

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday April 17, 2012

Chairwoman Mischel called the meeting to order at 6:30 PM at the Government Center, 315 Bridge Street.

Present: Dorance Amos, William Larson, Jim Lundy, Emile Sabty & Renee Mischel.

Absent: Jean Derenzy & Shen Smith

Also Present: Leonard Harrett, Zoning Administrator. Larry Nix, Planning Consultant. Audience 6.

Adoption of Agenda: M/S – Lundy/Amos. Agenda for 4-17-2012 meeting was adopted unanimously.

Approval of Minutes: M/S – Lundy/Larson. Minutes for 1-17-2012 meeting were approved unanimously.

Public Forum: None

Public Hearing

Amendment #2012-01 – Chapter 1, Sec 1.03 DEFINITIONS, Access Easement, and Chapter 2, Section 2.19 PRIVATE ROAD REGULATIONS Add Sub-Section 2.19-G.

Chairwoman Mischel opened the Public Hearing.

Mr. Nix, Planning Consultant, upon request from the Chair, reviewed the amendment as written. With no public input, Sabty/Amos moved to close the Public Hearing. **Approved 5-0-0**

As there was no further discussion Chairwoman Mischel asked for approval of the amendment.

M/S – Mischel/Amos. Move to recommend approving amendment #2012-01 to the Elk Rapids Township Zoning Ordinance Chapter 1 Section 1.03, adding Access Easement and Chapter 2 Sections 2.19 adding Sub-Section 2.19-G as written.

Chapter 1; Section 1.03 – DEFINITIONS – add “Access Easement” to read as follows:

Access Easement – A portion of land intended for the sole purpose of ingress/egress to a parcel. For the purposes of this Zoning Ordinance, an access easement shall be considered a private road, as defined herein.

Chapter 2, Section 2.19 – PRIVATE ROAD REGULATIONS, add Sub-Section “G” to read as follows:

G. Where a private road or access easement is present on a lot, minimum required yard setbacks shall be measured from the private road or access easement right-of-way, regardless of whether the right-of-way provides frontage for the lot.

Vote. Yes – Amos, Larson, Lundy, Sabty and Mischel

Motion passed 5-0-0. Approved amendment #2012-01 will be sent to County for their review and concurrence.

New Business

Twin Bay Medical, Inc. A letter from the applicant dated March 20, 2012 was received requesting that the Planning Commission extend the approval of the existing 5-17-2011 Site Plan as is for another year.

Mr. Sabty stated that upon receipt of the letter and in a discussion with the applicant they advised that they have completed the rear addition as requested in the Site Plan of 5-17-2011 and it is now in use. Now they are working on completing the South addition to the structure as planned as soon as work details become feasible. There will be no changes to the approved site plan.

M/S – Amos/Sabty. Move to grant a one year extension, which expires on 5-17-2013, to the Twin Bay Medical, Inc Site Plan previously approved on 5-17-2011 for the property located at 11590 US-31 South, Williamsburg, MI. **Approved 5-0-0**

Site Plan Review – Joseph A. Nowak/Mark Blackmore – Blackmore Property Management

The Chair asked Mr. Nix, Planning Consultant to review his application findings.

Mr. Nix stated that the basic Zoning Ordinance standards have been complied with in this Site Plan. The property ownership documentation by Mr. Nowak was received. An impact statement on infrastructure and natural environment of adjoining lands would not be needed since this request is considered an existing situation and the applicant would just be moving in and would not have any additional impact on the area except what they might be doing outside, particularly the storage bins and the Black Diamond Sealing business and how that is going to work on this property. On the application, Black Diamond is noted as an office for that use, but there were no details as to what is involved and the equipment involved. These need to be addressed by the applicant.

Mr. Blackmore, lessee, advised that the bins as shown on the Site Plan are opened and would be used to store mulch and similar landscape material, and are four (4) feet high. Black Diamond would only have their office there; the work location will continue to be on the existing property at Milton Township. Work trucks will not be stored on this Site Plan location.

Ms. Mischel asked about retail sales and displays and how that will be handled, would things be viewed outside while the actual sale is transacted inside the office? Mr. Blackmore explained that most of the material in the bins and the tree and plant displays are hauled to the work site on the landscape vehicles/trailers. Should someone ask to buy it on site they would load the customer car/trailer and the transaction is completed in the office.

Ms. Mischel asked about the plants display area locations? Mr. Blackmore responded that the trees and plants would be displayed in the designated berm areas and replaced as they are sold.

