

**CHARTER TOWNSHIP OF VAN BUREN
PLANNING COMMISSION AGENDA
Wednesday, October 28, 2015 – 7:30 PM
Board of Trustees Room**

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

MINUTES: Approval of minutes from the regular meeting of October 14, 2015

CORRESPONDENCE

PUBLIC HEARING: None

OLD BUSINESS: None

NEW BUSINESS

ITEM #1: CASE # SPR 14-003

TITLE: THE APPLICANT, ATCHINSON FORD, IS REQUESTING PRELIMINARY SITE PLAN APPROVAL TO PERFORM FAÇADE AND SITE IMPROVEMENTS AS REQUIRED IN SECTION 12.02 OF THE ZONING ORDINANCE 06-02-92, AS AMENDED.

LOCATION: THIS SUBJECT SITE IS LOCATED ON PARCEL TAX ID NUMBER V-125-83-061-0002-701 AND V-125-83-061-0003-002, ALSO KNOWN AS 9800 BELLEVILLE ROAD. THE SITE IS LOCATED ON THE WEST SIDE OF BELLEVILLE ROAD, BETWEEN TYLER AND I-94 NORTH SERVICE DRIVE. THE SITE IS IN THE C-2, EXTENSIVE HIGHWAY BUSINESS ZONING DISTRICT.

- A. Presentation by the applicant.
- B. Presentation by the Township staff.
- C. Planning Commission discussion.
- D. Planning Commission considers approval of permit.

ITEM #2: 2016 MEETING SCHEDULE

ITEM #3: PLANNING COMMISSION BY-LAW REVISIONS

GENERAL DISCUSSION

ITEM #1: NOTIFICATION OF ADMINISTRATIVE REVIEW APPROVALS

- A. T-Rex Arms – 44800 I-94 North Service Drive
- B. Purewater Properties – 12300 Haggerty

ITEM #2: DIGITAL DOCUMENTS & THE FREEDOM OF INFORMATION ACT (FOIA)

ADJOURNMENT

**CHARTER TOWNSHIP OF VAN BUREN
PLANNING COMMISSION
October 14, 2015
MINUTES**

Chairperson Thompson called the meeting to order at 7:30 p.m.

ROLL CALL:

Present: Franzoi, Jackson, Boynton, Kelley, McKenna, Budd and Thompson.

Excused: None.

Staff: Director Akers and Secretary Harman.

Planning Representatives: McKenna Associate, Sally Hodges.

Audience: Three (3).

APPROVAL OF AGENDA:

Motion McKenna, Franzoi second to approve the agenda of October 14, 2015 as presented. Motion Carried.

APPROVAL OF MINUTES:

Motion Franzoi, Kelley second to approve the minutes from September 23, 2015 as presented. Motion Carried.

NEW BUSINESS:

ITEM # 1 CASE# TLU15-015

TITLE: THE APPLICANT, DAVID BOUGHAN, IS REQUESTING A TEMPORARY LAND USE PERMIT FOR A HAUNTED HAYRIDE BEYOND THE TWO CONSECUTIVE WEEKENDS ALLOWED AS A RIGHT IN THE ZONING ORDINANCE FOR TEMPORARY LAND USES UNDER SECTION 4.44 OF THE TOWNSHIP ZONING ORDINANCE 06-02-92, AS AMENDED.

LOCATION: THE SUBJECT SITE IS LOCATED ON PARCEL TAX ID NUMBER V125-83-138-99-0013-000, ALSO KNOWN AS 15851 MARTINSVILLE ROAD. THE SITE IS LOCATED ON THE EAST SIDE OF MARTINSVILLE ROAD, BETWEEN HULL AND FRET ROADS. THE SITE IS IN THE AG, AGRICULTURAL AND ESTATES ZONING DISTRICT.

Applicant David Boughan gave the presentation. Mr. Boughan is asking for permission to operate a haunted hayride beyond the two consecutive weekends allowed under the zoning ordinance. The hayride operated the past two weekends with approval from the Planning Department.

Director Akers presented his review letter dated 10-9-15 recommending approval. The application submitted for the operation of the haunted hayride is the same as last year having no changes. The Planning Department administratively approved the first two weekends, under the zoning ordinance anything beyond requires Planning Commission approval. The Fire Department review letter dated 10-12-15 recommends approval for the temporary land use.

No comments from the Commission or the audience.

Motion Kelley, Boynton second to grant temporary land use to operate a haunted hayride at 15851 Martinsville Road subject to Director Akers review letter dated 10-9-15 and the Fire Department review letter dated 10-12-15. Motion Carried. (Letters Attached)

GENERAL DISCUSSION:

ITEM #1 DISCUSSION REGARDING THE DIGITAL PLANNING COMMISSION PACKETS

Director Akers discussed the digital delivery of Planning Commission packets. Commissioners expressed concerns with digital delivery of larger documents such as site plans and the potential for FOIA issues due to use on personal computers or tablets. The commission members would like to continue receiving hard copies of the Planning Commission packets. Director Akers will look into potential FOIA issues with digital delivery and follow up with Commission members.

Sally Hodges of McKenna Associates and Commissioner Boynton gave updates from the MAP Conference they recently attended. Hodges presented a handout on potential changes to sign regulations. Commissioner Boynton discussed a seminar on 3-D renderings for site plan applications.

Commissioner McKenna inquired about the cyclone fence surrounding the Michcon pig launch facility. The approved fencing was black cyclone and the fencing is currently a shiny silver. Director Akers will look into the issue and follow up with the Commission.

Motion McKenna, Franzoi second to adjourn at 8:05 p.m. Motion Carried.

Respectfully submitted,

Christina Harman
Recording Secretary

October 20, 2015

Planning Commission
Charter Township of Van Buren
46425 Tyler Road
Belleville, Michigan 48111

Subject: VBT 14-003, Atchinson Ford Dealership Remodel, Site Plan Review #4, Plans Dated October 14, 2015

Dear Commissioners:

Atchinson Ford proposes to reskin and remodel the existing new car dealership building at 9800 Belleville Road. The use would remain new car sales and service; parking, vehicle display and storage spaces would be restriped and arranged to improve traffic flow and site efficiency. We are excited about this upgrade to one of the Township's core businesses.

In May 2014, the Planning Commission held a public hearing on a previous plan that proposed to expand the sales and service building on the site, but at the applicant's request, no action was taken. A revised site plan has now been submitted which will not expand the building, only modify the façade, change the front entrance, remodel the interior layout and restripe the lot.

We have reviewed the plan for compliance with the Township's Zoning Ordinance, and sound planning and design principles. We offer the following comments for your consideration.

