

MONTCALM TOWNSHIP PLANNING COMMISSION PUBLIC MEETING MINUTES

January 21, 2025

Call to Order and Roll Call:

Meeting called to order at 7:01 p.m. with Pledge of Allegiance. R. Palmer indicating that Vice Chair, Karon Baird will be absent. There is a quorum.

Members Present: Richard Palmer (Chair), Richelle Lentz (Secretary), Christine Foley (Twp Board Liaison), Bob Hemmes, Recording Secretary-Barb Prah and Twp. Attorney Dave Eberle; Absent: Karon Baird (Vice Chair)

APPROVAL OF AGENDA:

Motion to Approve Agenda as written by C. Foley, **Second** by B. Hemmes. No discussion. Aye-All; Nay-None; Abstain-None. **Motion carried.**

APPROVAL OF MINUTES FROM December 17, 2024 Meeting:

Motion To Approve Minutes from the December 17, 2024 meeting by R. Lentz; **Second** by C. Foley. No discussion. Aye-R. Palmer, R. Lentz, C. Foley, Nay-None; Abstain-B. Hemmes (not present). **Motion carried.**

COMMENTS FROM ZONING ADMINISTRATOR:

M. Nelson indicated that he would like to address his items during in the Old Business discussion.

COMMENTS FROM PLANNING COMMISSION MEMBERS:

R. Lentz has a few things to bring up during Old Business. Also, she has been going through the worksheet at the back. Intends to discuss commercial property, zoning and the maps sent to Assessors. Discussion and confirmation the Township has a land division ordinance.

R. Palmer introduced the Twp Attorney, David Eberle, is present to discuss new proposed Ordinance.

R. Palmer received two emails concerning matters to be discussed tonight. First, from Brian Cousineau (Twp Board Trustee and prior PC Member) had some things he would like PC to consider about the Ordinance. He likes the NFPA Standards that are listed, because when things change the Ordinance does not have to be updated. He would like language to state similar to the newest so NFPA Standards should be enforced at time of application, also noting the facility must be upgraded to the new standard upon adoption. Also suggests adding a requirement that safety plans must be provided in formal review documentation by a certified fire plan examiner or certified fire protection specialists. This will ensure compliance to the standards. A question to consider is, who enforces these Ordinance. He thinks we seem to struggle with enforcement. We should state our system of enforcement. Ordinance should be clear as to what role can enforce the standard and how.

R. Palmer thinks it is clear from our Zoning Ordinance that the Zoning Administrator is responsible of enforcement. The Twp Supervisor is the legal representative of the township and has responsibility as well. Zoning Administrator can act on his own with regard to zoning violations. Administrator must be aware of violations. Citizens have the responsibility to inform him of violations, and he needs to take the initiative to investigate.

Other email came from Vice Chair, K. Baird, and she thinks the one labeled for our township is a good one. Had a question about Section E #3 & 4, how the word “reasonably” is used. She would like a definition because she feels it leaves it up to interpretation. Secondly, Section H, #5, the word “major” and “minor” are used. Believes they also need definition. She also agrees with Brian Cousineau’s comments.

PUBLIC COMMENT CONCERNING NEW BUSINESS ITEMS:

No comments.

NEW BUSINESS:

Zoning Ordinance Amendments Concerning Battery Energy Storage and Battery Energy Storage CREO, and the Scheduling of a Public Hearing Concerning such Amendments and Zoning Ordinance Amendment Approved by the Planning Commission Concerning Table 3-4, Footnote #6:

Twp Atty, Dave Eberle, opened with comments to address six things. First an update on the litigation. The Court of Appeals denied request for stay. Which means the MPSC rules are in effect. He feels that because they denied, injunction is not a good thing and is signaling the “court is not buying what you are selling”.

Talked about options of MPSC CREO, which is pointless; or an Incompatible Workable Ordinance that is saying we acknowledge the fact that it is not a CREO. We are not claiming to have it be a CREO, but we think it is sufficiently workable and that developers will choose to come and permit locally as opposed to going to MPSC, or they can go to MPSC if they want to. Because we are not claiming to have a CREO, they have to put some money in a fund for the Township to use to fight the MPSC. Other option, is an incompatible workable ordinance, but tack on a CREO Plus. We are currently taking a position that is not consistent with what the MPSC is saying. Hopefully that gets resolved in the litigation. If someone comes to permit now, it could be a little bit of an issue (risk) in that. He tried to pull over the items from other Ordinances that are workable in the Act to make consistent with MPSC guidance document. In PA 233, there were many things thrown in there which could edge more to an “activity” and resulted in zoning ordinances across the state that are questionable to him (a use or an activity). Also mentioned zoning and licensing and who does them. Need to have fire protection and input of fire department. Would like to walk out today as to what PC would like in Ordinance to take to a Public Meeting.

