Grand Traverse Commons

Joint City of Traverse City/Garfield Township Planning Commission

Regular Meeting
Tuesday, January 14, 2014
7:00 pm
Governmental Center, 2nd Floor
Training Room
400 Boardman Avenue, Traverse City, MI 49684
Posted: 1/10/14

AGENDA

1. Call Meeting To Order

2. Roll Call

3. Review and Approval of the Agenda - Conflict of Interest.

4. Approval of Minutes
   A. September 10, 2013 regular meeting (approval recommended)

5. Old Business
   A. Review of City Attorney's legal review of draft zoning ordinance and Joint Agreement
   B. Discussion of time line for final draft review and setting a public hearing for the draft zoning ordinance.

6. New Business
   None

7. Correspondence

8. Public Comment

9. Adjournment

The City of Traverse City does not discriminate on the basis of disability in the admission or access to or treatment or employment in, its programs or activities. Makayla Vitous, Assistant City Manager, 400 Boardman Avenue, Traverse City, Michigan 49684, 922-4440, T.D.D., 922-4766, has been designated to coordinate compliance with the non-discrimination requirements. If you are planning to attend and you have a disability requiring any special assistance at the meeting and/or if you have any concerns, please immediately notify the ADA Coordinator.

Grand Traverse Commons
Joint City of Traverse City/Garfield Township
Planning Commission

Regular Meeting
Wednesday, September 10, 2013
7:00 pm
Governmental Center, 2nd Floor
Committee Room
400 Boardman Avenue, Traverse City, MI 49684

MINUTES

1. Meeting began at 7:00 PM.
2. Roll Call

Present: Commissioners Serratelli, Hale, Racine, Warren
Absent: Clark.

Staff: Russ Soyring, City Planning Director

3. Review and Approval of the Agenda - Conflict of Interest. Motion by Commissioner Warren, supported by Commissioner Racine to approve the agenda. Motion passed.

4. Approval of Minutes. Approval Recommended.

   A. August 7, 2013 Regular Meeting. A motion was made Commissioner Racine, supported by Commissioner Serratelli to approve the minutes as presented. Motion passed.

5. Old Business

   A. Street Lighting for Silver Drive

      Mr. Soyring made brief comments on the lighting approach for the campus that Traverse City Light and Power is recommending for lighting. Mr. Soyring stated the lighting will be dark sky compliant. Mr. Tim Lodge, City Engineer commented on the lighting. Mr. Soyring stated that staff is checking to make sure the street lighting will have the proper color (Kelvin range) to be compliant with the Garfield Township Lighting Ordinance.

      Discussion.

      Matt Cowell, Recreation Authority commented on the lighting.

      A motion was made Commissioner Warren supported by Commissioner Racine to support the lighting fixture provided the lighting meets the dark sky

and color range required by the Garfield Township Lighting Ordinance. Upon vote, the motion passed 4-0.

B. Silver Drive Traffic Characteristics.

Tim Lodge, City Engineer presented the speed studies for Silver Drive and reviewed the process that involved designing the traffic calming elements.

Discussion.

Raymond Minervini, The Minervini Group commented.

The Planning Commission future discussed the street design process and the need to bring back changes when it changes the characteristics of the street.

6. New Business.

A. Review of Article 8 Draft Zoning Code with Matt Cowell, Recreational Authority.

Mr. Soyring commented on revisions staff will make after meeting with Matt Cowell. Matt Cowell commented on the draft and updated status of development in for the Barns area. He suggested a joint meeting with the Recreation Authority and invited the Commission for a formal tour of the grounds. Staff will work with Matt Cowell on making revisions to the draft and report back to the Commission at the next meeting.

Discussion.

7. Correspondence.

None.

8. Public Comment

Justin Reed commented.
Raymond Minervini commented.

9. Adjournment

The meeting was adjourned at 8:44 PM.

_____ _____

Dated Jan Warren, Secretary

Memorandum

The City of Traverse City

TO: Russ Soyring, City Planning Director

COPY: Rob Larrea, Garfield Township Planning Director

FROM: Lauren Trible-Laucht, City Attorney

DATE: January 6, 2013

SUBJECT: Grand Traverse Commons Zoning Ordinance and Joint Agreement

You have requested that I review the draft Grand Traverse Commons Development Regulations / Zoning Ordinance and provide feedback. Additionally you voiced the following concern: the Michigan Zoning Enabling Act allows cities to grant use variances, but townships do not wield this authority. What should the Joint Planning Commission do when a building is split by two jurisdictions and the property owner requests a use variance? The purpose of this memorandum is to provide you with feedback on the draft Zoning Ordinance and guidance regarding the question you posed regarding use variances.