COMMENTS

1. **Use.** The site is zoned C-2 Extensive Highway Business District. New car sales are permitted (Section 13.02.b.2). The use description states that the functions, operations and uses on the site will remain the same as existing. However to avoid questions in the future, Sheet DT, Existing and Proposed Building Use statement should include a list of included and excluded repair and servicing operations, not just label the operations as "major" repair.
2. **Dimensional Standards.** The building's south setback is an existing non-conformity (it is approximately 15 feet and the required minimum setback is 25 feet) that is not proposed to be changed. The parcel line dimensions are not all on the site plan and should be added. The fence surrounding the back lot encroaches on the shopping center site to the south; the applicant stated this encroachment is long-standing and no relocation is necessary.
3. **Parking and Circulation.**
 - a. The relevant parking standard is for "motor vehicle sales and service." The required number of parking spaces is calculated below:

Standard	Applicable Measurement	Number of Spaces Required
1 space per 200 sq. ft. of interior sales space	3,566 square feet	18 spaces
2 spaces per service stall	9 stalls	18 spaces
1 per employee at Quick Lane site (per special use approval for that site)	13 Quick Lane employees	13 spaces
	Minimum Required:	49 spaces
	Max. Permitted (Min. + 20%):	59 spaces
	Total Proposed:	61 spaces
	Total Display Spaces:	400 spaces

The parking calculations on Sheet DT must be revised to match Sheet SP101. The plan proposes to exceed the maximum 120% of the parking spaces required by Ordinance. We recommend that the Planning Commission approve the additional spaces since a significant portion of those spaces are to serve the site next door, and denying the increase would not decrease the amount of pavement on the site.

- b. **Barrier Free Spaces.** Three barrier-free parking spaces are required as part of the 61 parking spaces now proposed; only two are provided.
 - c. **Vehicle Display.** The angled display spaces in front of the building are very tight, with only 12 feet for access aisle behind them. At staff review, we agreed that the vehicle display could remain in this area without the Ordinance-required buffering since it is a pre-existing, nonconforming situation and the building is not being moved to the west as was proposed last spring. However, the Commission should consider whether this angled configuration (which may result in the display cars overhanging the sidewalk/public right-of-way) should be permitted. We recommend that the display in front of the building should remain as it is currently approved with no defined access aisle and with the cars oriented in a more random fashion that maximizes view of the vehicles without impinging on the sidewalk.
 - d. **Circulation.** The Planning Commission’s approval for the Quick Lane specified that overall circulation and the potential to eliminate one of the four curb cuts serving the two sites would be required to be addressed with the dealership site plan. This aspect should be addressed to the satisfaction of the Commission.
4. **Lighting.** A revised photometric plan has been submitted. The only new light proposed is an LED wall mounted unit and cut sheet information is on the plan, however much of that information is illegible. A clear copy of that cut sheet must be provided for review. Several of the light fixture types on the site are not focused straight down, but rather are angled as flood lights. While the photometric plan does not reveal an over-lighting situation, the Zoning Ordinance requires that all lighting must be focused down and not glare off site. This is an existing situation, and we encourage the applicant to work toward compliance. Also, there appears to be an error on the photometric plan in the vicinity of the southernmost fixture FX. The other FX fixtures are from 11 – 15 fc at the base, the southernmost fixture is less than 2 fc at its base. This discrepancy must be addressed.
5. **Landscaping and Screening.** Because this project is primarily addition of a new building façade with little footprint change, complete compliance with the landscape requirements of the Ordinance may not be practical and the Commission may approve alternatives. Our comments follow:

- a. **Landscaping Adjacent to Right-of-Way.** The Ordinance calls for a minimum 10-foot wide landscaped greenbelt along the site's Belleville Road street frontage with a continuous screen at least 30" high at planting (to reach a height of 36" within 12 months) or a 36" high screening wall. 1 tree per 50 feet of frontage is also required. The landscape plan proposes shrubs and perennials in the greenbelt along the north part of the site frontage and the applicant requests that no trees be required to protect the new cars from bird waste and tree litter.

- b. **Vehicular Surface Landscaping/Landscaping Adjacent to Residential Uses.** The Zoning Ordinance requires landscaping in and around parking lots, including landscaped islands every 20 parking spaces. However, most of the pavement on the site will be used for display/storage of vehicles for sale. It is not customary for dealerships to have extensive landscaping in their display/storage areas. A grass island is proposed at the south end of the display area in front of the building, and curbing should be added to protect it. Also, the site is adjacent to a residential use, and therefore screening is required by the Zoning Ordinance. As currently developed there is no unpaved space on the applicant's parcel for landscape screening, therefore we recommend that the applicant work with the condominium association to install shrubs or clusters of arborvitae along the chain link fence which would fit in this area and better screen the view through the fence. See pictures of the residential interface below.



- c. **Display Areas.** According to Section 4.40.3.e.2., auto display/sales areas must be screened from public rights-of-way by a building or by landscape screening. Many spaces labelled display are actually for storage of vehicle inventory and are at the rear of the site, screened by the building. The applicant proposes to install low level landscape screening for the north display spaces. Since the building location is not changing, there is little space for screening the display in front of the building; this area should be addressed as discussed in item 3.c. above.

6. Signs.

- a. **Existing Pole Signs.** The existing pole signs are non-conforming. Only one freestanding sign is permitted by Ordinance, and pole signs are not permitted. The smaller pole sign will be removed, decreasing the nonconformity by complying with the maximum number of such signs.
- b. **Total Sign Area.** The Ordinance permits this site to have up to a total 225 sq. ft. of signs; 326 sq. ft. is proposed, a surplus of 101 sq. ft. However according to the plan, the site contains 371 existing sq. ft. of signage, thus the proposal will bring the site into greater compliance with the Ordinance.

7. DDA/Belleville Road Standards.

This site is located in the Township's signature Belleville Road corridor, planned as a high-image attractive mixed use area. Considerable public investment has been made in streetscape plantings, decorative lighting, amenities and aesthetic improvements.

- a. The Planning Commission has consistently required new and renovated buildings along Belleville Road to reflect with the DDA's palette of red-brown brick, natural stone and limestone accents, and natural non-reflective facades. The new car dealership design includes thin stone, limestone accents and brick on portions of the building. The Belleville Road face uses a considerable amount of glass which is not typical along the corridor. The south side of the building is proposed to have brick that matches the Quick Lane building brick and smaller windows in proportion with the corridor palette. The color of most facade materials has been noted on the plan; however, the color of the thin stone that covers most of the front and north elevations must be labelled. Color and material samples must be presented for approval by the Commission.
- b. In the Township's commercial zoning districts every site must incorporate site amenities along the Belleville Road frontage. The applicant proposes a small paved seating area along the sidewalk. The detail for this feature must be to scale, the colors of fixtures and paving noted and to match the streetscape palette. A sidewalk connection from the public walk to the front door of the sales building is proposed; handicapped access should be provided at the building sidewalk.

