

**Town of La Pointe Planning and Zoning
Town Plan Commission Special Monthly Meeting Minutes
March 2, 2016**

Town Plan Commission (TPC) Members Present: Ted Pallas, Chair; Charles Brummer, Vice-Chair; Suellen Soucek; Greg Thury; Mike Starck; (5).

Town Plan Commission members absent: Joan Martin, Margie Denton (2).

Public Present: Arnie Nelson (1)

Town Staff Members Present: Lisa Potswald, Planning and Zoning Administrator (1).

I. Call to Order/Roll Call

Chair Pallas calls the meeting to order at 4:30 PM. Roll call reflects members present or absent as recorded above.

II. Public Comment

None.

III. Approval of Previous Meeting Minutes

a. Town Plan Commission Regular Monthly Meeting, February 17, 2016.

G. Thury moves to approve the Town Plan Commission Regular Monthly Meeting minutes of February 3, 2016 as corrected. S. Soucek seconds. Five in favor. Motion carries.

IV. Zoning Administrator's Report

Report will not be ready until the next meeting. Some permits are coming in.

V. Consideration and/or Action of Permit Applications

a. Craftivity/MISA Application for Change of Use – Parcel #014-00178-0200

Chair Pallas asked if Charlie was going to attend the meeting. ZA responded she had not heard from him. Chair Pallas asked if the TPC members had received the attorney work product. M. Starck presents a written motion:

“Motion to approve the change of use permit for MISA’s retrofit of the Granary building to be an annex of the barn kitchen with conditions: 1) All building permits are obtained from James Price before any work resumes; 2) After completion an inspection is performed by the county official responsible.”

S. Soucek seconds for discussion. M. Starck says we may want to modify CUP. C Brummer states that it must go through a public hearing. M Starck says the process is that the TPC holds the public

hearing, then determines the language to recommend to the Town Board for modification to the conditional use permit.

Chair Pallas asks if this is the language M. Starck would recommend to the Town Board, because Chair Pallas says it's not even close. Chair Pallas says he has no idea why MISA needs a commercial kitchen if MISA intends to do what Charlie has said he will be doing. If all he is doing is heating and prepping food, why does he need a moderate restaurant license? Charlie told us that he wants to cook food and prepare buffet style breakfasts.

A. Nelson states that MISA intends to continue to bring food over from the mainland. It comes in containers to maintain heat, but still must be reheated when it gets here, also because of using plates and silverware, they must have the equipment to wash dishes. A. Nelson said we don't need a public hearing to grant a permit for a change of use to the granary. He also said MISA is just trying to comply with Ashland County regulations. He thought this was only about the change of use of the granary,

Chair Pallas asked has he (Charlie) changed his mind from when he brought in the permit – he (Charlie) said he wants to cook breakfast, put in chafing dishes and serve to students, and that requires a commercial kitchen – it's on the tape. Stark's motion does not say that.

A Nelson repeats that he thought the whole land use issue was about changing the use of the granary. but then TPC members are asking all sorts of questions that don't pertain to the use of the Granary. The Granary is just where you wash stuff, pans, refrigerators - they don't intend to do cooking and keep food; he thought this permit was to change use of granary. This doesn't pertain to need for a public hearing. MISA is just serving for people that are staying there. He doesn't think MISA is going to do any more cooking than they do now – bringing the food over, keeping it hot, serving it on dishes, cleaning and sanitizing dishes so he can reuse them.

ZA points out that the first applications states that the permit is for changing the Granary building into a commercial kitchen.

A. Nelson states that's not what he's asking for now is it? Chair Pallas said he (Charlie) hasn't been here to change it, and (Charlie) said he wants to warm up food, refrigerate and do dishes. A. Nelson said that is all he wants to do. Chair Pallas says it has to be stated in the CUP language.

A. Nelson says not everyone understands what he is requesting and passes out a letter meant to be a clarification of his previous letters (see attached). Chair Pallas said he is not willing to involve dinners in the discussion. S. Soucek says no. A. Nelson says that he is serving for the people staying there, the students, staff and teachers.

