

**Elk Rapids Township  
Planning Commission**

Meeting Minutes – Tuesday July 17, 2012

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

Present: Jean Derenzy, William Larson, Jim Lundy, Renee Mischel, Emile Sabty & Shen Smith.

Absent: Dorance Amos.

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

**Adoption of Agenda:** M/S – Smith/Lundy. Agenda for 7-17-2012 meeting was adopted unanimously.

**Approval of Minutes:** M/S – Derenzy/Lundy. Minutes for 5-15-2012 meeting were approved unanimously.

**Public Forum** – None

**Old Business**

**Shoal's North Site Condo – Lot #2**

The Chair noted that the current owners of this property Bank/Agent are not present. At the last meeting they were seeking relief from the property deed restrictions to allow the use of the existing pole barn on the property before a dwelling is constructed. Len Harrett and Larry Nix were to study this matter and consult with the TWP, then bring back a report on a possible approach.

Mr. Nix reviewed his Memo to PC of 7-13-2012 (copy on file). He noted that, (1) the TWP did all possible within the Zoning Ordinance to save the structure from being torn down when they approved the lot creation. (2) With the barn door missing, they can put up a 6-ft chain link fence around the pole barn to secure it until it is OK to use it. (3) It can be sold or moved. (4) It can be demolished. (5) The agreement states that it can be used after a new residence built is well in progress; any other change would defeat the deed agreement.

Mr. Harrett reported of an interested party who would put a double wide mobile structure on the property and use the pole barn for his own use if feasible. He was informed of the 960 sq ft dwelling area requirement, have a septic system, a well, pass the County Building Dept. standards and it would have to meet the 'energy codes. The County advised that the roof has to be built to support 30-lb snow load, and if it is built after 1976, when the codes were improved, they would have no objections to it. It must be anchored down properly. The interested party was enthused that he would be able to rent the dwelling and use the pole barn for his own use and still meet the TWP requirements.

Mr. Sabty inquired about the Master Deed written when the Site Condo was developed, and if it would still apply? And if so, must a prospective buyer abide by those rules? Using a 'double wide' in such a plat may not work if the Master Deed is still in effect. Mr. Harrett advised that the TWP does not enforce or take any notice of a Master Deed, that the other lot owners would be the ones to take notice and enforce it.

Mr. Nix advised that it seems that on this whole issue we need to do nothing. This matter was discussed by the Planning Commission and no one from the Bank/Agent is present. Options were explored and no action should be taken nor required. Should the Bank/Agent contact the Zoning Administrator, it should be OK to share with them the Memo of 7-13-2012 about this subject.

The Chair summarized that it is the consensus of the Planning Commission that we should not change the existing deed conditions for this property, and that no action is required.

### Shoreline Protection Zoning Rules

Mr. Nix reviewed briefly the Special Meeting of May 15, 2012 and the circumstances leading to the draft ordinance. Then, it was noted that our ordinance is restrictive when dealing with shoreline protection. It basically states that one can't do any groin wall, build a vertical wall or do anything within 25' of the shoreline and can't exceed 30% of tree work. An applicant through the ZBA requested approval to fix his badly deteriorated shoreline and was not permitted. He approached the County Soil Erosion Officer for relief, which prompted the Officer to request the Planning Commission to review the restrictive rules and see if they can be modified to help in some situations. In requesting an environmental change they wanted to keep it as natural as possible, create a filtering system for fertilizer and runoffs while at the same time would keep it natural when working to get rid of some bad areas like ice dams, big earth mounds and dead trees etc; it has to be compatible with what the water does to the shoreline in terms of wave action, ice action and the erosion process that affects the habitat of fish, while at the same time avoid an adverse effect on the neighboring shorelines.

It was pointed that we are not experts in that field, this being a new field to approach, the proposed draft ordinance was kept simple, and tried to reach out to experts in that field to assist us when we get into such work and extend their assistance beyond the completion stage to make sure that the work was done right. The draft ordinance kept all what was in the existing ordinance, and added new section "D" which covers the added approach. Section D allows the applicant who wants to remove more than the 30% rule, to use the Site Plan Review and approval process at the Planning Commission to waive some of the restrictions. The work requested needs to be prepared by someone who is certified by the Michigan National Shoreline Partnership, which is an official existing certification position. After a submission is made the request is to be reviewed by the Soil Erosion Officer at Antrim County for their expert input, then we do the Site Plan Review at the Planning Commission. If the process is approved, It is suggested that the Planning Commission request a Performance Guarantee on the work to make sure that after one year of completing the work, the Zoning Administrator and the County Soil Erosion Officer can inspect the work to make sure it is working and the vegetation is alive, at which time the applicant would get back the performance guarantee and the case comes to a close.

