

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday October 16, 2012

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

Present: Dorance Amos, William Larson, Renee Mischel, Emile Sabty & Shen Smith.

Absent: Jean Derenzy, Jim Lundy.

Also Present: Leonard Harrett, Zoning Administrator, Larry Nix, Planning Consultant. Audience: Ms. Heidi Shaffer, from Antrim County Soil Erosion Control, Mr. Bob Kingon from Elk, Skegemog Lake Association, and Mr. Pat Brady.

Adoption of Agenda: M/S – Smith/Sabty. Agenda for 10-16-2012 meeting was adopted unanimously.

Election of Officers:

Chairwoman Mischel indicated a preference to have another person become the Chairperson.

M/S - Mischel/Sabty moved to elect Shen Smith Chairwoman.	Passed 5-0-0
M/S - Smith/Sabty moved to elect Renee Mischel Vice Chairwoman.	Passed 5-0-0
M/S - Smith/Amos moved to reelect Emile Sabty Secretary.	Passed 5-0-0

The Planning Commission expressed appreciation for the past services of departing Chairwoman Renee Mischel and welcomed new Chairwoman Shen Smith.

Approval of Minutes: M/S – Mischel/Larson. Minutes for 7-17-2012 meeting were approved unanimously.

Old Business

Shoreline Preservation Zoning Rules

Chairwoman Mischel had invited Ms Heidi Shaffer and Mr. Bob Kingon to participate in this meeting and express their thoughts on the Shoreline Preservation draft on hand.

Mr. Nix reviewed the proposed draft stating the main concern at the last meeting was that we should not allow someone to remove all the trees in the 25-ft shoreline strip. Determining the amount of trees to be removed is the hard part because every situation is different. Paragraph #4 was added based on the essence of the consensus as expressed at the last meeting. Each case would be handled on its own merits.

Chairwoman Mischel inquired as to what roll we have in this preservation effort, and our dependence on outside experts in this area, being the County.

Ms Shaffer raised a point for clarification, recommending in item D-3 that the TWP coordinate the communication with the County on notification for inspections. She also advised that the 30% limitation on removal of trees and shrubs in the 25-ft strip might end up being a problem, and it is better to not have it in the Ordinance.

Mr. Nix explored an alternative; at present the Ordinance state that no more than 30% can be removed; if there is land alteration, one still can't remove more that 30%. If more than 30% is to be removed, the only action then is to go to the ZBA for a variance. Having the 30% in item D then items D-1 thru 4 have to be met, if land is changed, removed, then ZBA approval will have to be used, because in item C it is fixed saying no more than 30% can be removed.

Mr. Harrett stated that maybe items D-3 & 4 would apply to water side properties that have not been developed yet; over the years, all others properties have taken advantage of the 30% and more. Owners look to the 30% rule today and do not pay attention to previous owners who already took advantage of the 30%. Taking out the 30% would eliminate this problem.

It was brought up that item D is giving permission to alter items A, B & C by doing something and asking permission to do it.

The Chair asked if the 30% is removed from item D, should it be also be removed from item C?

Mr. Nix pointed out that deleting the whole reference to the 30% and establishing that from this day forward, in the 25-ft strip, trees and shrubs shall not be cut; but then we go to item D and strike the 30% reference, with explanation that any alterations have to follow the Ordinance requirements.

Mr. Sabty stated that should the 30% be deleted, and an owner want to cut some trees, who would they ask? If the Zoning Administrator says no cutting, that decision is then appealed to the ZBA, and if they say no, it could end up in Court. But if to start with, if an application come to the Planning Commission, then they would say yes or no, with input from the Zoning Administrator or other experts. It is not appropriate to say just no cutting, there should be a step approach like coming to the PC for a special permit when upon review the work is approved or denied.

Mr. Nix pointed that to have a process it has to be quantifiable; otherwise it becomes a problem with different applicable numbers. A standard should be quantifiable. The ZBA is one approach. We need a plan or standard to be followed if the 30% rule is changed.

Chairwoman Mischel brought up the subject of wetlands that at present there is no Ordinance provision that would stop the removal of trees from wetland areas, and what can the TWP do to the Ordinance, or is that a DEQ regulation that we can't overthrow.

Ms Heidi Shaffer stated that a TWP Ordinance can be more restrictive than a DEQ one, but it can't be less restrictive.

The question was raised that if a wetland Ordinance is included would it fall within section 2.11 which is being worked on now or would it fall in some other part of the Zoning Ordinance. It was stated that it would be appropriate to include within section 2.11, that if it was in some other area it might create a misunderstanding in interpretation and application.