RECOMMENDATION

We recommend preliminary site plan approval subject to the following conditions being addressed prior to final site plan approval:

- a. The use statement should include a list of permitted and excluded repair and servicing operations, not just label the operations as "major" repair.
- b. The missing property line dimensions must be added to the site plan.
- c. The parking calculations on Sheet DT must be revised to match Sheet SP101 and the additional parking spaces proposed are subject to Planning Commission approval.

- d. Overall site circulation should be addressed to the satisfaction of the Commission.
- e. Site lighting items as listed in Comment 3 of our review.
- f. Commission approval of the modified frontage landscaping.
- g. Curbing to protect the grass island at the south driveway.
- h. Landscaping should be installed along the west lot line to better screen the dealership from the residential use; with approval of the condominium, that landscaping could be placed on the residential side of the lot line and enhance the existing buffer.
- i. The color of the thin stone that covers most of the front and north elevations must be labelled. Color and material samples must be presented and are subject to approval by the Commission.
- j. The detail for the public sitting area must be to scale, with the colors of fixtures and paving noted and to match the streetscape palette.
- k. Handicapped access should be provided at the building sidewalk.
- l. Approval of all agencies with jurisdiction

Respectfully submitted,

McKENNA ASSOCIATES



Sara J. Hodges, AICP, IAP2
Senior Vice President

Cc: Mr. Craig Atchinson, Atchinson Ford, 9800 Belleville Road, Belleville, MI 48111
Mr. Wayde Hoppe, 47032 McBride, Belleville, MI 48111

David C. McNally II
Battalion Chief / Fire Marshal
O: 734-699-8900 ext9416

Van Buren Fire Department
46425 Tyler Rd
Van Buren Twp., MI 48111



October 23, 2015

Director of Building and Planning
46425 Tyler Road
Belleville, MI 48111

Re: Atchinson Ford SPR-SLU 14-003

I have reviewed the plans by Atchinson Ford dated 05/13/14. The plan is re issued and submitted on 10/14/2015, Job number SPR/SLU 14-003 for the above referenced project. NFPA 1 Fire Code (2012 Edition), NFPA 13 (2007 Edition) and NFPA 101, Life Safety Code (2012 Edition), were the primary reference documents used for this review and I have the following items requiring further detail / attention:

1. The FDC connection will be a 4 inch Stortz fitting with a 30 degree downturn as required by the AHJ. **NFPA 13 6.8.1.2**
2. The Knox Box location will be verified prior to the installation on the building. The Knox box will not be installed to the recommended height of six feet and will be installed between the height of 4-5 feet from the ground. **NFPA 1 18.2.2.1**
3. All hydrants located on the site will be marked with a flag for easy identification purposes. **NFPA 1 18.5.7.2**
4. The hydrants described above will be protected from vehicle damage. **NFPA 1 18.5.5**
5. Hydrant clearances will be 36" around the circumference of the hydrant. **NFPA 1 18.5.3**
6. There will be 20 ft of clear access around the perimeter of the building. **AHJ**

Our Mission: The members of the Van Buren Fire Department shall work together in a professional and caring way to protect life and property from the adverse effects of fire, trauma, illness and dangerous conditions. Our services will be provided in a fair, honest, and ethical manner with the highest respect and dignity to all.

7. Snow removal plans will not obstruct the clearance(s) around the fire hydrants, FDC or the perimeter of the building.

AHJ

With the above considerations, the plan set is approved as submitted.

The fire department requires involvement in the continuing plan review, inspection, and Certificate of Occupancy process and will require various inspections during the construction phases and immediately prior to opening to verify compliance with the appropriate codes. One set of as built construction drawings, schedules, and details, as it relates to construction, fire protection and response, will be required, as well as **a digital cad layout** of the building by this department prior to our final C of O inspection.

Review and approval by the Authority Having Jurisdiction shall not relieve the applicant of the responsibility of compliance with these codes.

Respectfully Submitted,

David C. McNally II

Battalion Chief/Fire Marshal



Charter Township of Van Buren

BOARD OF TRUSTEES

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Memorandum

Date: October 23, 2015

From: Director Akers

To: Planning Commission

Subject: 2016 Meeting Schedule

Article 4 Section 3 the Planning Commission By-laws requires that the “schedule for regular business meetings, at which formal decisions and recommendations may be made, shall be adopted at or prior to the first meeting in October of each calendar year.” Due to this please find attached to this memo the proposed 2016 meeting schedule. I look forward to the Planning Commission’s discussion on the matter.

**Charter Township of Van Buren
Planning Commission
2016 Meeting Schedule**

The Planning Commission Meetings are held on the 2nd and 4th Wednesday of each month at 7:30 p.m. in the Board of Trustees Room at Township Hall, 46425 Tyler Road, Van Buren Township, MI 48111.

January 13, 2016

January 27, 2016

February 10, 2016

February 24, 2016

March 9, 2016

March 23, 2016

April 13, 2016

April 27, 2016

May 11, 2016

May 25, 2016

June 8, 2016

June 22, 2016

July 13, 2016

July 27, 2016

August 10, 2016

August 24, 2016

September 14, 2016

September 28, 2016

October 12, 2016

October 26, 2016

November 9, 2016

December 14, 2016

Only one scheduled meeting for months of November and December.

In compliance with the Americans with Disabilities Act, reasonable accommodations will be made available with advance notice.

For more information, please call the Developmental Services Office at (734) 699-8913.

MEMO

TO: Hon. Sharry Budd, Treasurer
Ron Akers, Director of Planning and Economic Development
FROM: Sally Hodges, AICP, Senior Vice President
SUBJECT: Planning Commission Bylaws
DATE: October 16, 2016

We have reviewed the re-typed version of the Planning Commission's bylaws as forwarded by Treasurer Budd and believe it is consistent with what the Commission and the Township Board adopted in 2011. Therefore, we believe it is ready to be filed with the Township Clerk as the official document.

During the course of that review, we identified several areas where changes to the bylaws could be beneficial. I have also attached a mark-up copy of the document which shows those suggested revisions in underline and strike out. Among the potential revisions noted are the following:

Article I – Objectives:

- Cite both the Planning and Zoning Acts

Article III – Election of Officers:

- Clarify that the new officers assume office at the meeting at which they are elected.
- Is the Secretary actually signing and certifying approved site plans as required by the bylaws? (Section 5)

Article IV – Meetings:

- Section 3 says that the schedule of regular business meetings is adopted at or before the first meeting in October, yet elections are held at the first meeting in December. For simplicity, consider making these two actions the same date.
- Section 8 requires a roll call vote for rezoning recommendations and all other cases where the nature of the matter to be decided appears to warrant a roll call vote. We suggest that a roll call be required for all recommendations being made to the Township Board, since that is has been the Planning Commission's practice.

There are other typos and editorial revisions marked in the draft. While none of the changes discussed are drastic, for good housekeeping we recommend that the Planning Commission consider these revisions at an upcoming meeting.