Mr. Sabty asked where the company vehicles would be stored and what goes inside the building? Mr. Blackmore responded that the vehicles would be stored behind the building (west) and in front of the bins area and that equipment related to landscaping goes inside the building, and at times a vehicle as needed.

Mr. Sabty stated that he was informed of and is making the Planning Commission aware of the fact that there is a 40' ingress/egress easement on the north side of the building. The Site Plan recognizes the 33' easement as well as the 10' north side setback; probably that is how the number 40 came about.

The Chair asked Mr. Harrett, Zoning Administrator to comment on the easement. He stated he views the 33' easement on the Site Plan as an easement for the Electric lines.

Mr. Sabty, in response, stated that when viewing the Site Plan it is noticed that the electric lines are located outside the 33' easement, to the south, so is the water well. For the record, there are three ingress/egress easements to the three Cooper properties located west of this property. The one showing on the Site Plan runs along the north side and continues thru the neighboring Mylone property accessing the Cooper property house to the west. The second easement runs in conjunction with the access road north of this property and serves the trailer house on another Cooper property. The third easement starts around the Nowak Cabinets property and runs north behind the commercial area to access the third Cooper property there. These three ingress/egress easements are registered with the property deeds.

Mr. Nix addressed the Site Plan signs. A total of 50 sq ft of signs is allowed with no more than two signs. One is the existing road sign which is 30 sq ft. The other is the Canopy sign over the door for Blackmore Property Maintenance and Black Diamond Asphalt; the actual canopy size makes for a bigger sign there, however, if we look at the Sign Ordinance and follow by drawing a rectangle around the words on the canopy, then the sq ft area is fine; but if the words on the canopy get any larger than what is illustrated in the Site Plan, then the sign will exceed the limits allowed.

Ms. Mischel asked Mr. Nix and Mr. Harrett about the parking of Company Vehicles in the back of the building; it was indicated earlier that there might be a Black Diamond vehicle there at some times, and since Black Diamond there is just an office and not a business, what are the regulations covering that?

Mr. Harrett stated that the Ordinance does not address the existence of a company vehicle parked outside in a commercial zone. Mr. Nix concurred with the statement and went on to state that from Mr. Blackmore's letter to the Planning Commission he intends to preserve the good appearance of the area and the PC efforts to maintain that good appearance as that section of US-31 is the entry to the Elk Rapids area. Mr. Harrett suggested putting a Site Plan condition to limit how many work vehicles could be found on site.

Ms. Mischel stated that at this time of review this business can be accommodated on the premises without a problem. We don't know now if the company becomes too big which might mean more vehicles would be needed. How many? Or if it happens we can deal with that when it happens. At present we can deal with the facts on hand but not some future unknown.

Mr. Harrett stated that there are six marked parking spaces in the back area, if three are for employees and three for company vehicles, it would be OK. But if all have trailers, what then? I hope the business will prosper, but when that happens and they have many company vehicles, we might have problems then.

Mr. Sabty said that it seems the discussion is shifting into a probability of unknown rather than the facts on hand, but to pursue that line. The business now have three or four vehicles with which they do all the work in Elk Rapids, and from their impressive list of customers they are now able to do it; unless they end up doing the landscaping and property maintenance for every home and business in Elk Rapids, then that becomes a different story, and would the current space be adequate for such an expanded business? We cannot look at a Site Plan for today and dwell on what they might do in the future, we don't know, and that is why the Site Plan review dwells on the facts on hand.

Mr. Nix suggested that a condition might be added that all parked work vehicles must be parked in the back side parking area near the bins and that they cannot be parked in front of the building or between the building and the road.

A Statement for an added condition by Sabty/Mischel, "As a condition to Site Plan approval all work vehicles are to be parked in the back (west) area of the building."

Mr. Harrett inquired about a Special Exception for allowing outside sales and displays? Ms. Mischel responded that this business does not require a Special Exception because they will not have outside sales and displays. Mr. Harrett then asked about displays of lawn equipment? Mr. Amos responded that the Planning Commission is considering material in the bins, trees and plants, there is no mention in the request of displays or other things located outside, to consider that we would be going outside the limits and we should stay within and deal with what is on hand.

Mr. Nix suggested that to avoid a Special Exception and clarify the approval, that if the outdoor display area goes beyond the bins and berms, they may have to, upon judgment of the Planning Commission, seek a Special Exception to allow the outdoor area to expand beyond what is indicated on the current Site Plan.