S. Soucek said that the benefit to the Island is that people are coming to the Island and eating out. She said townspeople should get some benefit out of it. MISA doesn't hire staff from the Island. A. Nelson said MISA tries to work with all of the Island businesses. Chair Pallas wants to exclude dinners.

S. Soucek states that the townspeople should get something out of this.

Chair Pallas states that if Starck's motion passes, it needs to be run past the Town attorney. He wants to add #3 the change of use being to arrange for breakfast and lunch to be provided excluding preparation. It would be onsite for teachers, students, and guests currently participating in onsite activities. All it is is just reheating and doing dishes.

A. Nelson said the food comes in containers and is put on plates. C Brummer said the Town's Attorney said you don't need a commercial license if only reheating food. A. Nelson said that food must be reheated, and dishes need to be washed. C. Brummer states that must take it from low complexity to medium complexity, which is the same license all restaurants have on the Island.

A Nelson said it's a change of use of the facility.

Chair Pallas agrees that it doesn't necessarily mean that they're running a restaurant but how they are using the kitchen to distribute the food. If MISA is putting out a breakfast buffet for a price to the students, they are running a restaurant and need a moderate license. Now A. Nelson is saying everything is coming in in containers and being reheated. C. Brummer if a moderate license is like a restaurant, where is it in the zoning ordinance for the W-2 zone as a permitted or conditional use. Chair Pallas says it is not.

A. Nelson said there is no commercial stove in there. C Brummer responds he doesn't know what is in there. A. Nelson says maybe the Town Plan Commission should take a trip to see what is there. C. Brummer says have the zoning administrator go; he doesn't see why everyone has to go out there.

M. Starck says the thing in front of us is a new application filled out to change the use of the Granary to a kitchen. We sent a letter saying we were not clear – please clarify. Charlie sent a letter back attempting to clarify. All we are discussing and voting on is issuing this change of use permit – what is required in the CUP is another topic. C Brummer says the change of use affects the CUP directly. G. Thury states that we can't change the use without changing the CUP.

Chair Pallas says the change of use changes the CUP because it's listed as the Granary. That's why the conditions are critical so we know exactly what Charlie wants to do with that building. M. Starck says we have the language about how to change the CUP from our attorney. G. Thury asks if we have anything stating that Craftivity is proposing to change the CUP? M. Starck says no. G. Thury asks if the CUP can be changed by the TPC without Craftivity requesting it? M. Starck says yes, because we wrote the language to begin with. ZA clarifies that MISA can choose not to accept it. Chair Pallas states that "we", the TPC, wrote some of the language; the language is written in stone by the Town Board. M. Starck says our attorney says we can change the language because it is ambiguous and we should take the ambiguity out of it. We would propose the language change at the public hearing to amend the CUP. Chair Pallas points out that A. Nelson does not think it needs a public hearing. If M. Starck is saying that the only thing we need to worry about is the building (C. Brummer does not agree with that) it needs to be clear that we think the use of the building is. M. Starck asks would we approve the permit with conditions?

Chair Pallas says to get the ball rolling, he proposes changes to the M. Stark motion. Number 1 is ok add the language from Katie's letter. A. Nelson says MISA is asking for a change of use permit but the TPC is adding a paragraph from the Town's attorney. C. Brummer says the change of use of the building affects the change of use of the CUP. M Starck agrees with Chair Pallas regarding his motion that we approve the permit (Motion 1, 2, and under 4.C in the CUP we add the following language "arrange for breakfast and lunch to be provided" so they cannot sell to the public. Chair Pallas said he does not have a problem with that language. This cannot be a change of use without amending the CUP because the building is not listed as a kitchen. M. Starck says so as a process how do we proceed? Chair Pallas says it would be conditional depending upon the outcome of the public hearing. M. Stark says we conditionally approve your change of use providing the language gets included in the CUP and we have to have a public hearing to have that. M. Starck asks do people agree with the 2 conditions in the original motion? Chair Pallas says he will agree if those 3 things are included in the motion. It is not a go until the amendment to CUP is done.