Mr. Amos stated that to work with wetlands we need to identify the wetlands in the TWP. Defining the wetlands would be a very difficult process. First we find the wetlands, identify them, then make all the property owners aware of it, and then move forward with an Ordinance. To do it backward is not a right approach.

It was suggested that an Ordinance can state, "Wetlands as identified by the DEQ", which eliminates the research work by the TWP. The response to that was that in identifying wetlands, the work has to be done and researched within the TWP, it is not appropriate to say, "Wetlands as identified by some Government entity." Developing a wetland survey is not a cheap project; it is very involved and is expensive involving specialized work.

Ms Smith suggested adding wetlands to section 2.11. But not forest management, leave it for future time. We already determined we need a standard requiring that no trees on shoreline 25-ft strip can be cut. We need a standard to state what they can do if they need to cut down trees, or what trees are allowed to be cut without any permission.

Mr. Larson stated that we should address the draft on hand without expanding on it. If we are going to do something, let's just do that. Maybe just change the 30% statement and say, "none". It was determined that we are addressing a subject that we don't know much about, and we are relying on Ms Heidi Shaffer as being the expert, take advantage of the current opportunity, put it under a site plan and leave the proposed Ordinance as is unless you want to take the 30% out of it at this time, run it as a pilot program, if it succeeds, and Ms Schaffer

confirms its success and we are convinced that it succeeded, then is the time to move and make changes that need to be made. Don't upset the whole thing now based on "if" come basis. Leave the laws the same, just create an exception for the pilot and let it test out, then after a preset period of time, if it is working, if the ice dam is working, then maybe the whole thing can be put under a Site Plan. Don't keep changing the whole thing.

Mr. Amos stated that he agrees with this approach, but still like to see some language included on the 30% for the undeveloped lots, because he estimates that there are more than just 3 or 4 undeveloped lots. Those lots should not lose the existing opportunity, and an allowance should be made when development is contemplated.

Ms Shaffer indicated that this project should work as long as we are into it together and is approached jointly.

Chairwoman Mischell summarized the pertinent points made so far that Mr. Nix should consider in reviewing and updating the draft for the next meeting

- The Ordinance would only deal with the 25-ft strip.
- Keep the draft text as is in section 2.11 without including wetlands.
- Remove the 30% language.
- Develop a standard for site plan application to cut trees and shrubs.
- In item D-3 add that the Zoning Administrator is the time keeper on the applicable progress.
- Move item D-4 to become D-2
- Include a provision dealing with undeveloped lots.
- No one is allowed to cut any trees within the 25-ft strip without a site plan.
- At some time in the future, the Planning Commission would work on adding a section on tree cutting in a wetland management program, either by itself or to be added to section 2.11.

M/S – Smith/Mischel. Move to ask the Planning Consultant to incorporate the summary suggestions made by the Planning Commission into the draft on hand for review at the next scheduled meeting. **Passed 5-0-0.**

Mr. Harrett pointed out that the Site Plan, Ch 17 is very extensive, much of which is not required for shoreline protection 25-ft strip. Mr. Nix advised that it can be geared towards the affected area only. Mr. Harrett added that such a reduced one can be made part of Ch 17 so that all Site Plan Ordinance language is in one chapter.

The Chair asked how neighbor properties would be affected in a site plan. Mr. Nix responded that some language can be included that the site plan work will not be of substantial detriment to the neighboring property and will not be contrary to the spirit and purpose of the Ordinance.

Combined Village Township Master Plan Update

Mr. Nix gave a brief review on the project progress so far. Most of the basic work has been completed and the project is getting ready to be put in a draft form which will then be reviewed by the Planning Commissions, to be followed by the approval stages.

New Business

Accessory Structure Ordinance.

The Chair introduced the subject for review, and then asked Mr. Sabty to review the draft Ordinance. Mr. Sabty stated that at a recent ZBA appeal in which the applicant was represented by an Attorney, much of the violations that took place in building a detached accessory structure in a residential zone were defended on the premises of, "Show me where in the Ordinance it states that such an action is not permitted." The TWP took the position that over time the ZBA had interpreted the Ordinance to mean that such actions are not permitted, and had applied the same interpretations to cases as they came up. It was pointed that if the ZBA had interpreted the Ordinance to mean as such, and had applied the same ruling to cases as they came up, the court would consider such action like an Ordinance even if the text is not in the Ordinance.

The suggested draft Ordinance would avoid any unclear situations like what took place, and would make it clear to an applicant what they can or can't do. The areas emphasized in the draft Ordinance are:

1. The detached accessory structure shall not be used for dwelling purposes.
2. There will be no plumbing in the structure. However if the applicant want plumbing in the structure, it would be allowed on the ground floor only and is limited to a half bathroom with two plumbing fixtures only, a sink and a toilet.
3. The attic or 2nd story is used for storage purposes only.
4. Access to the attic or 2nd story is by interior access only; exterior access or stairs shall not be permitted.
5. A site sketch to scale and with full details that meet the zoning ordinance requirements is to be submitted when requesting a zoning permit.