Planning Commission
Rules and Procedures

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Article I- Objectives

The objectives of the Van Buren Township Planning Commission are those set forth in Act 33, Public Acts of 2008, as amended. The powers and duties of the Planning Commission are those delegated to it by the above-mentioned Act.

Article II – Commission Membership

The Van Buren Township Planning Commission shall consist of seven (7) voting members each appointed by the Township Supervisor, subject to approval of the Township Board of Trustees. The Commission's seven (7) voting members shall be comprised of six (6) citizen-members from the community and one (1) member of the Township Board of Trustees. No other elected officer or employee of the township is eligible to be a member of the Planning Commission other than the Township Supervisor in his/her ex-officio capacity pursuant to Public Act 359 of 1947, MCL42.10 (h),

In the event the Township Supervisor becomes an ex-officio member of the planning commission pursuant to MCL 42.10 (h), it shall be in a non-voting capacity and his/her position as an ex-officio member of the planning commission shall not affect the establishment of a quorum for voting purposes. In the event the Township Supervisor becomes the ex-officio member of the Planning Commission through appointment by the township board, it shall be in a voting capacity and for purposes of constituting a quorum.

Each member shall be appointed for a term of three (3) years and will continue to serve and perform until reappointed, a successor is appointed or removal for non-performance of duty. Successors will be appointed by the Township Supervisor, subject to approval of the Township Board of Trustees.

Article III- Election of Officers: Their Duties

Section 1

A Chairperson, Vice-Chairperson and Secretary shall be elected by a majority vote of the Commissioners at the first regular business meeting of December each year, or when a vacancy occurs. Such other officers as are deemed necessary for the conduct of business shall be appointed by the Planning Commission as required.

Section 2

The Chairperson shall preside at all meetings of the Planning Commission and shall have the powers and duties conferred upon such officers by these rules and procedures and by parliamentary procedure. The Chairperson shall be a citizen-member of the Planning Commission and shall enjoy the privilege of discussing all matters before the Planning Commission, and of voting thereon. The

Planning Commission Rules and Procedures

Chairperson shall appoint such committees as may be authorized by the Planning Commission and shall be an ex-officio member of all such committees.

Section 3

The Chairperson shall serve as the Planning Commission representative to the Board of Zoning Appeals, also known as the Zoning Board of Appeals. Alternatively, the Chairperson may appoint a citizen-member of the Planning Commission to serve as the representative to the Board of Zoning Appeals. This appointment, if necessary, shall be made each year at the same meeting as the election of officers or when a vacancy occurs.

Section 4

The Vice-Chairperson shall be a citizen-member of the Planning Commission and shall preside and exercise all of the duties of the Chairperson in his/her absence. In the event both the Chairperson and the Vice-Chairperson are absent from a meeting, a temporary Chairperson shall be elected by a majority vote of the Commissioners present.

Section 5

The Secretary shall sign or otherwise certify all approved site plans and formal correspondence from the Planning Commission, and perform other duties normally devolving upon such office.

Article IV- Meetings

Section 1

All Planning Commission meetings shall be open to the public in accordance with the open meetings act, Michigan Public Act 267 of 1976, as amended; and all minutes and other records of proceedings shall be made matters of public record in accordance with the Freedom of Information Act, Michigan Public Act 442 of 1976, as amended.

Section 2

A recording secretary, whose position shall be a non-voting one in order to record accurate minutes of the proceedings, shall be provided by the Township for all workshop, regular, and special Planning Commission meetings.

Section 3

The schedule for regular business meetings, at which formal decisions and recommendations may be made, shall be adopted at or prior to the first meeting in October of each calendar year. Meetings may be rescheduled by a vote of the Planning Commission, then appropriately posted and properly noted by the recording secretary.

Planning Commission Rules and Procedures

Section 4

Special meetings may be called by the Chairperson. It shall be the duty of the Chairperson to call such a meeting when requested to do so by a majority of the Commissioners. Special meetings shall be appropriately posted at least 48 hours prior to such a meeting and shall state the purpose, location, and time of the meeting and properly noted by the recording secretary.

If any individual or group of individuals requests a special meeting, the Township shall be reimbursed the costs for all necessary expenditures incurred.

Section 5

A quorum shall consist of four (4) commissioners.

Section 6

A concurring vote of the majority of the Commissioners present, but not less than four (4), shall be necessary to pass on any matter referred to the Planning Commission, or any matter upon which the Planning Commission is required to act by law.

Section 7

It will be the responsibility of the Chairperson to limit debate so that all items placed on the agendas will be heard. In an effort to encourage public participation in the planning process remarks from members of the public, who are not associated with the applicant or appearing at the request of the Township to provide specific information, shall be limited to five minutes. A second opportunity shall be afforded these individuals after all members of the public wishing to speak for the first time on the matter have had an opportunity to do so and the second set of remarks shall be limited to three minutes.

Section 8

All proceedings of the Planning Commission shall be initiated by motion and voted upon by all Commissioners present. A roll call vote shall be taken in all matters pertaining to rezoning and in all other cases where the nature of the matter to be decided appears to warrant a roll call vote. In the event one or more of the Commissioners abstains from voting on a particular matter, that abstinence shall not be counted as a vote either in favor of or opposed to the issue to be decided. Permission for such abstinence must be granted by a simple majority of the other Commissioners present.

Article V- Procedures

Section 1

All inquiries, applications and any other matters requiring action by the Planning Commission shall be submitted in writing to the Township Developmental Services Department a minimum of fourteen (14) days prior to a scheduled

Planning Commission Rules and Procedures

meeting of the Planning Commission. Actions requiring a public hearing are subject to the notice requirements in Section 3.

The Developmental Services Department shall forward a copy of the agenda to the Township Clerk and all agenda items to the Planning Commissioners, Director of Planning and appropriate consultants for expeditious preliminary review. Petitioners shall also be notified prior to the date of their scheduled agenda item.

Section 2

The Planning Commission may require such surveys, plans or other information as it may deem necessary for the proper evaluation and consideration of the related matter. All petitions shall be made in the approved form, and shall contain complete information as to the full intentions for the petitioner, as well as, legal and informal description of the property in question. In the event insufficient data is provided, the Planning Commission may table the entire matter until such time as all required information is furnished.

Section 3

When the Planning Commission is called upon to hold a public hearing on any proposed amendment to the Zoning Ordinance, Zoning Map, Master Plan, or special land use request; not less than a fifteen (15) day notice of the time and place of such hearing shall be published in a newspaper of general circulation within Van Buren Township.

Notice shall also be sent to the owners of property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction. The notice shall do all of the following:

- (a) Describe the nature of the request.
- (b) Indicate the property that is the subject of the request.
- (c) State when and where the request will be considered.
- (d) Indicate when and where written comments will be received concerning the request.

Section 4

At the time of application, the petitioner shall deposit with the Township Treasurer a check payable to the Van Buren Township. Said deposit shall be used to cover the expenses of the processing of the requested action in accordance with the Township Zoning Ordinance. Fees shall be reviewed from time to time by Township staff and then adopted by the Township Board.