1. Use Variances

Section 5 of the Joint Municipal Planning Act (MCL 125.135(1)(g) and (h)) provides:

(1) Subject to section 9, the legislative bodies of 2 or more municipalities may each adopt an ordinance approving an agreement establishing a joint planning commission. **The agreement shall specify at least all of the following**:

(g) For situations in which the powers, duties, or procedures of a planning commission under the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885, depend on whether the municipality is (i) a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, (ii) a township that did not on September 1, 2008, have a planning commission created under former 1931 PA 285, or (iii) a city or village—a designation of which of these 3 categories of municipalities' powers, duties, and procedures will be applicable to the joint planning commission. A category of municipality shall not be designated under this subdivision unless at least 1 of the participating municipalities falls within that category.

(h) For situations in which the powers, duties, or procedures under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, applicable to a planning commission depend on whether the municipality is a township or is a city or village, a designation either that the powers, duties, and procedures applicable to a township will be followed by the joint planning commission or that the powers, duties, and procedures applicable to a city or village will be followed by the joint planning commission. Powers, duties, and procedures applicable to a township shall not be designated unless at least 1 of the participating municipalities is a

township. Powers, duties, and procedures applicable to a city or village shall not be designated unless at least 1 of the participating municipalities is a city or village. (emphasis supplied). The Agreement contains no provision indicating whether the powers, duties and procedures of a city or a township will be applicable to the Joint Planning Commission. Therefore I recommend the Agreement be amended to so designate. A draft amendment to the Agreement is attached hereto for your consideration. I have reviewed the Michigan Planning Enabling Act and the Michigan Zoning Enabling Act and determined that the following powers, duties and procedures depend on whether the municipality is a city or a township:

2

Michigan Zoning Enabling Act

3

- **MCL 125.3202** (4) An amendment to a zoning ordinance by a city or village is subject to a protest petition under section 403.

4

- **MCL 125.3205** (2) A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

5

- **MCL 125.3208** (3) The legislative body may acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures. The legislative body may provide that the cost and expense of acquiring private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in local units of government. Property acquired under this subsection by a city or village shall not be used for public housing.

6

- **MCL 125.3209 Township** Except as otherwise provided under this act, a township that has enacted a zoning ordinance under this act is not subject to an ordinance, rule, or regulation adopted by a county under this act.

7

- **MCL 125.3307** (1) Following the hearing required in section 306, a township shall submit for review and recommendation the proposed zoning ordinance, including any zoning maps, to the zoning commission of the county in which the township is situated if a county zoning commission has been appointed as provided under this act. NO COUNTY ZONING COMMISSION

THERE IS A COUNTY PLANNING COMM.

8

(2) If there is not a county zoning commission or county planning commission, the proposed zoning ordinance shall be submitted to the coordinating zoning committee. The coordinating zoning committee shall be composed of either 3 or 5 members appointed by the legislative body of the county for the purpose of coordinating the zoning ordinances proposed for adoption under this act with the zoning ordinances of a township, city, or village having a common boundary with the township. N.A.

9

(3) The county will have waived its right for review and recommendation of an ordinance if the recommendation of the county zoning commission, planning commission, or

10 coordinating zoning committee has not been received by the township within 30 days from the date the proposed ordinance is received by the county.

(4) The legislative body of a county by resolution may waive its right to review township ordinances and amendments under this section.

- **MCL 125.3402** (1) Within 7 days after publication of a zoning ordinance under section 401, a registered elector residing in the zoning jurisdiction of a county or township may file with the clerk of the legislative body a notice of intent to file a petition under this section.

11

Residents of the Grand Traverse Commons jurisdiction.

(2) If a notice of intent is filed under subsection (1), the petitioner shall have 30 days following the publication of the zoning ordinance to file a petition signed by a number of registered electors residing in the zoning jurisdiction not less than 15% of the total vote cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected, with the clerk of the legislative body requesting the submission of a zoning ordinance or part of a zoning ordinance to the electors residing in the zoning jurisdiction for their approval.