Chair would like to make this discussion as concise as possible to have everything we need to go forward.

- 1) Would it be better to eliminate CREOs and go back to unworkable ordinance? Or have CREO and there has to be determination from a court determines it is not a CREO.

Atty. stated it could be said we have a CREO until the Courts act on lawsuit. To avoid all litigation, it is better served either take a simple ordinance that everyone has to go to the MPSC and fight them there; or adopting an ordinance that is an incompatible ordinance to incentivize local control, or put what we want and know it is not workable and they go to the MPSC.

Input from, and Discussion with, Montcalm Twp Attorney Discussion, Motions, Schedule Public Hearing (if necessary):

Atty. discussed conforming with most recent NFPA standard and enforcement. At time of application must comply makes sense and must comply with NFPA updated standard. Add NFPA 855 to definition section. Don't know if you need to put in ordinance to review by certified firefighter examiner. You may say you need to provide this in the application. Are we putting things in so technical we set ourselves up for failure. HE does not know is the right person to do the review.

Re K. Baird's points and the word "reasonably" would leave people to argue about it and does not serve a purpose. The Zoning Administrator gets to make the call and that is why the "major" and "minor" terms are "squishy" on purpose.

C. Foley is concerned about Sound and zoning in Section H. We currently have 40 max in our Ordinance. She said it can reach 60 to 70 on average. Atty. included 50 in new Ordinance. Discussion to keep it as 40. Atty. will change it to 40 in new Ordinance.

R. Lentz discussed decommission plans (Section E). She asked that we don't have anything if they do not do what is included. Atty. stated it would be a zoning civil infraction. PC members discussed what new penalty provision should be. In Zoning Ordinance 2.10 the fine is \$1,000. If a municipality does not decommission right away and it takes 5 years or more, they won't care. We need a new penalty provision. Compliance is the goal. Penalty should be made to be sufficient for the future. Could be changed to penalty of \$10,000 to get municipality attention. PC agreed to \$10,000 penalty and be applicable to solar and wind provisions as well (24 and 25).

For the CREO, we are reciting the provisions what the State Statute requires.

R. Palmer discussed definitions. Re commercial energy facility must be a principal use; in both wind and solar on a property can be principal or an accessory use. An Energy facility has to be a principal use. Discussion if Ag is an accessory with wind turbine. With battery and solar, the property is being used up mostly. Wind is where there is dual use. Definition of principal use and participating property was discussed. Land with battery storage must be principal use. With wind turbine, there can be multiple use on property.

Decision to leave wind and solar alone to have multi-use. Change definition to say “a *commercial* energy storage facility is a principal use”. Should be last sentence under Commercial Energy Storage Facility definition.

Non-participating property: Current Ordinance defines abutting, but does not define adjacent and defines lot and parcel, but not property. We should use language we have in our Ordinance. Should update to Non-participating “lot” instead of property, and change adjacent to abutting.

Re Table 3-2 where 15 was added. Within 7.26, should it be stated that the commercial energy storage facilities are only permitted in A1 and require a special land use? Not necessary as it was stated specifically in wind and solar. Atty will review to be sure.

Under “F” – Financial security and when parceling out, wind and solar require 100% up front. Would like decommissioning to be consistent. Take a look at “performance bond and financial security”. Language is different and make them consistent when it is paid for special land use. Would like 100% following approval of the special land use, but prior to the issuance of any special use permit or commencement of the approved use, and no later than 10 days following approval.

Under “G” – Insurance. Need to take a look at wind and solar requirements and make them consistent. The use runs with the land. Will requirement fall with land owner? Atty. will look into this and who is responsible, owner or entity? May write language to where a property owner would be the one that consents to the special land use consideration.

Participating Property – Application is the one applying and does not hinge on who is paying owner.

H.1 – General Requirement Tables – Suggestion of what is in Solar Ordinance which is 300 feet from property line, right of way. House and barn is subject to the “Good Neighbor” policy (30 foot side yard setback). For safety reason, want to make sure there is a minimal amount of spacing. Will add the water set back also. This can only go in A1 (Ag), minimum yard setbacks. Suggestion of minimum of 30 feet side yard setback, rear yard setback of 40 feet to be consistent with yard setbacks in A1. Non-participating setback should be 350 feet.

H.3 – Noise – Model is non-participating property lines. Should we be giving protections to non-participating property lines for setbacks and noise, and extend those noise safety values to principal buildings on participating properties for storage facilities? Agreed to go with what the State Statute indicates, which is 40 decibels as modeled as the non-participating property line, and 55 decibels as modeled at the principal building on participating property, where the principal use is not commercial.