Article VI- Order of Business

Section 1

The order of business at regular meetings shall be:

1. Call to order
2. Roll call
3. Approval of Agenda
4. Approval of Minutes
5. Correspondence
6. Public Hearings
7. Unfinished business
8. New business
9. General Discussion
10. Adjournment

Article VII- Reports

Section 1

The Planning Commission shall keep the Township Board apprised of its proceedings by forwarding copies of all approved minutes within one (1) week of their approval.

Article IX- Expenditures

Section 1

All disbursements shall be accounted for in accordance with the Van Buren Township purchasing policy guidelines as established by the Township Board of Trustees.

Article X- Responsibilities of Commissioners

Section 1

Commissioners shall endeavor to attend all meetings of the Planning Commission. When a Planning Commission member needs to be excused, he or she should notify the recording secretary prior to the meeting. If any member of the Planning Commission has three (3) unexcused absences in a row, then that member shall be considered delinquent. Delinquency shall be grounds for the Township Board to remove any member for non-performance of duty. The recording secretary shall keep attendance records and shall notify the Township Supervisor whenever any member of the Planning Commission has three (3) unexcused absences in a row.

Planning Commission Rules and Procedures

Section 2

Commissioners shall attend training relative to the duties of the Planning Commission. All members of the Planning Commission should attend a minimum of two (2) Township approved training classes or sessions annually. Township staff shall inform Commissioners of training opportunities and attempt to organize training classes or sessions within Van Buren Township.

Section 3

Commissioners shall make every effort to avoid a conflict of interest that shall arise from a real or seeming incompatibility between the Commissioner's private interests and the commissioner's public or fiduciary duties. Planning Commission members shall declare a conflict of interest and abstain from participating in any hearing, deliberations, discussion, or vote on a request when:

- a) A relative or other family member is involved in any request for which the Planning Commission is asked to make a decision;
- b) The Planning Commission member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association;
- c) The Planning Commission member owns or has a financial interest in neighboring property. For the purposes of this section, a neighboring property shall include all property falling within the notification radius for the proposed development, as required by the Zoning Ordinance or other applicable ordinance or state statute;
- d) There is a reasonable appearance of a conflict of interest, as determined by the Planning Commission member declaring such conflict;
- e) The Commissioner has taken a public position on a matter before the Commission before participating in a hearing or voting shall be considered a conflict of interest.
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Planning Commission Rules and Procedures

Adopted by the Planning Commission:

Approved by the Township Board:

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Draft 10/16/15

Planning Commission Rules and Procedures

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Planning Commission Rules and Procedures

Article I- Objectives

The objectives of the Van Buren Township Planning Commission are those set forth in Public Act 33, ~~Public Acts~~ of 2008, as amended, ~~being the Michigan Planning Act (MCL 125.3801 et seq.), and Public Act 110 of 2006, as amended, being the Michigan Zoning Enabling Act (MCL 125.3101 et seq.)~~. The powers and duties of the Planning Commission are those delegated to it by the above-mentioned Acts.

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Article II – Commission Membership

Section 1

The Van Buren Township Planning Commission shall consist of seven (7) voting members each appointed by the Township Supervisor, subject to approval of the Township Board of Trustees. The Commission’s seven (7) voting members shall be comprised of six (6) citizen-members from the community and one (1) member of the Township Board of Trustees. No other elected officer or employee of the township is eligible to be a member of the Planning Commission other than the Township Supervisor in his/her ex-officio capacity pursuant to Public Act 359 of 1947, MCL_42.10 (h).

In the event the Township Supervisor becomes an ex-officio member of the ~~p~~Planning ~~e~~Commission pursuant to MCL 42.10 (h), it shall be in a non-voting capacity and his/her position as an ex-officio member of the ~~p~~Planning ~~e~~Commission shall not affect the establishment of a quorum for voting purposes. In the event the Township Supervisor becomes the ex-officio member of the Planning Commission through appointment by the ~~†~~Township ~~b~~Board, it shall be in a voting capacity and for purposes of constituting a quorum.

Section 2

Each member shall be appointed for a term of three (3) years and will continue to serve and perform until reappointed, a successor is appointed or removal for non-performance of duty. Successors will be appointed by the Township Supervisor, subject to approval of the Township Board of Trustees.

Article III- Election of Officers: Their Duties

Section 1

A Chairperson, Vice-Chairperson and Secretary shall be elected by a majority vote of the Commissioners at the first regular business meeting of December each year, or when a vacancy occurs. Such other officers as are deemed necessary for the conduct of business shall be appointed by the Planning Commission as required. All officers shall take their respective office at the same meeting at which they were elected.

Section 2

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Planning Commission Rules and Procedures

The Chairperson shall preside at all meetings of the Planning Commission and shall have the powers and duties conferred upon such officers by these rules and procedures and by parliamentary procedure. The Chairperson shall be a citizen-member of the Planning Commission and shall enjoy the privilege of discussing all matters before the Planning Commission, and of voting thereon. The Chairperson shall appoint such committees as may be authorized by the Planning Commission and shall be an ex-officio member of all such committees.

Section 3

The Chairperson shall serve as the Planning Commission representative to the Board of Zoning Appeals, also known as the Zoning Board of Appeals. Alternatively, the Chairperson may appoint a citizen-member of the Planning Commission to serve as the representative to the Board of Zoning Appeals. This appointment, if necessary, shall be made each year at the same meeting as the election of officers or when a vacancy occurs.

Section 4

The Vice-Chairperson shall be a citizen-member of the Planning Commission and shall preside and exercise all of the duties of the Chairperson in his/her absence. In the event both the Chairperson and the Vice-Chairperson are absent from a meeting, a temporary Chairperson shall be elected by a majority vote of the Commissioners present.

Section 5

The Secretary shall sign or otherwise certify all approved site plans (*does this happen???*) and formal correspondence from the Planning Commission, and perform other duties normally devolving upon such office.

Article IV- Meetings

Section 1

All Planning Commission meetings shall be open to the public in accordance with the ~~Open~~ ~~Meetings~~ ~~Act~~, Michigan Public Act 267 of 1976, as amended; and all minutes and other records of proceedings shall be made matters of public record in accordance with the Freedom of Information Act, Michigan Public Act 442 of 1976, as amended.

Section 2

A recording secretary, whose position shall be a non-voting one in order to record accurate minutes of the proceedings, shall be provided by the Township for all workshop, regular, and special Planning Commission meetings.

Planning Commission Rules and Procedures

Section 3

The schedule for regular business meetings, at which formal decisions and recommendations may be made, shall be adopted at or prior to the first meeting in ~~October~~December of each calendar year. Meetings may be rescheduled by a vote of the Planning Commission, then appropriately posted and properly noted by the recording secretary.

