

Village of Pentwater

65 S Hancock St., PO Box 622 Pentwater, Michigan 49449
(231) 869-8301 Website: www.pentwatervillage.org

Regular Meeting of Village Council April 10, 2023 Park Place 310 North Rush Street

I. CALL TO ORDER

President Jeff Hodges called the regular meeting of the Pentwater Village Council to order at 6:00 pm. from Park Place Meeting Center at 310 North Rush Street.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Present: Michelle Angell-Powell, Dave Bluhm, Jared Griffis, Dan Nugent, Kathy O'Connor, Don Palmer, and Jeff Hodges.

Absent: None.

Also, present: Village Manager Chris Brown, Clerk/Treasurer Rande Listerman, Chief Laude Hartrum, Zoning Administrator/Rec Director Kate Anderson, Deputy Clerk/Treasurer Renee VanNortwick, and Deputy Clerk/Treasurer Barb Siok.

IV. PUBLIC COMMENTS - On the agenda

Laura Kassanos, 50 Wheeler St. - Read a letter on behalf of her husband Nicolas Kassanos in favor of the Whitcomb Properties map amendment request for the PUD. Laura Kassanos did not give a copy of the letter to the Village Clerk.

Tom Amon Legal Counsel for Mr. Whitcomb - President Jeff Hodges asked Mr. Amon to address the Council during New Business, Item A, on the agenda.

Tom Pell 590 N. Oceana St. - Mr. Pell and his wife have lived in Pentwater for 23 years. We love the Village and love living here. I am asking the council to vacate the parcel of land that is plotted for a road. I am asking for the part that is the length of my property. I would take care of the maintenance of the property. It is a small portion, and it would enhance my land I would like to have it vacated. Thank you very much for listening.

V. APPROVAL OF THE AGENDA

President Hodges requested an approval of the agenda.

Motion by O'Connor, supported by Angell-Powell to approve the agenda as presented.

VOICE VOTE: AYES: 7. NAYS: 0. ABSENT: 0.

Motion approved 7 - 0.

VI. CONSENT AGENDA

A. Approval of Minutes: Regular Council Meeting on March 13, 2023.

B. Disbursements Village: Accounts Payable - \$111,833.19; Payroll - \$100,982.43.

- C. Disbursements from Township: Fire Department - \$4,677.03.
- D. Commission & Board Reports: Planning Commission, City Feasibility Study.
- E. Requests for Village Green Property use:
 - 1. Movies on the Green – John Nagel – June 16th, July 14th, and August 11th
 - 2. Wooden Boat Show – PYC - August 26, 2023.

Motion by Griffis, supported by Nugent to approve the consent agenda items as presented.
 ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and Hodges. NAYS: 0. ABSENT: 0. Consent agenda items approved 7 - 0.

VII. ANNOUNCEMENTS

- A. Comments from the President.
 Happy Belated Easter to everyone. Hopefully Spring is here.

Trustee Don Palmer shared the names of three longtime residents that have passed away: Keith Wells, Kitty Cox and Doris Brown. Our thoughts and prayers go out to their family and friends.

VIII. CORRESPONDENCE

- o All correspondence directed to the Village Clerk is received, filed and emailed on to the Village Council.

The following citizens sent correspondence to the Village Clerk for the Village Council.

- 1. Randy Hepworth, Hepworth Land Surveying. 2. Thomas M Amon, Warner Norcross & Judd LLP.
- It was noted by the Clerk/Treasurer Listerman that she did not receive correspondence from Village Attorney Brian Monton from Thomas M Amon. Mr. Amon will read his correspondence aloud to the Council under New Business, Item A. .

IX. VILLAGE DEPARTMENT REPORTS

Reports are in the meeting packet and posted on www.pentwatervillage.org.

- A. Village Manager - Report submitted in writing.
- B. Clerk/Treasurer - Report submitted in writing.
Motion by Palmer, supported by O'Connor to receive the April 2023 financials as presented.
 ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.
- C. Police Chief – Report submitted in writing.
- D. Fire Chief – Report submitted in writing.
- E. Zoning Administrator – Report submitted in writing.
- F. Rec Director – Report submitted in writing.