12

(3) Upon the filing of a notice of intent under subsection (1), the zoning ordinance or part of the zoning ordinance adopted by the legislative body shall not take effect until 1 of the following occurs:

(a) The expiration of 30 days after publication of the ordinance, if a petition is not filed within that time.

(b) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is inadequate.

(c) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is adequate and the ordinance or part of the ordinance is approved by a majority of the registered electors residing in the zoning jurisdiction voting on the petition at the next regular election or at any special election called for that purpose. The legislative body shall provide the manner of submitting the zoning ordinance or part of the zoning ordinance to the electors for their approval or rejection and determining the result of the election.

(4) A petition and an election under this section are subject to the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

13 NO ZONING COMMISSION

- **MCL 125.3404** (2) Before presenting its recommendations to the legislative body, the zoning commission of a township shall submit the interim zoning ordinance, or an amendment to the ordinance, to the county zoning commission or the coordinating zoning committee, for the purpose of coordinating the zoning ordinance with the zoning ordinances of a township, city, or village having a common boundary with the township. The ordinance shall be considered approved 15 days from the date the zoning ordinance is submitted to the legislative body.

NOT SURE THIS APPLIES TO Traverse City because of our densities allowed.

- **MCL 125.3506** (1) Subject to subsection (4) and section 402, a qualified local unit of government shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a smaller portion of the land than specified in the zoning ordinance, but not more than 50% for a county or township or 80% for a city or village, that could otherwise be developed, as determined by the local unit of government under existing ordinances, laws, and rules on the entire land area, if all of the following apply: … [*Some of the conditions depend on whether the municipality is a township or city, with a township required to specify a higher percent of land area will remain perpetually in an undeveloped state.*]

14

- **MCL 125.3601** (2) The legislative body of a city or village may act as a zoning board of appeals and may establish rules to govern its procedure as a zoning board of appeals. (4) In a county or township, 1 of the regular members of the zoning board of appeals shall be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission. In a city or village, 1 of the regular members of the zoning board of appeals may be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission, unless the legislative body acts as the zoning board of appeals under subsection (2).

15

- **MCL 125.3604** (9) The authority to grant variances from uses of land is limited to the following:

16

(a) Cities and villages.

CHECK

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

CHECK

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.

17

(11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

Michigan Planning Enabling

- **MCL 125.3813**

(1) Subject to subsection (2), a township ordinance creating a planning commission under this act shall take effect 63 days after the ordinance is published by the township board in a newspaper having general circulation in the township.

18 (2) Subject to subsection (3), before a township ordinance creating a planning commission takes effect, a petition may be filed with the township clerk requesting the submission of the ordinance to the electors residing in the unincorporated portion of the township for their approval or rejection. The petition shall be signed by a number of qualified and registered electors residing in the unincorporated portion of the township equal to not less than 8% of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected. If such a petition is filed, the ordinance shall not take effect until approved by a majority of the electors residing in the unincorporated portion of the township voting thereon at the next regular or special election that allows reasonable time for proper notices and printing of ballots or at any special election called for that purpose, as determined by the township board. The township board shall specify the language of the ballot question.

(3) Subsection (2) does not apply if the planning commission created by the ordinance is the successor to an existing zoning commission or zoning board as provided for under section 301 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3301.

(4) If a township board does not on its own initiative adopt an ordinance under this act creating a planning commission, a petition may be filed with the township clerk requesting the township board to adopt such an ordinance. The petition shall be signed by a number of qualified and registered electors as provided in subsection (2). If such a petition is filed, the township board, at its first meeting following the filing shall submit the question to the electors of the township in the same manner as provided under subsection (2).

(5) A petition under this section, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

- **MCL 125.3815** (5) In a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, 1 member of the legislative body or the chief elected official, or both, may be appointed to the planning commission, as ex officio members. In
19 any other township, 1 member of the legislative body shall be appointed to the planning commission, as an ex officio member. In a city, village, or county, the chief administrative official or a person designated by the chief administrative official, if any,

the chief elected official, 1 or more members of the legislative body, or any combination thereof, may be appointed to the planning commission, as ex officio members, unless prohibited by charter. However, in a city, village, or county, not more than 1/3 of the members of the planning commission may be ex officio members. Except as provided in this subsection, an elected officer or employee of the local unit of government is not eligible to be a member of the planning commission. The term of an ex officio member of a planning commission shall be as follows:

5 MEMBER
1 MEMBER
CAN BE
EX OFFICIO

(a) The term of a chief elected official shall correspond to his or her term as chief elected official.