Section 4

Special meetings may be called by the Chairperson. It shall be the duty of the Chairperson to call such a meeting when requested to do so by a majority of the Commissioners. Special meetings shall be appropriately posted at least 48 hours prior to such a meeting and shall state the purpose, location, and time of the meeting and properly noted by the recording secretary.

If any individual or group of individuals requests a special meeting, the Township shall be reimbursed the costs for all necessary expenditures incurred.

Section 5

A quorum shall consist of four (4) commissioners.

Section 6

A concurring vote of the majority of the Commissioners present, but not less than four (4), shall be necessary to pass on any matter referred to the Planning Commission, or any matter upon which the Planning Commission is required to act by law.

Section 7

It will be the responsibility of the Chairperson to limit debate so that all items placed on the agendas will be heard. In an effort to encourage public participation in the planning process, remarks from members of the public, who are not associated with the applicant or appearing at the request of the Township to provide specific information, shall be limited to five minutes each. A second opportunity shall be afforded these individuals after all members of the public wishing to speak for the first time on the matter have had an opportunity to do so and the second set of remarks shall be limited to three minutes.

Section 8

All proceedings of the Planning Commission shall be initiated by motion and voted upon by all Commissioners present. A roll call vote shall be taken in all matters pertaining to rezoning, other recommendations to the Township Board, and in all other cases where the nature of the matter to be decided appears to warrant a roll call vote. In the event one or more of the Commissioners abstains from voting on a particular matter, that abstinence shall not be counted as a vote either in favor of or opposed to the issue to be decided. Permission for such abstinence must be granted by a simple majority of the other Commissioners present.

Planning Commission Rules and Procedures

Article V- Procedures

Section 1

All inquiries, applications and any other matters requiring action by the Planning Commission shall be submitted in writing to the Township Developmental Services Department a minimum of fourteen (14) days prior to a scheduled meeting of the Planning Commission. Actions requiring a public hearing are subject to the notice requirements in Section 3.

The Developmental Services Department shall forward a copy of the agenda to the Township Clerk and all agenda items to the Planning Commissioners, Director of Planning and appropriate consultants for expeditious preliminary review. Petitioners shall also be notified prior to the date of their scheduled agenda item.

Section 2

The Planning Commission may require such surveys, plans or other information as it may deem necessary for the proper evaluation and consideration of the related matter. All petitions shall be made in the approved form, and shall contain complete information as to the full intentions for the petitioner, as well as, legal and informal description of the property in question. In the event insufficient data is provided, the Planning Commission may table the entire matter until such time as all required information is furnished.

Section 3

When the Planning Commission is called upon to hold a public hearing on any proposed amendment to the Zoning Ordinance, Zoning Map, Master Plan, or special land use request; not less than a fifteen (15) day notice of the time and place of such hearing shall be published in a newspaper of general circulation within Van Buren Township.

Notice shall also be sent to the owners of property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction. The notice shall do all of the following:

- (a) Describe the nature of the request.
- (b) Indicate the property that is the subject of the request.
- (c) State when and where the request will be considered.
- (d) Indicate when and where written comments will be received concerning the request.

Section 4

At the time of application, the petitioner shall deposit with the Township Treasurer a check payable to the Van Buren Township. Said deposit shall be used to cover the expenses of the processing of the requested action in accordance with

Planning Commission Rules and Procedures

the Township Zoning Ordinance. Fees shall be reviewed from time to time by Township staff and then adopted by the Township Board.

Article VI- Order of Business

Section 1

The order of business at regular meetings shall be:

1. Call to order
2. Roll call
3. Approval of Agenda
4. Approval of Minutes
5. Correspondence
6. Public Hearings
7. Unfinished business
8. New business
9. General Discussion
10. Adjournment

Article VII- Reports

Section 1

The Planning Commission shall keep the Township Board apprised of its proceedings by forwarding copies of all approved minutes within one (1) week of their approval.

Article IX- Expenditures

Section 1

All disbursements shall be accounted for in accordance with the Van Buren Township purchasing policy guidelines as established by the Township Board of Trustees.

Article X- Responsibilities of Commissioners

Section 1

Commissioners shall endeavor to attend all meetings of the Planning Commission. When a Planning Commission member needs to be excused, he or she should notify the recording secretary prior to the meeting. If any member of the Planning Commission has three (3) unexcused absences in a row, then that member shall be considered delinquent. Delinquency shall be grounds for the Township Board to remove any member for non-performance of duty. The recording secretary shall keep attendance records and shall notify the Township

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Planning Commission Rules and Procedures

Supervisor whenever any member of the Planning Commission has three (3) unexcused absences in a row.

Section 2

Commissioners shall attend training relative to the duties of the Planning Commission. All members of the Planning Commission should attend a minimum of two (2) Township approved training classes or sessions annually. Township staff shall inform Commissioners of training opportunities and attempt to organize training classes or sessions within Van Buren Township.

Section 3

Commissioners shall make every effort to avoid a conflict of interest that shall arise from a real or seeming incompatibility between the Commissioner's private interests and the Commissioner's public or fiduciary duties. Planning Commission members shall declare a conflict of interest and abstain from participating in any hearing, deliberations, discussion, or vote on a request when:

- a) A relative or other family member is involved in any request for which the Planning Commission is asked to make a decision;
- b) The Planning Commission member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association;
- c) The Planning Commission member owns or has a financial interest in neighboring property. For the purposes of this section, a neighboring property shall include all property falling within the notification radius for the proposed development, as required by the Zoning Ordinance or other applicable ordinance or state statute;
- d) There is a reasonable appearance of a conflict of interest, as determined by the Planning Commission member declaring such conflict;
- e) The Commissioner has taken a public position on a matter before the Commission before participating in a hearing or voting shall be considered a conflict of interest.
- f) The majority of the members of the Planning Commission present vote in the affirmative that they believe a member has a conflict of interest in the matter before them.

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Charter Township of Van Buren

BOARD OF TRUSTEES

SUPERVISOR
Linda H. Combs

CLERK
Leon Wright

TREASURER
Sharry A. Budd

TRUSTEE
Phillip C. Hart

TRUSTEE
Jeffrey L. Jahr

TRUSTEE
Brenda J. McClanahan

TRUSTEE
Reggie Miller

Memorandum

Date: October 23, 2015
From: Director Akers
To: Planning Commission

Subject: Notification of Administrative Review Approvals

Section 4.31 of the Township Zoning Ordinance requires that staff notify the Planning Commission of any site plans which have been administratively reviewed. Due to this Township staff is notifying the Planning Commission of two (2) administrative approvals. These are as follows:

1. T-Rex Arms – 44800 I-94 North Service Drive – This use is for an indoor shooting range which is utilizing an existing building on the I-94 North Service Drive.
2. Purewater Properties – 12300 Haggerty Road – This is a warehouse use where a vacant industrial building has been purchased and the new owner is utilizing it to store equipment from his offsite business. All storage is indoors and the applicant is working to fix the property up and bring it to current Zoning Ordinance standards.