X. PUBLIC HEARING

A. Intent to Vacate a Portion of E. Hanover Street @ 6:15 P.M.
President Hodges opened the Public Hearing at 6:15 P.M.

Chris Conroy, 560 S. Hancock St. # 21. was wondering if the Council will be addressing the letter from Randy Hepworth during New Business, Item B.?

Public Hearing was closed at 6:17 P.M.

XI. COMMITTEE REPORTS

- A. Building & Grounds – No meeting, no report.
- B. Finances – No meeting, no report.
- C. Ordinances – No meeting, no report.
- D. Personnel – No meeting, no report.
- E. Planning/Economic Development – No meeting, no report.
- F. Services – Minutes submitted in writing.

XII. UNFINISHED BUSINESS

- A. Village Council Meeting Procedural Rules.

Motion by Bluhm, supported by O'Connor to remove Village Council Meeting Procedural Rules from the Unfinished Business until after the Parliamentary Procedures training on May 11, 2023, and move the issue to Ordinance Committee for review.

Discussion was held:

Trustee Griffis stated we used to adopt the Roberts Rules of Order. I think it is something to look at.

President Hodges it is my understanding we should have a Parliamentarian.

Trustee Palmer stated the Council usually appointed the Clerk.

Village Manager Chris Brown stated if you make Motions with any flaws then the motion was not done properly and the motion must be redone.

Trustee Palmer, I agree with Jared, but it is always good to review. An elected body needs to have a procedure on how it conducts their meetings.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.

- B. Utility Agreement for Township North.

Village Manager Chris Brown will have the updated contract to present to the Village Council at the Special Council meeting Monday, April 18th, 2023 @ 6:00 P.M.

C. Social District.

Zoning Official Kate Anderson stated the email feedback from the businesses was positive. She will put together packets for the public to review so an Open House can be held to respond to questions.

Motion by Bluhm, supported by Nugent to move forward with the process and have a Resolution on the agenda at the Regular Council Meeting with hopes the Village may establish Social District in the Fall.

Discussion was held:

Trustee Dave Bluhm Our season is not just the summer. Fall is just as important. Let's keep this moving along.

Trustee Don Palmer I want to commend Katie although the council is not unanimous in supporting the Social District. With that in mind Katie, I want to commend you for taking cautionary steps on this issue.

Trustee Dan Nugent, I support it. I think it is going well for other communities. I do like the idea of having an open house so we can share the information with the public.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Nugent, O'Connor, and Hodges.
NAYS: Griffis and Palmer . ABSENT: 0. Motion approved 5 - 2.

XIII. NEW BUSINESS

A. Request for Map Amendment by Mr. Dick Whitcomb of Whitcomb Trust Property to the Zoning Ordinance to rezone a portion of Lites Woods PUD property, Parcel ID No. 64-044-620-126-20, and 64-044-620-125-00 from PUD to R-2.

Mr. Amon address the Council with his clients concerns and read the letter aloud below that was dated April 3, 2023, to the Council.

Warner Norcross+Judd LLP

Via Email

Village of Pentwater – Village Council
c/o Brian Monton, Village Attorney
327 S. Hancock Street – PO Box 622
Pentwater, MI 49449

Re: Request for Rezoning – Cottages at Lites Woods

Dear Village Council Members:

This letter is to supplement our prior submittals to the Planning Commission. We have respectfully requested that the Village rezone the property owned by my client, Richard Whitcomb, from its present PUD Zoning to R-2 residential. The property in question is vacant property situated along Victoria Avenue, Parcel Nos. 044-620-126-20 & 044-620-125-00. (the “Whitcomb Trust Property”).

Over 20 years ago, the Whitcomb Trust Property was designated as an “expansion area” for the original Lites Woods condominium. But the original developers (who went bankrupt) never expanded the condominium into this area. The original developer failed, and by 2015 the Whitcomb Trust Property was

in the hands of West Shore Bank. At that time, the bank sought to separate and withdraw the Whitcomb Trust Property from the PUD, and rezone it to residential. The zoning administrator indicated that he did not see “any major issues with pulling [the property] out of the approved PUD,” and that a rezoning would likely be R-2. (**Exhibit A**, 6/4/2015 Email). Although the Bank submitted a request, it did not result in the property being rezoned (we do not know whether the application was abandoned by the bank, or denied).

