Mixes could not be here, but are comfortable with us speaking for them.

We are asking for the Commission to move forward with intentions regarding transitional zoning district. The two properties owned by NRTW and Wentzloff have been in commercial use for a long time. This request recognizes the mix of commercial and residential in this neighborhood. The school, barber shop, and dentist office all operate here. This is not really a residential neighborhood. We understand the concerns to general commercial zoning, which would allow intense commercial usage. We do not want this, nor do other property owners. We spoke with Josh Mills about rezoning with restriction on uses. This area is effectively part of the central business district except it's not on Main St. Restrictions similar to those in the central business district may be appropriate, such as the restrictions for office use. They would be willing to accept this restriction.

Larry McKay, 664 Denton: Asked to reserve his right for rebuttal.

Ogilvie: Granted right to rebuttal.

Randy and Melissa Gilbert, 819 Leelanau Ave.: Randy Gilbert read his letter, which argues for denial of the application, to the meeting. This letter had been previously submitted to the Commissioners and is attached.

Lonna Harrison, 715 Leelanau: Primary concern is congestion of central corridor in Sections 4 & 5. 709 Leelanau Avenue does not have egress for M-22. Parking is restricted to even number houses. Primary use of Port Place is required by all residents. There is a lot of foot traffic, especially seeking access to the elementary school and by people going to the Market Square Park. Increased traffic is happening in Section 7. My fear is congestion will prohibit safe walking for children and elderly residents. I am aware that the hospital needs open access to main corridors, she is a registered nurse. Thus commercialization of three businesses in a row will bring business and congestion down the core of the neighborhood. It is a pivotal time to maintain the main corridors of Sections 4 & 5, which are Leelanau, Forest, and 7th Street. I do not want to compete for access to my home. The Leelanau Avenue property (will have) no access from Leelanau, only access is from Port Place (alley).

Thelma Ryder-Novak, 1019 River Rd.: Approval of this would be jumping the gun on what was discussed in the planning sessions. No one has yet agreed that this corridor should be "transitional zoning". By making the corridor transitional, sprawl is being invited. There are many vacant areas for businesses in the business district.

Carolyn Thayer, 731 Leelanau Ave.: With many families in the area, this area is very busy with foot and bike traffic. That corner is busy with children who pass over to and from school. The two current offices, which are an eye doctor and dentist, are directly serving the community. My husband and I were out of town during the planning process and will be looking at the minutes. It seems like this re-zoning application is jumping the gun on the planning that goes into the Master Plan. The Master Plan should take its course, including feedback and discussion on the issues. There is lots of available space in the main business district. Main Street has been developed with the streetscape and it would be nice to see

this area utilized more. I am asking that more discussion be held before a decision on general commercial zoning is made and for deep consideration of the language used. I request that this application be defined.

Kelly Thayer, 731 Leelanau Ave.: I am very much in agreement with the comments in opposition, especially the Gilbert's. We (Thayer's) have lived there for ten years. We have two children, who both walk and ride their bikes to school and around the neighborhood. Approval of this zoning would significantly change their way of life. This area is not part of the central business district. This is an area where houses are next to a school. I work in the central business district. There is a significant difference. Premature comes to mind with this decision. The Master Plan should be allowed evolve to incorporate much of this issue. Our kids are listening and paying attention to this issue. **That a change in zoning to create a transition (requires) space and set backs different than what exists at this location. To change one residential plot, or three, into general commercial zoning is a reach.** I do not think these transitional zoning areas which are being envisioned would end up as general commercial areas. As Randy said, the zoning has gone with the property, not the owner. There are many (use) examples, such as exterminators, fabricators, hotels, motels, bowling alleys; (all) these are not consistent with residential uses. Let's see where the Master Plan process takes us and let commercial businesses find commercial areas. I want to see the City keep growing, but this decision would be the wrong direction.