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Memorandum

Date: October 23, 2015

From: Director Akers

To: Planning Commission

Subject: **Digital Documents & the Freedom of Information Act**

Please find attached a MML article from 2010 which addresses the Freedom of Information Act and what is considered a public record. I look forward to your discussion on the matter.



michigan municipal league

Law Enforcement Action Forum Newsletter



July 2010 Edition

Volume 17, Issue 2

The Michigan Court Of Appeals Brings The Freedom Of Information Act Into The 21ST Century. Now What?

By Gene King, LEAF Coordinator

At the end of January, Audrey Forbush, LEAF's Legal Advisor, called attention to a Michigan Court of Appeals opinion that had been published on January 26, 2010. The opinion deals with the Michigan Freedom of Information Act (FOIA), MCL 15.231, *et seq.*, as it relates to emails on publicly maintained computer systems. The case seemed straightforward in that the Court said the original FOIA laws did not contemplate the current technology. When the Court has to devise an opinion on a set of facts that the law does not specifically address, the rules require that the Court use the Legislative intent as a guide in interpreting the law. In this decision, the Court called for the Legislature to deal with this problem going forward. Audrey's concern is how far do the tentacles of the opinion actually reach?

The Court actually did a good job of looking at the facts in *Howell Educ. Ass'n v Howell Bd. of Educ.*, - - N.W.2d --, 2010 WL 290515 (Mich. App. 2010) and balancing them against what was the Legislators' intent when PA 442, 1976 was passed. The Court said, "We conclude that under the FOIA statute the individual plaintiffs' personal emails were not rendered public records solely because they were captured in the email system's digital memory." They also ruled that a mere violation of an



acceptable use policy barring personal use of the email system—at least one that does not expressly provide that emails are subject to FOIA—does not render personal emails public records subject to FOIA.

To Provide or Not To Provide

The December, 2002 issue of the LEAF Newsletter, *The Freedom of Information Act – Privacy Rights vs. Disclosure* was the last time that LEAF discussed the topic of FOIA. At the time, several cases had been decided that spoke to the privacy of information and the exemptions found in FOIA. As was stated in 2002, FOIA provides citizens with broad rights to obtain public records limited only by the coverage of the statute and its exemptions (*Kent Co. Deputy Sheriff's Ass's v Kent Co Sheriff*, 463 Mich 353, 362; 616 NW2nd 677 (2000)). Nothing in FOIA itself prevents a government from providing any information it is willing to disclose. However, good judgment and several other acts such as the Crime Victim's Rights Act, the Family Educational Rights and Privacy Act of 1974, Employee Right to Know Act, the Health Insurance Portability and Accountability Act (HIPAA) and the Social Security Protection Act restrict what information a governmental entity can or should disclose.

LEAF has found that municipal entities still have questions and issues with trying to comply with FOIA and to protect the privacy of those who may be unfortunate enough to be involved in an incident or issue with the entity. FOIA provides several exemptions from releasing department policies, procedures, rules, codes or tactics. MCL15.243, Section (13)(n),(v) and (vi) specifically addresses law enforcement and allows departments to exclude from disclosure any departmental codes, plans of deployment, operational instructions and the contents of staff manuals provided to law enforcement officers or agents that might impair a department's ability to protect public safety. In most circumstances, departments should not release this information. Once again, the public interest in disclosure must outweigh the public interest in nondisclosure *in the particular instance*. This is another situation in which the department, if embroiled in controversy or suffering from the erosion of community confidence, may need to negotiate with the person requesting the information.

Many attorneys try to use FOIA to get around discovery rules. Therefore, departments should not release policies, procedures, rules, regulations or department regulatory or employee advisory documents or information without first conferring with legal counsel. Many municipal attorneys have a tendency to release these documents and police personnel records thinking that releasing them will have no significant consequences. This information is specifically exempted under MCL15.243, (13) (n), (v), (vi) and (ix). Its non-release is further supported in *Bradley v Saranac Community Schools Bd of Education*, 455 Mich 285, 565 NW2d 650 (Supreme Court 1997).

One of the most important issues is to meet all the notices and deadlines that FOIA established. Municipal entities bear a significant risk and expense if they fail to meet the requirements. For more information on FOIA, go to mml.org. For the LEAF Newsletter at mml.org look under Insurance, then Pool or Fund where the Risk Management Resources are found on the left side of the page

choose Law Enforcement Newsletters and drop down to 2002.

The Howell Case Is Pretty Clear, Or Is It?

The *Howell* decision answers the question of what electronic records are public records and what are not when captured on a publicly owned system. The Court said:

Having determined that personal emails are not "public records" subject to FOIA, the next question is whether emails involving "internal union communications" are personal emails. We conclude that they are. Such communications do not involve teachers acting in their official capacity as public employees, but in their personal capacity as HEA members or leadership.

Thus, any emails sent in that capacity are personal. This holding is consistent with the underlying policy of FOIA, which is to inform the public "regarding the affairs of government and the official acts of . . . public employees." MCL 15.231(2). The release of emails involving internal union communications would only reveal information regarding the affairs of a labor organization, which is not a public body.

The Court distinguished between when a personal email could remain private and when it could become public. Their example was a teacher being subject to discipline for abusing the acceptable use policy and personal emails were used to support that discipline. The use of those emails would be related to one of the school's official functions—the discipline of a teacher—and, thus, the emails would become public records subject to FOIA. The Court said this is consistent with *Detroit Free Press, Inc v Detroit*, 480 Mich 1079; 744 NW2d 667 (2008). It is common knowledge that underlying the case was a wrongful termination lawsuit that resulted in a multi-million dollar verdict against the city of Detroit. During the course of the lawsuit and subsequent settlement negotiations, certain text messages became public that had been sent

between the Detroit mayor and a staff member through the staff member's city-issued mobile device. The text messages indicated that the mayor and the staff member had committed perjury.

A "public record" as defined in MCL 15.232(e) is "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." To be a public record the Court ruled in *Detroit News, Inc v Detroit*, 204 Mich App 720, 724-725; 516 NW2d 151 (1994) that the use or retention of the document must be "in the performance of an official function" and that the "mere possession of a record by a public body" does not render the record a "public document".

This pretty much takes care of the electronically stored data that is generated and retained by governmental entities that is not related to an "official function" of the operation. Audrey is concerned! With the use of social networking sites to promote the city and provide an avenue of open communication, is any posting, blog participation or friend responses considered public record? With today's retention requirements, has the Howell decision made another whole analysis necessary before records can be deleted for cleanup?

Audrey said in Michigan there is no specific statute, court ruling or opinion expressly addressing current technology in Michigan. The following is an updated summary of the basic provisions of the Freedom of Information Act (FOIA) as amended by 1996 PA 553 found on the Michigan Attorney General's website. The actual text of the statute follows in Section II. "It does not matter what form the record is in. The act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. It does not include computer software."