M. Starck would go along with that. Chair Pallas says when it comes time the TPC may propose additional language. M. Starck says after the public hearing something additional may come out and the TPC proposes additional language to put into a CUP modification, then we vote on that here and pass it on to the Town Board; the Town Board either accepts it or modifies it again.

M. Starck asks where did no dinner come up? C. Brummer states that in previous discussions/letters from MISA state students are on their own for dinner. G. Thury points out that while it is not in the CUP; MISA said they would do that to support the Town and local restaurants; but none of that matters now. M. Starck says that the CUP now allows them to serve meals.

C. Brummer states that what it says is that the owners and operators of the facility may provide beverages and snacks and arrange for meals to be provided to students, teachers and guests participating at the site and he thinks that if it would have said the owners and operators of the facility may provide beverages and snacks and meals, and took the second section out of there. It almost sound like they are allowed to provide beverages and snacks but when it comes to meals they have to arrange for someone else to do that. That's how he recalls it. G. Thury says once again it is vague and ambiguous.

Chair Pallas says we could also go the other way and have it be construed that where they make their own food and serve it, but as long as (additional language) gets added, it will be clear.

C Brummer says to play devil's advocate and say what they are doing to the granary building is adding a commercial kitchen and they will get a moderate food license, Fauerbach made us take out the words "included but not limited to" from the ordinance, there are no more options other than conditional or permitted. M. Starck asked what does the ordinance say as a conditional use for W-2? They can have an educational facility commercial - that's what they are. Does the definition include that you can serve meals? G. Thury reads the definition. C. Brummer says it's not as simple as the original motion. M. Starck thinks that question becomes does an educational facility serve meals – some do, some don't. G. Thury points out a separate food license is needed for the facility.

Chair Pallas has a list of questions that he contacted Ken Tuckwell of Ashland County about this project. One of the questions is where do you draw the line and call this a moderate complexity license? If in fact all the school is doing is what Arnie and Charlie say, meals are coming in there and are just being reheated. If not prepping/handling the food, why is it not a low complexity license?

M. Starck says our real concern is, is that a public restaurant? G. Thury says his real concern is that they abide their conditional use permit. Chair Pallas says the real concern is we are a zoning and planning commission; we have to try to do the right thing according to the ordinance. He agrees with C. Brummer that it was very clear that every single conditional use was to be listed for each zone, and there is nothing about a restaurant, a kitchen, a retail store, or an on/offsale liquor store. This is why it requires more than a change of use permit; with a CUP, if you vary from what you originally say you are going to do with a building, it's not alright – you have to do what you said you are going to do because that is what everyone through the TPC and the Town Board voted on. There is discussion on what the Town's attorney said regarding these matters.

Chair Pallas states to A. Nelson that a lot of people say he (Chair Pallas) fights this thing tooth and nail – he does not mean to fight this thing tooth and nail. He treats it like anything else and wants it to be simple, but it's never simple. He must agree 100% with what our attorney says that, first and foremost, she recommends that the TPC receives clear information from Craftivity/MISA as to what the intended use of this kitchen is. He doesn't think we've been supplied that yet.

A. Nelson says the TPC is getting a little picky. S. Soucek responds that they have to. From the beginning they have been too loose with their language which has caused all of this in the first place. We needed it more detailed to begin with and we didn't do it – we have been trying to nail it down ever since.

A. Nelson states that maybe the TPC needs to write a letter telling MISA what they should have on their menus.

Chair Pallas responds that he doesn't care about what's on the menu. He wants to know how the menu got to the table and what happened inside this kitchen. That's what determines to him whether it is a commercial operation or not.

A. Nelson says it is not a commercial operation. Just because they have put in state of the art commercial equipment doesn't mean they are a commercial kitchen. M. Starck and C. Brummer say that according to Tuckwell and the state, it is.

ZA reminded that there are 3 options: 1) approve the change of use permit without any conditions; 2) approve the change with conditions; and 3) deny the permit. A condition could include adding language to the CUP. ZA does not hear anyone recommending denying the permit. So of the two choices left, can you move ahead and approve it without any conditions, or approve with conditions and clarify the language. The TPC should write up proposed language and then have the public hearing.