(b) The term of a chief administrative official shall expire with the term of the chief elected official that appointed him or her as chief administrative official.

(c) The term of a member of the legislative body shall expire with his or her term on the legislative body.

- **MCL 125.3823** (3) A planning commission may accept gifts for the exercise of its functions. However, in a township, other than a township that on the effective date of this act had a planning commission created under former 1931 PA 285, only the township board may accept such gifts, on behalf of the planning commission. A gift of money so accepted in either case shall be deposited with the treasurer of the local unit of government in a special nonreverting planning commission fund for expenditure by the planning commission for the purpose designated by the donor. The treasurer shall draw a warrant against the special nonreverting fund only upon receipt of a voucher signed by the chairperson and secretary of the planning commission and an order drawn by the clerk of the local unit of government. The expenditures of a planning commission, exclusive of gifts and grants, shall be within the amounts appropriated by the legislative body.

20

- **MCL 125.3843** (2) The approval of the proposed master plan shall be by resolution of the planning commission carried by the affirmative votes of not less than 2/3 of the members of a city or village planning commission or not less than a majority of the members of a township or county planning commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the planning commission to form the master plan. A statement recording the planning commission's approval of the master plan, signed by the chairperson or secretary of the planning commission, shall be included on the inside of the front or back cover of the master plan and, if the future land use map is a separate document from the text of the master plan, on the future land use map. Following approval of the proposed master plan by the planning commission, the secretary of the planning commission shall submit a copy of the master plan to the legislative body.

21

- **MCL 125.3849** (1) This act does not alter the authority of a planning department of a city or village created by charter to submit a proposed master plan, or a proposed extension, addition, revision, or other amendment to a master plan, to the planning commission, whether directly or indirectly as provided by charter.

- **MCL 125.3861** (1) A street; square, park, playground, public way, ground, or other open space; or public building or other structure shall not be constructed or authorized for construction in an area covered by a municipal master plan unless the location, character, and extent of the street, public way, open space, structure, or utility have been submitted to the planning commission by the legislative body or other body having jurisdiction over the authorization or financing of the project and has been approved by the planning commission. The planning commission shall submit its reasons for approval or disapproval to the body having jurisdiction. If the planning commission disapproves, the body having jurisdiction may overrule the planning commission by a vote of not less than 2/3 of its entire membership for a township that on the enactment date of this act had a planning commission created under former 1931 PA 285, or for a city or village, or by a vote of not less than a majority of its membership for any other township. If the planning commission fails to act within 35 days after submission of the proposal to the planning commission, the project shall be considered to be approved by the planning commission.

22

- **MCL 125.3865** (1) To further the desirable future development of the local unit of government under the master plan, a planning commission, after adoption of a master plan, shall annually prepare a capital improvements program of public structures and improvements, unless the planning commission is exempted from this requirement by charter or otherwise. … (2) Any township may prepare and adopt a capital improvement program. However, subsection (1) is only mandatory for a township if the township, alone or jointly with 1 or more other local units of government, owns or operates a water supply or sewage disposal system.

23

Many of these provisions are procedural. Probably the most substantive is the provision regarding use variances. Some may not even apply as they are only pertinent for adoption of the master plan. It is up to the Board to decide whether to choose the powers, duties and procedures of a city or a township, however in this instance it would give the Joint Planning Commission more flexibility to choose those of a city. This would not obligate the Joint Planning Commission to grant use variances, but rather only empower it to do so. Additionally, many of the requirements attributed to a township, such as the requirement to submit for review and recommendation the proposed zoning ordinance, including any zoning maps, to the zoning commission of the county in which the township is situated would clearly not apply if the powers, duties and procedures of a city were chosen.

24

NO ZONING COMMISSION

2. Comments regarding draft Grand Traverse Commons Zoning Ordinance

I understand that the draft Ordinance has been proofread for typos by another individual so these comments will be address substantive content of the document only. I did discuss my preliminary thoughts on the Ordinance with Russ Soyring prior to drafting this memorandum. Some of my comments are specific to certain sections of the Ordinance and some are broader suggestions which my effect several sections of the Ordinance.