Audrey said since the Legislature was very specific in outlining the current technology available when they last amended FOIA, it is reasonable for public officials to conclude that location or format of the record is not relevant as long as it meets the definition of a public document.

No Protection For Settlements

Audrey pointed to other cases influencing the handling of FOIA requests. Though somewhat aged, not many people realize that at the beginning of the intense battle of the Detroit mayoral scandal, the Detroit Free Press made a FOIA request to get their hands on the court settlements that were made in the Whistle Blowers cases brought by two fired Detroit police officers. When the city refused to provide the Settlement Agreements and related Notice of Rejection forms, a court battle ensued, culminating in the Michigan Supreme Court ruling. In *Detroit Free Press Inc v City of Detroit*, 480 Mich 1079; 744 NW2d 667 (2008) the Court said:

The court held the trial court did not err in concluding the Settlement Agreement and the Notice of Rejection were "public records" and subject to disclosure pursuant to the FOIA. The court also concluded the plaintiff-*Detroit Free Press's* Freedom of Information Act (FOIA) requests were sufficiently specific, and there is no FOIA exemption for settlement agreements.

This case affirmed the documents are public documents and are subject to production. Audrey said the ruling is not a landmark by any means, but it takes away the ability to shield the reputation of public defendants when settlements are made in cases that allege unproven bad behavior. Even though other documents are agreed upon addressing the facts, the allegations are available for posterity.

Principles Can Be Costly When FOIA Requests Are Ignored

Another area of significant concern to Audrey is the cost of mishandling a FOIA request. One of the most common areas of default is failure to meet the timetables established in the act. The public has the right to "inspect, copy, or receive copies of the requested public record, under MCL 15.233(1), or under MCL 15.233(3); they can choose to examine public records. The government has five business days to respond to FOIA requests, MCL 15.235(2), and may only ask for one 10-business-day extension under MCL 15.235(2)(d).

If the entity does not meet the timetable for providing a response, it forces the requester to go to the courts to seek a remedy. Once this happens, MCL 15.240(6) allows the attachment of attorney fees. The law says if the prevailing party is the person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record, the court shall award reasonable attorneys fees, costs, and disbursements. If the person or public body prevails in part, the court may award all or an appropriate portion of reasonable attorney fees, costs, and disbursements. MCL 15.240(7) allows the court to decide if the public body arbitrarily and capriciously denied a FOIA request, which allows for a required \$500 fine.

Audrey points to a recent Michigan Supreme Court case that supports MCL 15.240(6), which requires a court to award reasonable attorney fees, costs and disbursements to prevailing FOIA plaintiffs. In *Coblentz v City of Novi*, 774 NW2d 526 (November 13, 2009) the Court reaffirmed their position of reasonable attorney fees;

The trial court erred in considering whether the city's conduct was "corrupt enough" to justify a sanction that "amounts to a severe criminal penalty," and whether the requested attorney fees would bankrupt the city or whether a sanction would "burden...the public welfare." "Nothing in MCL

15.240(6), or decisions of this Court, authorizes consideration of such factors in determining a reasonable attorney fee award." Reasonable attorney fees shall be determined pursuant to the factors set forth in *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008).

In *Smith*, the Court ruled that in determining a reasonable attorney fee, a trial court should first determine the fee customarily charged in the locality for similar legal services. In general, the Court shall make this determination using reliable surveys or other credible evidence. Then, the Court should multiply that amount by the reasonable number of hours expended in the case.

Audrey opined that this decision will help to curb some of the costs in these cases, but in most circumstances FOIA cases should not have to go to court to be resolved. Audrey said to make sure to get the FOIA resources by going to mml.org and in the search box at the right top of the screen put in FOIA, then follow rules explicitly.

Social Networking, FOIA, Retention

A presentation entitled *Social Media: Legal Considerations for Communities*, made by Attorney Laura Katers Reilly of Kendricks, Bordeau, Adamini, Chilman & Greenlee, P.C., at the MML Region Seven Education Seminar in Ishpeming Michigan on May 13th, spoke to the issue of social networking sites established and maintained by a "public body" being subject to FOIA. As of the date of her presentation, Reilly said there were no Michigan cases considered specifically on point to FOIA and social networking. She came to her conclusions looking at trends from the latest FOIA litigations, rulings and opinions from other states, and some educated predictions.

Reilly suggested that using the language of what a public record is under Michigan FOIA, and the *Howell Education Association* decision as guidance, a municipality's official page on social

networking sites such as Facebook (Twitter 'tweets', etc.) would likely be a "public record" because the content is posted by the municipality in "performance of an official function." Whether or not postings by others on the site constitute "public records" will depend on the purpose of the comments. Examples are posting questions or proposals on the site and inviting comments to gauge public sentiment on issues. She went on to say that, the "Friends" info or sign in, or identification of blogger info, which could include unsolicited comments not pertaining to a subject addressed on the site, are, like the emails in *Howell Education Association*, more "personal" and incidental to public purpose, and therefore would probably not be a "public record".

One of the most important issues in using a social networking site is for the municipal entity to establish rules of use before creating a social networking page. The rules should be placed on the social networking page setting forth the purpose of the forum and guidelines for posting comments. Reilly said the idea is to allow the municipal employee monitoring the site to edit public posting so people are not promoting their own business or hijacking the intended discussion of point. This also allows the control of inappropriate language, comments or subjects. She also recommended that the entity establish that once posted the entity reserves the right to restrict or remove any content that is deemed in violation of the entity's Social Media Policy, third party regulations or any applicable law.

The next issue is that the entity's retention policy outlines how, when and where the information from the site will be stored and who is responsible to retrieve it. Remember, under *Howell* and *Detroit Free Press*, private records can become public records when it becomes relevant to an official function. It becomes very important to be able to find, analyze and reproduce the information if presented with a FOIA request or subpoena otherwise there may be sanctions.

To find information on the Freedom of Information Act and Records Management go to mml.org or contact one of the Research Specialists at the MML.

LEAF continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact the Michigan Municipal League's, Loss Control Services at 800-482-2726, for your risk reduction needs and suggestions.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our reader's are encouraged to consult with their attorneys for specific legal advice.

LAW ENFORCEMENT ACTION FORUM (LEAF) is a group of Michigan law enforcement executives convened for the purpose of assisting loss control with the development of law enforcement model policy and procedure language for the Manual of Law Enforcement Risk Reduction. Members of the LEAF Committee include chiefs, sheriffs, and public safety directors from agencies of all sizes from around the State.

The LEAF Committee meets several times yearly to exchange information and ideas relating to law enforcement issues and, specifically, to address risk reduction efforts that affect losses from employee accidents and incidents resulting from officers' participation in high-risk police activities.

*Sponsored by the Michigan Municipal League Liability & Property Pool and Workers' Compensation Fund
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