The draft ordinance covers the process described; it addresses the land side issues and the water side issues when going through a Site Plan Review. It does not include technical standards as to what natural vegetation, or what we do specifically in the water; that we send to the County Soil Erosion Officer for assistance, who happens to be an expert in that field. This approach will take care of the concerns expressed during the Special Meeting of May 15, 2012. Such a project will be costly to an applicant attempting to do a thorough job.

Discussion followed about the restrictions on removal of dead stumps already on the water shoreline edge. Some people understand it that the Zoning Ordinance allows such removal outside of the 30% rule. Mr. Nix stated the draft ordinance approach on that appears in the added paragraph D, that if a property owner want to remove those tree stumps and/or those natural ice dams then paragraphs D comes into play, even if it is not more than 30%, one has to go through the Site Plan Review approval process.

Chairwoman Mischel suggested that it may be preferable to see that if more than 30% of living trees and shrubs and/or the removal of natural ice dams or tree stumps are proposed, then the Site Plan Review and approval process is appropriate.

Ms Smith pointed that there might be a problem with the "more than 30% part," that it might open the door to removing all the trees on a property. Mr. Nix advised that the Ordinance pertains to the area from the shoreline and 25' inland, that beyond the 25' we don't control what happens there. Ms Smith added that in the strip, if more than 30% is cut, it would blight that strip

Mr. Sabty stated that during the Special Meeting East Bay Township was mentioned as an example of a Township that uses the Planning Commission Site Plan Review in those special situations. Mr. Nix advised that the draft language also covers the removal of the natural ice dams, when the ice dams and tree stumps are causing environmental damage to the water side.

Ms Smith stated that we should not allow someone to take out more than 30% of the trees in the 25' strip. The draft wording may need some clarification. Mr. Nix advised that if more trees were to be removed they have to come to the Planning Commission for permission; why would an owner want to take out more than 30% in the 25'

strip? If one is removing trees that are in the ice dam, why not leave some there specially beyond the ice dam if they are not a problem, which would keep the property shoreline appearance blending in with the area around it. Cutting the trees for a “view” should not be an acceptable reason. The Planning Commission can get into such details during the Site Plan Review approval process.

Mr. Sabty stated that the draft ordinance is specific that a person who wants to make a dimensional change such as building a deck in the 25’ strip would go to the ZBA for approval. If the request is turned down they do not qualify to go to the Planning Commission for such a change using the proposed Site Plan Review. Only extensive work that is the product of the shoreline water edge and the strip damage would come to the Planning Commission for review.

Mr. Nix pointed that as he sees it, either one of the water work and land work repair or both together would trigger a Site Plan Review by the Planning Commission with professional input. Not in all situations would the 30% work apply, an example would be, when one have only three trees and one is in an ice dam. We can put in the ordinance that the property owner should strive to maintain as much of the natural trees as possible to achieve the objective of the National Shoreline that is being promoted with some limitations that would still meet the objectives; but that may not be practical because there are so many different situations out there and seldom one shoreline is the same as the other.

Mr. Harrett commented that Sec. D-2 in the draft does show that the Planning Commission is concerned about the character and impact of the proposal. The Planning Commission does not have to clearly define what their likes and dislikes are, what a detailed 30% is, or the variety of trees to be cut and which ones to stay. The Planning Commission should be performing a sort of general “artistic” review to maintain the character of the shoreline. They should go into a Site Plan Review openly and not be limited by pre prescribed numbers and conditions. Such things are hard to define in advance except on a case by case basis as it happens, which keeps the Planning Commission free to make a decision on that case and would control excess and unwarranted tree removal in the 25’ strip.