Mr. Whitcomb purchased the Whitcomb Trust Property in 2019. He has professionally marketed the property since then, but the only market interest to date has been from buyers who want to purchase a lot to build a single-family residential home. For nearly three years, the Whitcomb Trust has attempted to work with the Village zoning administrator and planning commission in an effort to appropriately rezone the property, while buyers and Mr. Whitcomb remain in limbo.

To date, the Planning Commission has provided guidance that is inconsistent and contradictory. Initially, the Planning Commission advised Whitcomb that it would like the Whitcomb Trust Property to be developed for affordable housing or senior living. Whitcomb explored these options, but they simply were not viable. Mr. Whitcomb again requested that the Whitcomb Trust Property be rezoned R-2, but at a meeting in the fall of 2021, the Planning Commission suggested that property should be sold to an organization that would develop the property for affordable housing. Mr. Whitcomb discussed a potential sale with the organization suggested by the Village, but that organization wanted Mr. Whitcomb to donate the property for free.

The zoning administrator suggested that Mr. Whitcomb could seek to rezone the Property to R-2 and then split it into seven separate lots, or accomplish essentially the same result by creating seven separate site condos and seeking to amend the PUD accordingly. So, in August of 2022, Mr. Whitcomb submitted those alternate proposals to the Planning Commission, believing it would be more than sufficient to satisfy the varying input received in the past from the Village. (**Exhibit B**, August 2022 letter).

The Planning Commission delayed Mr. Whitcomb’s request repeatedly. Mr. Whitcomb’s request was initially placed on the October 25, 2022, planning commission agenda, and pushed out again to the November 2022 agenda. However, the commission did not publicly notice Mr. Whitcomb’s request in advance of the November 2022 meeting as required by Michigan law. At the November 2022 meeting, the Planning Commission demanded—without any legal basis—that Mr. Whitcomb could only submit *one* request to the commission for consideration—he either had to request to rezone, or request to amend the PUD. The Planning Commission did not provide any guidance whatsoever regarding which alternative would be acceptable to the Planning Commission. Nevertheless, Mr. Whitcomb attempted to accommodate the commission by requesting that the Commission rezone the Whitcomb Trust Property to R-2 residential.

The Planning Commission considered the rezoning request at its January 2023 meeting, but *again* pushed Mr. Whitcomb’s request to a subsequent meeting. Finally, at its February 2023 meeting, the Planning Commission determined that it would not recommend that the Whitcomb Trust Property be rezoned to R-2 residential. The Planning Commission has never provided any formal findings to Mr. Whitcomb, but at the February 2023 meeting several planning commissioners voiced their opinion that Mr. Whitcomb’s plan to sell off individual lots for single family homes could be done by seeking an amendment to the current PUD Zoning. **Amending the PUD is exactly what Mr. Whitcomb had proposed to the Planning Commission in August of 2022, but that proposal was met with hostility from the planning commissioners.**

Needless to say, Mr. Whitcomb is incredibly frustrated at this process. He has tried over and over again to work with the Planning Commission, but the Planning Commission has behaved in a manner reminiscent of Lucy pulling the football away from Charlie Brown. The Planning Commission has caused Mr. Whitcomb to expend thousands of dollars and years of time, and has acted in an arbitrary and capricious manner.

The Planning Commission’s conduct raises an obvious question: **if the Planning Commission believes that Mr. Whitcomb’s same plan to sell the Whitcomb Trust Property for single**

family houses can be accomplished by amending the PUD, then *why* won't the Planning Commission recommend approval of rezoning to R-2 to reach the exact same result?

CONCLUSION

The Whitcomb Trust Property was originally zoned R-2 before it was placed in the PUD by the original developer. Over the course of the past 20 years, the original developer went defunct, and it became apparent that the PUD could not be developed as originally envisioned—which the village zoning administrator acknowledged as early as 2015.