Chair Pallas agrees that these are the right steps. He will bring it up once again for the record. What concerns him more than anything is the original permit is for turning that building into a commercial kitchen.

ZA clarifies that the only a non-commercial kitchen is in a private home. What the issue is is that MISA has built a commercial kitchen but what we are hearing today is that he is not going to making food from scratch – he is bringing food in and reheating it. That is what we are hearing today. C. Brummer states that Ted should find out from Ken Tuckwell if that requires a moderate complexity. If he stays with the low complexity, he's golden.

Chair Pallas says he understands that not a single license has been issued to MISA yet from Price or Tuckwell. He's comfortable with what has been talked about to this point if the attorney's language gets added so that the Town Board knows where we are heading with this. If this can be licensed as a low complexity, and provide meals for students, it doesn't mean that it is a "commercial" kitchen. He doesn't know if Ken knows that MISA is just warming food.

ZA points out that MISA may have to go to this level food license not because the food is being prepared differently, but to meet health requirements. The critical thing the TPC must decide is whether the CUP needs to change or not. Chair Pallas asks for a straw vote – he absolutely thinks the CUP has to be amended. M. Starck thinks so as well, as does G. Thury and C. Brummer. Chair Pallas says that will be a condition on this change of use - the CUP requires an amendment, because that's the only way it's crystal clear and everybody's on the same page. M. Starck says that's what the attorney recommended to us. Chair Pallas said that if he understands A. Nelson correctly, they will only be allowed to continue doing what they have already been doing but they will have a bigger facility because they want to serve more food. M. Starck says he's not so sure that's true because if they're going to serve different kinds of food. Chair Pallas said A. Nelson just said all the food is being brought in. ZA brought up the previous boiled egg discussion; that most food will be brought in, but MISA wants to be able to prepare some things on site.

Chair Pallas says that Charlie made it clear in the first application that he wants to do a breakfast buffet on site which required upgrading the kitchen and getting the moderate complexity license, and that's a whole different ballgame from food coming in hot boxes. ZA points out that they could still do a buffet if it all comes in hot boxes.

M. Starck asks aren't we more concerned about the use, that it doesn't change it from a school to a restaurant? Whatever the state calls the license doesn't matter if we put language in. Chair Pallas says you're half right – what we're worried about is that in not one single place in the ordinance or the CUP does it talk about a commercial kitchen. C. Brummer adds either permitted or conditional. Chair Pallas says that to him there's only one logical zoning answer, and that is to apply for a variance. If all they are doing is prepping the food, it can't happen without a change in the CUP.

M. Starck will amend his motion to agree with what Chair Pallas is saying. Chair Pallas says make the number one thing what we are looking at the intent of the building being used for. Then get permits and ducks in a row. So #1 and #2 would become #2 and #3. M. Starck says that makes all kind of sense.

Discussion ensues about how to word the new motion. M. Starck asks why we are limiting it to breakfasts and lunches. Chair Pallas says because Charlie has said numerous times that they're on their own for dinner. Chair Pallas fully supports that other Island businesses may make some bucks from dinner; he doesn't need another reason. He doesn't think dinners need to be involved. S. Soucek said that was what the original thought was. M. Starck says the original CUP says arrange meals.

M. Starck says so what we are saying is that we would propose language and that would go in front of the public hearing; that we would listen to what people have to say including MISA; the language that we are intending to change the CUP. ZA suggests that the TPC should write a letter to MISA to make sure they want to go this direction. Chair Pallas says we will do that but he wants to get close to some closure and get it (the language) to where they want it.

A. Nelson asks if you approve the three conditions and if MISA has to modify their CUP, and you take dinners out, does Charlie get a kick at this cat – that is, can he ask for changes? Chair Pallas says that Charlie gets a kick at the cat all the way up to the Town Board meeting. ZA proposes next step is to write everything up and send to Charlie – he can then respond that he either wants to continue the process or drop it.