Article 1

Section 1.01. Mr. Soyring suggested the Ordinance might better be referred to as the "Grand Traverse Commons *Development Regulation* Ordinance" and I see no difficulty with this

change.

Section 1.05 states that the City Commission and/or Township Board, on its own motion or petition, may amend or repeal zoning boundaries or regulations after submitting them to the Joint Planning Commission for its recommendation, report and public hearing. It may be better to develop a process for changes and amendments to the Ordinance whereby the City and Township must pass concurrent resolutions, which would recommend a change to the Joint Planning commission for adoption after a public hearing. This would ensure consistency. ?

25

Section 1.08 indicates that "no building, parking area or structure in any area shall be permitted which does not comply with applicable federal, state, county, public health, or City/Township statutes, ordinances or administrative rules." Is the intent of the Ordinance that the strictest applicable regulation control as indicated in Section 1.04? What if a City ordinance conflicts with a Township ordinance and/or the Grand Traverse Commons Development Regulations? This should be clarified.

26

Section 1.11. This section as written more or less addresses storage of hazardous substances rather than drainage and run-off issues. After discussing this section with Mr. Soyring I would suggest adopting the City's regulations (Ordinance Chapter 1068) regarding drainage and run-off by reference because those are truly the concerns meant to be addressed by this section and not storage of hazardous materials.

27

Section 1.12. This section indicates that all fences must receive approval from the Planning Director(s) and the Joint Planning Commission and that all fences and other architectural elements of the fence shall be in context with the surrounding building and landscape. However no standards are indicated for making these determinations. I am concerned that this leaves too much subjective decision making to the Planning Director(s) and the Joint Planning Commission. Relevant standards should be developed.

28

Section 1.11 "Outside Lights" is mis-numbered and should be numbered 1.13. I would revise Subsection (A)(1)(a) to read "Insure that direct or directly reflected light is confined to the minimum area necessary and that it is not directed off the property."

29

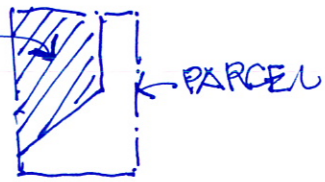
Section 1.12 "Definitions" is mis-numbered and should be numbered 1.14.

- The definition of "Basement/Ground Story" should include the example drawing found on page 8 under "Ground Story". The definition of "Ground Story" should then be changed to state simply "See definition of "Basement/Ground Story".
- The definition of "Brewpub" should be revised to state: means a facility as defined by the State of Michigan Liquor Control Code (Act 58 of 1998, MCL 436.1101 et seq.

30

- I would suggest adding the following definitions to this section:
  - ***Development*** means all structures and other modifications of the natural landscape above and below ground or water on a particular site.
  - ***Parcel*** means a portion of land occupied or intended for occupancy by a use permitted in this Ordinance, including one principal building together with accessory buildings, open spaces and parking areas required by this

Development Envelope ?



Ordinance, and having its principal frontage upon a street or upon an officially approved private street. The word "parcel" includes the words "lot", "plot" or "tract"

Development Envelope defines where buildings can be placed. (no setbacks)

- ***Setback*** means the distance required between a lot line and a building wall.
- ***Setback, front.*** "Front setback" means the minimum required distance, extending the full lot width, between the principal building and the front lot line.
- ***Setback, rear.*** "Rear setback" means the minimum required distance, extending the full lot width, between the principal and accessory buildings and the lot line opposite the front line.
- ***Setback, side.*** "Side setback" means the minimum required distance, extending from the front setback to the rear setback, between the principal and accessory building and the side lot line.

31

- The definition of Zoning Ordinance should be revised to read: ***Zoning Ordinance*** means the text of this Development Regulation Ordinance as well as all maps, tables, graphics, schedules as included or attached as enacted or subsequently amended.

Section 1.13 "Planning Director Exceptions" is mis-numbered and should be numbered 1.15.