Mr. Whitcomb respectfully submits that enough is enough, and requests that the Council approve Mr. Whitcomb's request to Rezone the Whitcomb Trust Property to revert it to its original R-2 zoning. Doing so will resolve the longstanding zoning problem at this property and remove the zoning that currently deprives the Whitcomb Trust Property of all economic value. Mr. Whitcomb simply wants to put idle, vacant property in the Village to good and productive use. However, if the Village refuses to act on this, then Mr. Whitcomb may have little choice but to initiate litigation or pursue other resolutions to vindicate his due process and property rights.

Sincerely,

Thomas M. Amon

Motion by Bluhm, supported by Palmer to approve adjourning the request for Map Amendment by Mr. Dick Whitcomb Trust Property until the May 8th Council meeting to Give the Council more time to review the issue.

Discussion was held:

Village Manager Chris Brown the biggest discussion on behalf of the Village is "What is the utility plan for the property?" Explaining the current PUD has an obligation to provide water and sewer to those lots. Letting them out of the PUD with no water and sewer provided would put the burden on the rest of the taxpayers. The way the property is proposed to be split is in complete opposition of our Well Head Protection Ordinance. That was the biggest question I had, and I have not received an answer to the questions. I have followed this as it went through the Planning Commission and have asked is there any utility plans? Has an engineer looked at this yet?

Mr. Amon I was not part of the discussion in 2019. I think there has been some input at the Planning Commission but the specific issues regarding the wellhead protection never came out. If there is an Ordinance that makes that non-viable with well and septic, we would have to comply with Village Ordinances as well.

Village Manager Chris Brown currently there is one now, the Well-Head Protection Ordinance.

Mr. Amon - if the only thing that is standing in the way is the utility issue I can talk to my client. I heard from Mr. McKee it is not financially viable to bring utilities for seven lots. But if this would bring us closer to a resolution it would be something we could explore.

President Hodges - if one of us today want to see Mike McKee and buy one of those lots could we build a house on it tomorrow or next week?

Mr. Amon, No, because they are not lots, right now they are expansion area under the PUD. They would require two different forms of action, re-zoning and a lot split. The reason it was seven lots, that is how many splits are available for that property. Just for reference I have included exhibits from the August letter and the maps with the letter dated April 3, 2023.

Village Manager Chris Brown it was reported earlier that sewer stubs and actions are available. Those are owned by the Association and not by the Village of Pentwater. So, the utilities would have to be supplied by other means. I did have a conversation with the owner that utilities would be a part of this and still 4 years later the developer is dodging the ball with utilities.

Mr. Amon in the times we have been in front of the Planning Commission we have not been given guidance. We don't know what they want, we just have our proposal.

President Hodges if the developer wants to put 31 Condos in there he would be required to put water and build condos? Nothing is stopping him from building.

Mr. Amon under the current PUD, it is based on a site plan from the early 2000's. I do not know exactly what is involved in that.

Trustee Nugent, I do not blame Mr. Whitcomb for wanting this. I can see the financial benefit with not having to supply utilities. I would love to see something done with this property but at the same time it was part of that agreement.

Trustee Bluhm, I like the idea of exploring the utilities. It is important for the Village to get utilities out there and it adds value to the property as well. I do not think this is something that can be done quickly. Do you have engineers that you have retained to look at that and maybe work together with us?

Mr. Amon, we could explore the idea of a conditional agreement.

Trustee Palmer asked if there were any other communications we the council need to review? Is the Planning Commission done with this issue?

Zoning Official Kate Anderson Council should have the August letter. As for the Planning Commission we are done with this issue unless something new is brought to us.

Motion Bluhm, supported by Palmer to adjourn this item until the next regular Council meeting to give an opportunity for all the documents to be given to the Village Council so they may explore the utility issue further.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and

Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.

B. Resolution No. 2023-04-11 to Vacate Public Street.

Motion by Palmer, supported by Angell-Powell to deny Resolution No. 2023-04-11 to Vacate Public Street.

Discussion was held:

Trustee Angell-Powell, we have a Rec Plan we are getting ready to explore and I am not a fan of giving away property.

Trustee Palmer, I am never in favor of giving away public land.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer.

NAYS: Hodges. ABSENT: 0. Motion approved 6 - 1.

C. Amendment to the Zoning Ordinance No. 215, Chapter 12.02 Permitted Uses and 12.03 Special Land Uses.

Motion by Griffis, supported by Angell-Powell to approve the Amendment to the Zoning Ordinance No. 215 12.02 Permitted Uses and 12.03 Special Land Uses.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.