Chair Pallas proposes to first come up with the language; then run it past MISA. If he doesn't have any argument, a meeting will be called to set the public hearing. The TPC sets the public hearing date, and Town Board members must attend or listen to the tape. ZA points out that building inspector will not go to look at the structure until the Town issues the change of use permit. Chair Pallas says that the permit is conditional on the CUP.

M. Starck says he's not sure if it is the TPC's decision or the Town Board's decision, but what we are doing here is recommending changing the language in 4.A. Chair Pallas agrees. M. Starck says where he is going with this is if we are clarifying ambiguous language, should MISA have to pay the \$750 fee to amend the CUP. Chair Pallas says that is the Town Board's decision. M. Starck says once the CUP gets amended, MISA has to sign it to accept conditions. Chair Pallas says the only time it will cost MISA money is if they go to the Board of Appeals. They would go to the board of appeals to appeal a TPC decision; they go to court to appeal a Town Board decision.

A. Nelson says after the public hearing, if the TPC makes a decision, don't you recommend that to the Town Board? Chair Pallas says yes. Charlie has to go to the Board of Appeals before the decision goes to the Town board.

Language proposed is read by Lisa: ***"To approve the change of use permit with conditions for the retrofit of the Granary building to be an annex of the barn kitchen for the purpose of, as follows:***

- 1) ***Amend Section 4.A to state: "The owners and/or operators of the facility may provide beverages and snacks and arrange for breakfast and lunch to be provided (including preparation) on site to students, teachers and guests currently participating in on-site activities. There shall be no meals provided to anyone that is not a student, teacher or guest currently participating in on-site activities".***
- 2) ***All building permits are obtained from James Price before any work resumes.***
- 3) ***After completion an inspection is performed by the responsible county official."***

C. Brummer wants to add that he appreciates all the work done on this. If this is going to be a commercial kitchen with a moderate complexity license where does that fall under a conditional use/permitted use in that zone? G. Thury points out that a B & B is a conditional use, and that has a commercial kitchen.

Chair Pallas says that the only reason he is doing this is because our attorney said. And there again it is a flipping crapshoot. In a court of law it's not clear enough. If we deny the permit, it will go to court and we don't want to spend taxpayers' money. A court may say of course they have to have a commercial kitchen to feed their students. He will be talking to Ken. S. Soucek is happy with the verbage. G. Thury points out that we are still discussing Starck's original motion. M. Starck withdraws his motion, and will make a new motion to use the verbage Lisa read. S. Soucek seconds. Chair Pallas says they are voting on the language to send to MISA; there is no point in the TPC going any further if MISA does not agree to the language. Does everyone agree with the language? Chair Pallas calls the question. 4 in favor; C. Brummer opposed.

ZA will contact the Town's attorney to clarify C. Brummer's question about approving a commercial kitchen if it is not a permitted use or a conditional use and will share that information with the TPC.

VI. New Business

None.

VII. Old Business

a. Private Road/Driveway Ordinance

- 1) **Letter for existing property owners with driveways**
- 2) **Second draft of ordinance for going forward (new driveways)**
- 3) **Appeal process**

Nothing to report.

b. Camping Units/Campsites – Update

Nothing to report.

c. Cell Tower Update

Nothing to report.

VIII. Future Agenda Items

a. MISA/Craftivity Change of Use Permit Application

b. Private Road/Driveway Ordinance

1) Letter for existing property owners with driveways

2) Second draft of ordinance for going forward (new driveways)

3) Appeal process

c. Camping Units/Campsites - Update

d. Zoning ordinance update

e. Cell tower update

IX. Schedule Future Meetings

Meeting scheduled for **Monday, March 10, 2016 at 4:30** to set the MISA public hearing to modify the CUP.

Next Special Monthly Meeting is scheduled to be held **Wednesday, April 6, 2016 at 4:30 p.m.**

X. Adjournment

G. Thury moves to adjourn. S. Soucek seconds. All in favor. Motion carries. Meeting ends at 5:51 pm.

Town Plan Commission minutes respectfully submitted by Lisa Potswald, Planning and Zoning Administrator, on Thursday, March 31, 2016.