Mr. Larson stated that we are trying to write an ordinance that we are not even into its content yet. The lot in question that came up, the presentation that followed and the program in review are basically a PILOT program; it warrants some consideration for an individual Site Plan Review and approval by the Planning Commission, but I don’t think we should rewrite all the laws we have right now. Basically the draft ordinance is a very good start. If we were to consider a Site Plan and say yes to something that should be or could be done, but we really don’t know how, we have the expert that would come and do it with us. It would be just that individual Site Plan for which we would do something. I don’t agree with what the discussion is leading to. Some of what is being said is true and some is not. So, if one would come for an individual Site Plan Review, we would seek the help of the expert in that field who would be the one to guide that effort; we repeat that that through 1, 2, or 3 years, after that, when we know more about what we are doing, then if we need to put something concrete in the Ordinance, then do it. But as far as stumps go it should be the least of our worries, because in 10-12 years the stumps would be rotted and gone. Briefly put I feel that something should be done, but don’t destroy what we have, yes create a Site Plan Review program on an individual basis approach, and monitor it for more than one, two or three years, then make changes to the ordinance based on factual experience.

Chairwoman Mischel pointed that our current ordinance says that one can’t remove more than 30% nor can disturb the root system. Draft section 2.11-D says if more than 30% of living trees and shrubs will be removed..., it is felt that the statement opens up the possibility of actually weakening our Ordinance that says one can’t go more than 30%.

Ms Smith stated that any work that is done should fit into and not change the forested shoreline of our lakes; we want to keep that look.

Chairwoman Mischel said that in whatever approach we take, our responsibility is two folded; (1) Environmental Protection, and (2) Fixing a deteriorating shoreline while still maintain the environmental protection. How we accomplish both at the same time is the challenge. Then she asked the members for their comments on the discussion.

Ms Derenzy stated that we should keep what we have, but should not allow removing more than 30%. The County Officer will review everything that we do. When they want to improve the shoreline condition under existing Ordinance Section 2.11-C they are prohibited from doing any work.

Mr. Sabty pointed that under the proposed draft we would involve the professionals including the County Officer when one has to work the shoreline to improve it. But as far as someone wanting just to remove trees in the strip, the Zoning Administrator has been handling that all along when working within the 30% rule. There is no reason to change that responsibility.

Mr. Harrett advised that in almost every case, the owner thinks that they can cut 30% of the trees, to which my response is that they can't cut any trees, because the previous owners already cut the trees. The 30% rule does not apply every time the property changes hands and our shorelines are on tape as they existed in 1999.

Chairwoman Mischel advised that it needs to be in the ordinance and clearly stated that the 30% removal of trees would apply only once to a property.

Ms Derenzy stated that there should be a limit put into the ordinance, we need to keep the natural character of what we are trying to achieve in Elk Rapids Township, and we don't want people to automatically think that if they go the 30% cutting they can go for a 100%. We should have a limit that they could not go above; whatever we think that limit shall be but we should not keep it open.

Ms Smith stated that we should allow removing the stumps within the 30% cut trees without getting a Site Plan Review.

Mr. Nix advised that removing an ice dam or breaker is part of land issues, and removing that and the stumps would be part of the Site Plan Review process and what it involves. If we do restructure the draft on hand and work with Paragraph "C", we can remove the part addressing the 30%; but then in the 25' strip we will be taking out the ability to cut trees up to 30%, and replace all that with language that basically says, if one wants to remove living trees and shrubs including the removal of natural ice dams, one has to go through the Site Plan Review and approval process, which in essence is saying one can't cut anything in the 25' strip, we are going to take away the 30% ability. This does not cover how many trees can a property owner cut down or what is the top limit. Should it be more than 50% of the trees that existed prior to 1999 that can be removed from the 25' strip?

Ms Smith stated that very few properties in the TWP shoreline area still retain the original trees. May be we should be writing the Ordinance geared towards protecting the portion of the trees that exist today. Since most properties have gone through the 30% cutting, there should be no tree cutting permitted. The Ordinance should be dealing only with the shoreline ice dams and tree removal.

Mr. Nix advised that we want to maintain that no more than 30% is cut. We don't want to lose the natural view look of the tree lined Elk Rapids TWP shoreline. But because almost all the properties on the lake shore are different, we would have a hard time writing the rules, we don't know where the trees are, we don't know how the trees are affected by the presence of ice dams, some trees have grown out through the ice dams, if one can't remove the tree, how can the ice dam be removed? Every piece of property needs to be reviewed without limits other than the Planning Commission judgment, and that is how the draft ordinance is structured, there is no limit to how much the Planning Commission will be the judge as they review each case on its own. They would work out with an applicant so that after the work is done, they would restore the view from the water side to maintain the existing natural look.