D. Resolution No. 2023-04-08 2023-2024 Annual Appointments & Wages.

Motion by Griffis, supported by Palmer to approve Resolution No. 2023-04-08 2023-2024 Annual Appointments & Wages as presented.

Discussion was held:

Trustee Don Palmer asked for clarification on the Rec Director wage combined with the Zoning Official salary.

Trustee Kathy O'Connor asked for clarification for the salary on the Zoning Official and the Rec Director.

Trustee Dave Bluhm, asked Village Manager Chris Brown have you met with each staff member for their annual review?

Village Manager Chris Brown, we historically follow the union contract. We did sit down with the employees and review the benefit package and I asked what their thoughts were on them. We have not made any cuts to the benefits as other municipalities have done.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.

E. Resolution No. 2023-04-09 Approval of Bank Depositories.

Motion by Griffis, supported by Palmer to approve Resolution No. 2023-04-09 Approval of

Bank Depositories as presented.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.

G. Update - 5 Year Park & Rec Plan.

Discussion was held regarding the updating of the 5 Year Park & Rec Plan.

Park & Rec Director Kate Anderson would like to have this item on the May regular council meeting agenda. The Village has accomplished all of its goals and objectives except the RV Park. The Council does need to decide if we will continue with our own plan.

Village Manager Chris Brown stated that when we have a combined plan all the goals and objectives that are not met affect the overall grant scoring.

H. Memorandum for US 31 BR Pentwater MDOT Turnback.

Motion by Griffis, supported by Blum to approve the Memorandum for US 31 BR Pentwater MDOT turnback as presented.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, O'Connor, Palmer and Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.

I. Transfer funds from Major St. to Municipal St. Fund to pay a portion of the 2019 GO Limited Capital Improvement Bond.

Motion by Angell-Powell, supported by Griffis to approve the transfer as a "Due To" Major Street Funds of \$31,000 as a "Due From" the Municipal Street Fund towards the 2019 GO Limited Capital Improvement Bond March 2023 payment.

ROLL CALL VOTE: AYES: Angell Powell, Bluhm, Griffis, Nugent, Ressel-Hodan, Palmer and Hodges. NAYS: 0. ABSENT: 0. Motion approved 7 - 0.

J. Approval for Clean Water Plant Membrane Cleaning.

Village Manager Chris Brown will present the quote at the Special Council meeting on April 18, 2023, at 6:00 P.M.

XIV. PUBLIC COMMENTS:

Paula DeGregorio, 270 Sands - as far as the cottages go, would the lot splits be large enough to allow well & septic?

Heather Douglas, Township Treasurer - with regards to Michelle's question earlier: "Was the Township using the Village employees to maintain the Township Sewer?"

That was our intention, but we were told we would not have access to Village employees during Village business hours. So, we had to hire someone else to maintain the township system.

Kendra Flynn, Pentwater Twp. Library - shared the upcoming events at the library.

1. June 12, 2023, Community Open House, Organization may have booths to share information. There will be hot dogs and games for the kids.

2. The library is re-establishing "Friends of the Library".
3. June 21, 2023, Captain Joel Magic Show.

Kevin ? 9523 N Business 31 PUD versus R2 and seven developed lots for taxes is something to think about. Obviously, there is a cost to put the utilities in but is there a tax benefit?

XV. COUNCIL COMMENTS:

President Hodges - I want to commend those that serve so diligently on the ad hoc committees, Short Term Rental and the City Feasibility Committee working to make Pentwater a better place. I appreciate their hard work.

Trustee Bluhm - The Army Core of Engineers is taking bids on dredging the channel. I think they are looking at early June for the dredge to be on site.

Trustee O'Connor - Is the timeline ok for the City Feasibility Study?

Trustee Griffis - The issue of the PUD and R2 does really revolve around the cost analysis of supply the utilities. That is the issue.

XVI. CLOSED SESSION

XVII. ADJOURNMENT

President Jeff Hodges adjourned the meeting 8:23 P.M.

Respectfully submitted,

Rande Listerman, MiCPT, CPFA, CPFIM, MiPMC
Clerk/Treasurer

Date