Karen Kent, 715 Forest Ave.: I drove 5 hours to be here. We will be residents soon. My husband and I recently bought a brand new structure. I received this letter and worried about the "transitional zoning." The idea seems very vague. I have not seen the Master Plan. I agree this decision may be jumping the gun. I do not want to see my street get any busier. An advantage to moving here was that commercial was only a block away. It's scary to see re-zoning happen so easily. I spoke with the Hahn's, who gave me their full support. I would look forward to having a more firm plan and am leaning towards denial of this proposal.

Larry McKay, 664 Denton: In rebuttal, I would like to address the fact that we are not asking for general commercial zoning. Zoning is generally reactionary. No one really thinks about it until someone wants to do something they cannot do and then people react to it. General commercial zoning includes almost all of the uses that we disapprove of. We do want to see a McDonald's or dry cleaning business here. The problem is that appropriate uses for low intensity professionals, such as a hairdresser or optometrist are only allowed in what the current map designates as the current central business district. The general business district is not geographically connected to the area we are talking about. Essentially, we are stuck with a reactionary problem. What we really want to do is put low intensity business where the map will not allow. I strongly encourage restrictions to put on the possible approval.

Regarding the new owners, I would invite you to our current building. Our access is off the alley. Our neighbors have children and there has never been a problem with traffic to (our) office. There are usually only one or two cars. Most of the traffic comes from State Savings and Celia's Cafe. Private corridors would not be taken up by (this) parking. Parking would be permitted in the vacant area next to the elementary school. The access would be off the alley, but there would be no turns off of Seventh Street. I don't think there would be an adverse effect from traffic.

The MDOT boundary goes from Cookie Anderson's sidewalk (316 7th Street) to where parking lot to elementary school begins. This whole area is the state highway right of way.

If you measure this area geographically, you have 80% of existing uses are professional buildings. 20% is residential. The elementary school is the major source of congestion, not the doctor's offices.

The notion of additional space on Main Street is a gimmick if you look at the listings. It's not a gimmick if you look at restrictions being placed on new professional uses. You need barrier-free bathrooms or an elevator if you have a second story. The Mix's building is already barrier-free. We have no intention to get the camel's nose in the tent, so to speak. We do not want to expand; we want a small general practice, which is barrier-free. It also has a full basement, which is another large attraction. Client file storage takes up a large majority of their space.

We are happy to answer any questions from concerned citizens and submit to any conditions. We do not want any kind of general commercial use, and we never want it.

Larson: Do you plan on living there?

McKay: No, we do not plan on living there. We have another home. In summary: There would ample parking, traffic would be minimal. I would urge the council to permit low density residential type professional building.

Ogilvie asked Mills if this was a completed application. Mills stated that it was as much as he thought was necessary at this point to begin the discussion. When asked if the application fees were paid, and the survey of the property was completed. Mills responded that they were.

Discussion regarding when Fairchild Grocery was converted to its current use and whether they obtained a special use permit to be in a residential area. Would this have predated the last zoning? The prior ordinance of 1999 allowed this type of transition by notifying your neighbors and having restrictions. The existing buildings do not fit into the transitional residential.

The transitional area talked about did not include this area. The area we talked about commenced going west along Forest Ave., including 7th and north up to the barber shop, but would only include property bounded by M-22. This parcel would be included and could still be part of the transitional zoning.

McLaughlin: We need to refer to this as "proposed transitional zoning", since no "transitional zoning has been approved or formalized. Asked for clarification on parking. Will the cars be backing into alley?

McKay: There is enough room for four cars to park side by side between the sidewalk and the front edge of the building. Pulling in from Port Place would require a 270 degree turn. The garage would require a 90 degree turn. We would not want any larger parking lot. Our current parking lot is soft surface and promotes drainage. The cars will be backing into the alley to exit.

McLaughlin: Asked Mills to confirm Mr. Gilbert's original comment that the building was built as residential.

Mills: Due to its barrier free design, it served as an ideal structure for low impact office space. It was not sought out for that.