Chairwoman Mischel stated that when focusing on the issues on hand, the issue is not what we want to see on some ones property, the issue is environmental, and shoreline erosion control. Mr. Lundy concurred with the statement, and added that we don't have the right to tell those people that what we have to see there is what we want to see there, so you can't do too much on your property.

Chairwoman Mischel stated that in 1979 the existing Ordinance was written to preserve the shoreline, and we don't tell an owner that they can't cut the trees because we want to see trees on your property, this is not proper. But the official Environmental Experts have told us that in the 25' strip of natural vegetation that exist there, it is

important to saving the quality of a lake and the environment. How do we keep that where it is supposed to be? That should be our goal.

Ms Derenzy stated that the discussion is getting there, but the property owner should have to come to the Planning Commission for a Site Plan Review and the County Officer would have to review it. Then if they do cut down all the trees, and we approve that, it is because they would be protecting the shoreline and that is an environment choice there, that would be our decision, but it has to go to the County Officer for approval, then they come here, and we are OK with it. What we are saying now is that everybody has to go to a Site Plan Review.

Mr. Sabty stated that through the years the County Officer has worked on preserving the shoreline water side related problems, but said that beyond that any work on the land side should go to the Zoning Administrator. Yes It is recognized that our current Zoning Ordinance is restrictive; let us keep the draft ordinance as written, brief and to the point, without going into the individual details of its components, because then there is no limit to where it would end once it is opened up. We have a general draft ordinance in which they have to come here for a Site Plan Review, and then we are open to look at it and make a decision on the facts presented. One case at a time based on its own merits. An ordinance straddled with technicalities could not be properly applied to properties of different natures, but a general ordinance such as the draft on hand would apply, because we can review and judge each case on its own logical merits. We have a good draft ordinance, don't choke it.

Chairwoman Mischel stated that being in Northern Michigan, there must be some groups that have looked at what we are studying and have adopted some rules; it would be helpful if such information was made available for review.

Mr. Nix noted that we have gone over some areas of concern and we are now back to our starting point. We started talking about the view from the water, cutting down the trees, and that is not the purpose of what we are doing, which is really saying that we can't accomplish some of what is being advocated because our mission of water quality and having the shoreline land issues in the 25' strip to work as an environmental system, to act as a filter into stabilizing the shoreline as the inner action of the shoreline land and the water work together. In some instances that may be the 25' strip, it may mean the removal of all trees in that area because it makes sense; we don't know that, it may mean everything in the 1<sup>st</sup> 10' of the property where everything gets cleaned from the ice dams, stumps, etc. There might be trees in the back 15' that would not have to be touched or maybe have to be cut up to varying degrees depending on each case. Setting a "limitation percentage" would be worrisome and may be regretted later because we would start to compromise the best environment solution on that property that has to be achieved because we want to have a different look. We want to make sure it looks "woody". Beyond the 25' strip they can cut all the trees they want as they may have done in other Townships for whatever reason.

Chairwoman Mischel with the member's concurrence tabled the discussion and asked Mr. Nix to review the discussion and bring back an update at the next scheduled meeting.

#### Combined Village Township Master Plan Update

Mr. Nix gave a brief review of the visioning process that took place involving the TWP/Village Combined Master Plan work shop. He addressed the subjects that were brought up and how addressed. Tallies are still being worked on and a report will be prepared for the Joint Committee for their review. Future processing of the Combined Master Plan would follow.

**New Business** - None

**Correspondence** – None

**Public Comments** – None

**Members Comments**

Mr. Sabty advised that Amendment 2012-01 was approved by the TWP Board on 7-10-2012, and will become effective 7 days after it is noticed in the local newspaper, (Effective 7-26-2012).

As there was no further business Chairwoman Mischel adjourned the meeting at 8:10 PM.

Next scheduled meeting will be on Tuesday October 16, 2012 in the Government Center, 315 Bridge Street.

E.S.Sabty, Secretary  
7-17-2012

**Approved 10-16-2012**

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