I would suggest adding the following two sections to Article 1:

Section 1.16 ***Rules of Construction.***
This Ordinance should be liberally construed to give effect to its purpose and the purposes of the Zoning Enabling Act. If a definition is not provided, common dictionary definitions may be referred to as interpretive aids. Words used in the present tense include the future tense and the singular includes the plural unless the context clearly indicated the contrary. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.

Section 1.17 ***Uses Not Mentioned.***
When a use is not expressly mentioned in this Ordinance, the Planning Director(s) shall make an interpretation as to what district or districts should accommodate the use. The decision shall be based on the intent of each district, similar uses mentioned in a district, and recognized rules of interpretation. The Planning Director(s) decision shall be appealable to the Board of Zoning Appeals.

32

Planning Commission is given this authority to a degree.

Article 2

Section 2.01(A) requires a land use permit before a building or structure is built, rebuilt, converted etc., but does not specify which entity (City or Township) is to issue the permit. This should be clarified.

33

Section 2.01 should be revised to add the following:

Survey. When requested by the Planning Director, all dimensions shown on the site plan relating to the locations and size of the parcel shall be based on an actual survey and the parcel shall be staked out on the ground before construction is started.

Section 2.01(F) should be revised to state "Land use permit application fees shall be agreed upon and established by a [*joint* or *concurrent*] resolution of the City Commission and Township Board. …"

Section 2.01(G) indicates that a permit extension shall be determined and granted by the sole discretion of the Planning Directors. This does not address the possibility that the Planning Directors do not agree on the extension of the permit. I would suggest this be clarified to add that the Joint Planning Commission or Zoning Board of Appeals would make the decision in the event the Planning Directors do not agree.

34

Article 3

Section 3.02(A). In discussing this with Mr. Soyring he indicated that the preference was to choose "Option A". I see no issue with this, but would recommend adding language to Subsection (A)(3) so that it states: "One member of the Joint Planning Commission shall be appointed jointly by the City Commission and Township Board and shall be a registered elector of the City or Township residing within the zoning jurisdiction of the Grand Traverse Commons. The members selected shall be representative of the population distribution and of the various interests present in the local unit of government." This incorporates the language of MCL 125.3601(5) regarding appointments under the Michigan Zoning Enabling Act.

35

The first sentence of Section 3.02(C) should state "The City Commission and Township Board shall also each appoint one alternate member for a term of three years."

Section 3.03. The last sentence of this section indicates that upon a concurring vote of two-thirds of the members a use variance may be granted within the City portion of the Commons covered by the Ordinance. This relates to the decision to amend the Agreement Establishing the Grand Traverse Commons Joint Planning Commission. If the Agreement is amended to indicate the powers, duties and procedures of either a City or a Township will be adopted as discussed above, this sentence should be revised or deleted to reflect that decision. The same is true for Sections 3.05(D) and 3.05(D)(2)(b).

36

Section 3.05(E)(3) should be revised to state "Permit alteration or enlargement of an existing building associated with a Class I. nonconforming use (*as defined in Article 13 of this Ordinance*), or permit the increase in intensity of use of a Class I. nonconforming use, where: …"

Section 3.05(E)(4) should be revised to state "Permit a change in use of a Class I. nonconforming use (*as defined in Article 13 of this Ordinance*) to another nonconforming use which is more nearly conforming to the use restrictions of this Ordinance. …"

Article 4

Section 4.04 should be revised to correct the citation. The correct citation to the state law is "MCL 117.4(i)(3)".

Articles 5-9 contain typos which are not addressed in this memorandum.

Article 10

37 Section 10.02 should delete parking as an allowed use according to Mr. Soyring and should incorporate a map.

Parking is allowed as an accessory use

Article 12

Section 12.03(A) indicates a land use permit application shall be accompanied by a filing fee established by resolution of the City Commission and the Township Board. I would suggest that
38 the fees should be set by a *joint* or *concurrent* resolution of the two boards to ensure consistency.

Section 12.03(B) indicates that requirements may be waived by the Planning Directors where, in their judgment such data will not bear on their decision or the decision of the Joint Planning Commission. I would suggest clarifying this process in the event that the Planning Directors do
39 not agree on a waiver. In that instance it may be best that the Joint Planning Commission itself or the Zoning Board of Appeals make the decision on the waiver.