Maple Valley Ordinance – R. Palmer emailed PC members to review. Should our Ordinance include any that are in Maple Valley’s Ordinance and not in Atty’s proposed Ordinance? R. Palmer read through the items concerning written plan for maintaining property, a plan for resolving complaints from public, a plan for managing any hazardous waste, and essentially a hold harmless agreement for Township, lighting that affects surrounding properties, security fencing, underground transmission, drain tile

inspections, recurrence of extraordinary events, annual report, inspections by township and transferability of permit.

Atty. responded regarding drain tile that it would be need to be a consult with drain commissioner. As to the written plan for maintaining property, it was decided not to include that. Resolving complaints was simplified to not be so detailed. Hazardous waste is a reasonable requirement, and request a plan. As to lighting, the dark skies is the major issue. Should be consistent with solar provisions and amend accordingly. The fencing will be reviewed by atty. and see if it needs to be altered. As to underground transmission, there is questions about putting things underground and we do not know the ramifications of that and leaving it out. The drain commissioner would be responsible for the drain tile inspections. Extraordinary events, we have something in wind and solar about this. We can add something that they are responsible to notify authority within a reasonable timeframe. Should have insurance on file with the Twp Clerk (similar to solar) and bond must say it is non-revocable. Re inspections, it was decided that we would not include this.

It is agreed that Atty. does not need to be present at public hearing. Atty. indicated that he would make changes to Ordinance by 1/31/25 and be sent to the Chair for review. Publish on 1/31/25 or 2/1/25. Discussion about a possible PC meeting to be held on 2/11/25. Public meeting to be held on 2/18/25, 7:00 p.m at Twp. Hall.

Discussion: The public hearing will be to discuss each item separately and have a resolution for each one. Twp. Atty. will revise proposed Battery Storage Ordinance and R. Palmer will prepare the two resolutions. The public comment summary must be included in the resolution to be adopted. These will be submitted for the Twp. Board to approve.

R. Palmer motioned for a Special Public Hearing to be held on February 18, 2025, at 7:00 p.m., at the Township Hall, on the proposed Battery Storage Ordinance, with the revisions as discussed this evening, and as to amendment concerning Footnote #6, Table 3-4, and have two resolutions. Supported by R. Lentz. No further discussion. Roll Call Vote: R. Lentz, yes; R. Palmer, yes; B. Hemmes, yes; C. Foley, yes. Motion approved.

PUBLIC COMMENT CONCERNING OLD BUSINESS ITEMS:

M. Nelson (Zoning Administrator) talked about a single-family residence on Colby Road. He would like permission to go forward with occupancy permit from county. He will make sure all the residential use are met under R3. This property is already zoned residential. The property is zoned R3 on map. There is a discrepancy on the property to the west of the "church property". The new map shows it as zoned A1. M. Nelson stated that the north end of property is zoned commercial. R. Lentz will go over the map and review.

OLD BUSINESS:

Master Plan Amendments:

K. Baird gave R. Lentz her updated changes and was not able to focus on them as she was working on maps. Board decided to wait until K. Baird present to discuss.

Township Zoning and Planning Maps:

R. Lentz discussed zoning around Turk Lake and zoned different colors. She reviewed the maps on the wall and the color codes are incorrect. She sent an email to the assessor and it should go to the person who makes the maps with corrections as what is commercial, and other around the lake is medium density residential. She sent a detailed description of corrections.

Also worked on "Commercially Zoned Parcels" sheet in back of Maps. She validated the parcel numbers with the map that they are currently zoned C2 (royal blue). Ones on list, but not royal blue, she sent to assessor. She thinks there are typos, so she will reconcile the parcel number to what the actual parcel number should be for the commercially zoned item. B. Hemmes explained that everything on list was supposed to be C2 and explained/gave clarification that all three parcels on back should be marked as Light Industrial. There are no C1 parcels in the township. R. Lentz will send a message to assessor with updates of this list.

There may be mistakes throughout all 36 sections when maps are updated. This will need to be gone through section-by-section. R. Lentz has been kind to voluntarily continue to work in these.

Future Development vs. Master Plan:

Due to K. Baird working on this, we will discuss at next meeting.

Commercial Zoning Districts:

This was covered above with R. Lentz's map information. She will make corrections of these on maps. R. Palmer questioned as to how deep are the districts on M-91.

Zoning Districts in the Turk Lake Area:

This was covered above.

PUBLIC COMMENT CONCERNING ALL MATTERS:

Jemery Palmer (Shady Lane): Applaud to all for helping to do all these things by PC members to alleviate work by Chair, which makes life easier.

ADJOURNMENT:

C. Foley **motioned to adjourn. Second** by B. Hemmes. Aye-All; Nay-None. Abstain-None. **Motion carried.**

Adjournment at 10:00 PM.

Respectfully submitted,

Barbara Prah, Recording Secretary