Chairwoman Renee concluded that another added condition to the approval shall be that all outside display areas be confined to the berms and the current landscape plans as proposed.

Mr. Sabty stated that the Zoning Ordinance section 11.02 lists the permitted uses in a Commercial Zone. Landscape and Property Maintenance business is not listed as a permitted use. However, at the end of that section the Ordinance states, “ *Other similar retail business or service establishments which supply convenience commodities or perform services primarily for residents of surrounding neighborhood, provided, however, such uses shall be found to be similar by the Planning Commission.*” In our Site Plan approval process we have to find that we authorized Landscape and Property Maintenance as a use similar to the uses permitted by right in a Commercial Zone.

Mr. Sabty provided a statement for adoption during the Site Plan approval, that because in the Zoning Ordinance Section 11.02 under permitted uses, Landscape and Property Maintenance is not listed as a permitted use, therefore the Planning Commission does authorize Landscape and Property Maintenance as use similar to uses permitted by right in a Commercial Zone.

Mr. Fox, audience, commented on clarifying the allowed parking on the south side of the building as to overnight and weekend parking there. It was brought out that parking on the south side of the building was intended for customer parking and not for overnight or weekend parking.

The Chair summarized the review findings that the standards are met and that there are three areas to be addressed for approval, one that this business is similar to permitted uses by right, the other two are conditions that work vehicles be parked in the back parking area on nights and weekends, and that outside display areas be limited to what is currently on the Site Plan.

With no further discussion, the Chair asked for a motion on the Site Plan.

M/S – Amos/Lundy. Move that the Planning Commission find that Landscape and Property Maintenance is a use similar to uses permitted by right in a Commercial Zone and to approve the Site Plan for Blackmore Property Maintenance as submitted with the following conditions.

1. That work vehicles be parked in the back parking area west of the building for overnight and weekend parking.
2. That outside display areas be limited to what is shown currently on the Site Plan.

The Motion was **Approved 5-0-0.**

Shoal's North Site Condo – Request for Review

The Chair stated Mr. D. Ireland requested a review for this property and a possible easing of the involved restrictions. Mr. Harrett, Zoning Administrator had requested including this as an agenda item, he was asked to brief the PC on the request.

Mr. Harrett stated that in 2005 Mr. Shoal proposed a six lot site condo on that property on Elk Lake Road. The Planning Commission after extensive reviews made all six lots conforming lots. One existing accessory structure by itself on lot #2 would have made that lot nonconforming which by Ordinance rules cannot be created. To solve the problem, the PC on 6-7-2005 approved the Site Plan with 17 conditions, two of which pertained to lot #2 accessory structure and said it could not be used for anything and must remain locked and out of use until such time when a primary structure is built on that lot. This became part of the legal registration of the deed registered at the County. Recently the Shoal Site Condo property was taken over by the bank and is trying to sell the lots. They indicated that the restrictions in the deed on lot #2 make it hard to sell. The people here tonight are asking for a compromise language that will help them sell this lot.

Mr. D. Ireland, Real Estate Agent, stated that lot #2 has a restricted accessory structure on it, and the restriction says that even if a home is to be built on it, the home must be well in progress before the barn/garage goes into use. An owner would not be able to use the structure to store construction material inside of it while preparing to build a house on the lot. With the bank, we are proposing a lesser restrictive language on lot #2. That as to the barn/garage, the buyer is the only user of that building, that everything must be kept inside it, that it could not be

rented to anyone, and that it could not be put into commercial use. Making that modification to the agreement, we can get the property sold and a house built on it.

Mr. Amos stated that to avoid buying the lot with the barn/garage on it and not putting up a primary structure, a time limit can be put in place when the building permit is issued. If not completed in time, the building permit will go away and it becomes in violation.

Mr. Sabty stated that any zoning change goes with the land and not with the owner. The restriction was put in place to avoid creating a nonconforming lot. Any change to the restriction rules would create a nonconforming lot, regardless of the intentions of facilitating a sale which may not occur. Consider the situation where one gets a building permit for a house, digs a hole in the ground for starting a foundation then goes on and start using the accessory structure, the following year he pays \$25 for the permit renewal and continues to use the accessory structure but no house, is that right? Any change in the restrictions on the deed will go with the land, and to go the violations way is an expensive burden on the Township when now it is not. When the restrictions were put there, it was to avoid creating a nonconforming lot and the restrictions allowed the total project to proceed. The restriction language avoided the pretence of building a primary structure by stating that the project should be well on its way before the accessory structure is put back in use.