In addition, and to be consistent with previous zoning and planning decisions, The Attached Accessory Structure Ordinance section 2.06-D-2 was expanded to state that, access to the second story shall be by interior access only; exterior access or stairs shall not be permitted.

Mr. Sabty also made the observation that in 2004 when the current Accessory Structure Ordinance was revised, the PC tried to avoid penalizing large lot owners when building a detached accessory structure with a set height of no more that 18 ft to the peak, this was resolved then by having the 18 ft apply to lots of 20,000 sq ft or less, and lots larger than that were not limited and could go as high as 35 ft. In the ZBA case, the lot in question was 20,909 sq ft and located in the midst of a neighborhood of similar lot sizes, and the newly built 20'x24' two story garage with high rise roof became the object of complaint by the neighbors. If the PC did have this example then, probably they would not have used the 20,000 sq ft break point. Because most of the TWP platted lots are in that magnitude and much of the future work would fall into the remodeling or addition category, to avoid this situation in the future, a suggestion is made to raise the break point from 20,000 sq ft or less, to one (1) acre or less. The suggestion was accepted by the PC and would be added to the draft per submitted text.

During the discussion it was pointed out that the proposed plumbing on the first floor should not be limited to a small ½ bathroom as suggested. Garage owners usually would use sinks of various sizes and for different work or hobby purposes. It was suggested to delete reference to the ½ bathroom text and just state that no more than two fixtures are allowed and only on the first floor. Mr. Nix suggested changing the text on plumbing in the draft section 2.06-C-3 to read that no more than two internal plumbing fixtures, such as a toilet and a sink, are allowed and located only on the first floor.

Mr. Amos felt that the plumbing text is too restrictive as written in the use of a detached accessory structure. That the consensus is, no living quarters are allowed in such a structure; but people use garages to do various work and choose various fixtures for that, a ½ bathroom does not serve such a purpose.

Mr. Nix stated that the point being made here which the ZBA has made over time is to legitimize what they have been doing for the past decade; not allowing these accessory buildings to be converted or to be built as living quarters.

Mr. Harrett stated that traditionally he views zoning as not about rooms inside a house, but nowadays we get into the definition of a single family zone with seasonal rental above detached structures or apartment spaces over garages are starting to overlap. We can't police people from building a storage space above their garage, and then after all the inspections are completed, put living space upstairs. We can somehow deter rentals by not allowing exterior stairways. Regulating that plumbing has to be restricted to the first floor is a good idea. But after that it will be nice to be able to stipulate that it should be limited to only sanitary type toilet and sink, no showers. This would then require a floor plan of the building for which zoning has never been used. It has been the placement and the growth and the development of property so that a neighbor does not have to look at that structure next door.

Chairwoman Mischel asked Mr. Nix for his recommendation. He advised to change paragraph 3 to say, "No more than two interior plumbing fixtures. Rather than mention what kind of plumbing fixture, just say you are limited to two on the first floor or ground floor, any combination of two. This would not be regulating the interior aspect of it. This way we don't lay it out, we only say that you can have only two fixtures. When the Zoning Administrator

reviews the Zoning Permit Application, it is up to him to determine to the applicant what two fixtures are you using. Yes you can have plumbing; it has to be on the first floor, what are they?

Discussion went into section C-8 and the detailed site sketch requirement. Mr. Nix explained that a detailed sketch would eliminate any guessing or unforeseen things that might be added. It gives the Zoning Administrator the latitude to ask for the information to make sure there is compliance. It gives the tools to enforce the Ordinance.

Chairwoman Mischel asked Mr. Nix to review the suggestions, and revise the draft accordingly for the next meeting. M/S – Amos/Mischel made a motion to that effect which was unanimously approved 4-0-0.

Zoning and Planning Applications – Update: To be reviewed at the next meeting.

Correspondence – None

Public Comments – None

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Members Comments

Mr. Sabty distributed a Quarterly PC Meeting Schedule for 2013 which will be posted before the next scheduled quarterly PC Meeting on January 15, 2013. It was mentioned that at the next scheduled meeting the Planning Commission will consider holding their regular meetings every other month.

The Quarterly Meetings Schedule was approved unanimously 4-0-0.

As there was no further business Chairwoman Mischel adjourned the meeting at 9:10 PM.

Next scheduled meeting will be on Tuesday January 15,, 2013 in the Government Center, 315 Bridge Street.

E.S.Sabty, Secretary
10-16-2012

Approved 1-15-2013

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