Section 12.04(K) indicates exterior lights shall not violate the night sky provisions of the Traverse City Code of Ordinances. I discussed with Mr. Soyring whether that provision of the Traverse City Code should be formally adopted by reference into these regulations if it is in fact
40 to be enforced. He indicated that this decision has not been made yet. I recommend formal adoption by reference of the night sky provisions of the Traverse City Code of Ordinances if the Joint Planning Commission wishes to utilize those provisions.

Decision made to use Garfield Twp. Lighting ordinance

Article 13

Section 13.04(A)(4) should be deleted.

Section 13.05(A). The second paragraph of this section reads "If nonconforming use status is lost, all future use shall be in conformity with this Zoning Ordinance and the initial nonconforming use may not be continued or re-established." This sentence should be moved below Section 13.05(B) and be its own Section 13.05(C).

Article 14

Section 14.05. This section contains two "Subsection As" the second one of which should be deleted. I believe this is a typo.

Article 15

Section 15.03.

- The definition of "District" should be removed because this designation is not used throughout the draft ordinance and could therefore be confusing.
- 41 The definition of "Window Sign" should be revised to state: A sign which is applied, affixed or attached to any building window.

Section 15.04(C) should be revised to state: **Motor vehicle with a sign** which is parked in a position visible to traffic on a road or parking area for the primary purpose of displaying the sign to the public.

Section 15.04 should be revised to add the following:

- **Internally illuminated sign** in a predominately residential area. ?
- 42 **Portable sign** along [in specifically designated areas, if any] except for governmental directional signs.

Section 15.05 should be revised to add the following:

- **Small signs, one wall or projecting sign per one or two-family residential parcel**. The sign shall not be illuminated, shall not exceed two square feet in area and shall not exceed a height of eight feet above ground level.

Section 15.06(C) should be revised to state: Each sign permit shall be accompanied by a non-refundable permit fee, in an amount determined by [*joint* or *concurrent*] resolution of the City Commission and Township Board. …

Section 15.07(d) could be revised to add "except for signs made of metal with individual routed letters or logos." This is a change that would reflect a recent amendment to the Traverse City
43 Sign Ordinance. DISCUSS WITH PLANNING COMMISSION

Section 15.08(C) should be revised to state "A Master Sign plan may be amended by filing a new plan which conforms with all of the requirements of this Article."

The last sentence of Section 15.08(D) should be revised to state "In the case of a conflict between the provisions of the Master Sign Plan and any other provision of this Article, this Article shall control.

Section 15.12(C) should be revised to replace the word "Ordinance" with the word "Article".

The first sentence of Section 15.13(C) should be revised to state: Appeals shall be filed with the Zoning Administrator(s) and shall be accompanied by a fee established by [*joint* or *concurrent resolution of*] the City Commission and Township Board.

Section 15.14 refers to MCL 764.9(2), which has been repealed. I believe the proper citation is MCL 764.9(c)(2).

Section 15.16 refers to Traverse City Code Section 2020.99. Instead of referring to the Traverse City Code, I would recommend including the text of the code itself in the regulations for clarity. This ensures it has been properly incorporated and may be enforced.

Article 16

The first sentence of Section 16.01(B) should be revised to state "All sidewalks shall be a minimum of five feet wide, free from obstructions and *ADA compliant*."

Section 16.03(C)(4)(2) should properly incorporate the referenced Chapter of the Traverse City Code of Ordinances or should include the language of that Chapter in the text of the regulations for clarity and to make certain that it may be enforced.

Section 16.03(C)(4)(3) refers to the "municipal engineer". This individual should be specified as the City Engineer, Township Engineer or some other individual for clarity. Likewise, Section 16.04(E)(5) should refer to the same individual for consistency.

Articles 17 and 18

Mr. Soyring and I discussed that these two Articles could be deleted in their entirety if the Joint Planning Commission so wishes, as these uses are permitted in other areas of the City and Township. Therefore they need not be permitted in the Grand Traverse Commons.

Article 19

The first sentence of Section 19.02 should be revised to state "All zoning permits and building permits which have been previously issued, but which have not been acted upon by the permit holder by starting substantial construction *at the time of adoption of this Ordinance*, are hereby revoked."

The first sentence of Section 19.03 should be revised to state "All site plans, preliminary and final, which have been authorized, but which have not been acted upon by the owner of the site through initiation of substantial construction *at the time of adoption of this Ordinance*, are hereby revoked."