Mr. Amos stated that to use the barn/garage in the interim, the building permit would be tied to the completion of the primary structure within a set time, if that does not happen, then the building permit goes away and with it the use of the building.

Mr. Lundy stated that modifications may look alright, but how can you get to do something without building a house on the lot.

Mr. Fox, Bank Representative, stated that it will be used by an owner who intends to build on it. In these hard economic times, the restrictions on the lot do create a difficulty in selling the lot. A lesser restriction will help even with time limits.

The Chair stated that this subject is just been presented to the Planning Commission. The Chair suggested that Mr. Harrett and Mr. Nix review this subject further and come back with a recommendation.

M/S – Mischel/Amos. Move to authorize Mr. Harrett and Mr. Nix to take a closer look at this property and bring back a recommendation if there are changes that they would recommend to the Planning Commission at the next meeting.

During discussion Mr. Sabty stated that at this stage, this is the wrong place for the request to come to the Planning Commission. The Planning Commission in 2005 recommended approving the Site Plan with 17 conditions. A second motion then recommended to the Township Board that they approve the Site Condo with the conditions as is. The Township Board then with the attorney made a final approval after which it became part of the Site Condo lot split property deed. This request now should be made to the Township Board (Approved Site Plan Condition #3) because they were the ultimate decision makers for the Site Condo and the lots split. Between them and their attorney, if they agree with the proposal they can recommend sending it to the Planning Commission for a review and report back, they can make the modification at the Township Board level, or they can reject the request for modification. It is their call. But to start this request at the Planning Commission level is just not right because it will be bypassing the legal authority process and ultimately it is going to end up legally at the Township Board, so why not do it right to begin with.

The Chair stated that this should be something that Mr. Harrett and Mr. Nix will be considering in their review.

Vote. Yes – Amos, Larson, Lundy and Mischel
Abstain – Sabty

Motion Approved 4-0-1

Old Business

Medical Marijuana – Zoning Ordinance

The Chair acknowledged that the Township Board had extended the MM Moratorium for 6 months through October 14, 2012. Mr. Nix was asked to give an update review of the Medical Marijuana Ordinance under study.

Mr. Nix – During the past meeting a couple of text changes were approved to the MM draft ordinance, also locating it in the A & R-1 Zones was discussed. He was asked to review with Messer's White and Amos the notion of allowing it only in the A Zone. Mr. White thought that the idea of locating it in the A Zone would not go anywhere at all and he was very concerned about even the TWP moving forward with MM ordinance at all, given the County Prosecutor opinion on the topic of MM. He also had further discussion with Mr. Amos who will be sharing that with the Planning Commission.

Mr. Amos concurred with Mr. Nix statement. First, we believe and agree from what our attorney had told us and the County Prosecutor position on the sales of MM that it will stand and not go forward. Second, we also believe that we cannot enforce it financially or legally. We get an individual who is a card carrier and have the right of the Privacy Act to do it in his home, so there is no enforcement there. We really feel that we keep the moratorium in place until it runs out and then see what happens by the next month if something changes, by what the Attorney General is doing and by what the Prosecutor believes. We are certain that taking a move forward now would be going in the wrong direction because, above all, we believe we cannot enforce it and we don't have the enforcement tools to do it right.

Ms. Mischel asked if there was any State Legislative move on the subject. Mr. Nix responded that there is none to date. Mr. Sabty advised that in a current News Paper column concerning Doctors dilemma with MM it was mentioned that the legislators heard testimony recently and are now considering a package of bills

Mr. Nix suggested that given the state of where the State of Michigan is at concerning MM, the position of the County Prosecutor and also on the advice of Messrs White and Amos who conferred on this subject, that we table this issue until so directed by the Township Board as to when they want to move forward on it at some time in the future. We do have a good solid draft ordinance on hand that we can come back to if so needed.

The Chair, based on advice from the Township and the Planning Consultant, moved to table further discussion on Medical Marijuana Ordinance until so directed by the Township. **Approved 5-0-0**

Correspondence - None

Public Comment - None

Members Comments - None

As there was no further business Chairwoman Mischel adjourned the meeting at 8:05 PM.

The next scheduled quarterly meeting will be on Tuesday July 17, 2012 at the Government Center, 315 Bridge Street, Elk Rapids MI.

E. S. Sabty, Secretary
4-17-2012

Approved 5-15-2012

Minutes are subject to approval at the next regular Planning Commission Meeting.