Duncan: I have great regard for the McKay's. I live on 831 James St. Many children walk by the street. There will be a problem with people trying to park. It has been very difficult to keep this a residential area and we have to fight to keep it this way. I live here because we can walk. That corner is critical with children walking. My concern is possibly hurting pedestrians. Although he sees their idea as a good one, this could nibble away at the current residential area. This is a threatened area that we want to keep residential.

Johnson: Under the existing zoning could the property be purchased and used as an office?

Mills: Yes, if you live there.

Discussion regarding current zoning and allowed uses and what area is being considered for transitional zoning in the Master Plan discussions.

Storrer: Why is this being requested for the additional properties?

McKay: Spot zoning is surrounded by conflict. We thought if the doctors joined in the application, it would not be considered spot zoning and they could ratify the uses for which their buildings are now used. If they change professions or make several changes, they need approval for any changes. They do not want to see large scale commercial zoning. They are joining together in order to get ratified.

Storrer: Why does this need revisiting now? Why was it zoned residential? Despite commercial use, it has continued to be zoned residential.

McKay: Although this area was used as commercial, it has remained as zoned residential.

Lawson: If this is approved and that property is sold, what zoning could be put in place?

Mills: The zoning would stay with the property.

Responding to a question, unknown person, "…why do you want to move?"

McKay: Our office is not barrier-free and we must move. He would rather be rejected than include general commercial zoning.

Discussion surrounding the ability to put restrictions on zoning.

Melissa Gilbert, 819 Leelanau Ave.: The statement about this area not being marketable is not a good rationale for re-zoning. Buying something because it is barrier-free is also not a good reason for re-zoning. Other business owners have to incur this expense. The Planning Commission is in control of this situation. You should use the Plan as a tool to make changes. This is spot zoning and people want this to remain as residential.

Ogilvie: Feels we do not have enough information at this point and requested a motion to adjourn the hearing for one month to August 12, 2008 at 7:00 p.m. to gather additional information.

McLaughlin: Asked for clarification.

Ogilvie: A prior hearing was adjourned and caused trouble. We are just adjourning this in order to gather more information.

Motion by McLaughlin, seconded by Johnson to adjourn public hearing for one month until August 12 at 7.00 p.m. Ayes: All. Nays: None. Motion carried.

Mills: For clarification of Adjourned Public Hearing, No new notices will be sent for the continuation of this meeting.

Public Input – Agenda Items only

Lonna Harrison, 715 Leelanau Ave.: I asked Craig Delaney of MDOT about an access and egress onto a State Highway. He said the state will not intervene with matters within city limits. Once the zoning is

changed to general commercial, MDOT will never allow it to be changed back. What would happen to business properties after owners retire? This should be considered.

Mills: We do have land use guidelines which help control usage.

Randy Gilbert: When I was on the Zoning Commission, I was surprised when nonconforming issues came up and they were generally allowed. However, these areas were not part of the original use. To say no attention is paid to zoning, this is not accurate. Zoning was established by district.

It is amazing to me how nonconforming use becomes the reason to make the change versus using the Master Plan as the tool to establish the landscape of the community. If the council is confident in their plan, use the plan. The rationale for the nonconforming use becomes the rationale behind making the change. Change is not always progress. The Master Plan helps implement the change. If nonconforming use is allowed to be the norm, the tool is no longer being used. Growth is encouraged and that is where progress comes from. Property owners still have control in nonconforming use properties. Once you relinquish control, you cannot get it back.

Joan McKay: A 78 year history of a nonconforming use is different than what Mr. Gilbert suggested. Transitional zoning is already being considered and if we were three years ahead of the gamed we would not be here.

McLaughlin: We need to be careful about talking about “transitional zoning” as though it is already a done deal.

No further public comments.

Motion to adjourn by Hommel, seconded by Johnson. Ayes: All. Nays: None. Motion carried.

Meeting adjourned. At 8.47 pm.