

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday January 15, 2013

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

Present: Dorance Amos, Jean Derenzy, William Larson, Jim Lundy, Emile Sabty & Shen Smith.

Absent: Renee Mischel.

Also Present: Leonard Harrett, Zoning Administrator, Larry Nix, Planning Consultant. Audience, 4.

Adoption of Agenda: M/S – Lundy/Amos. After a new entry to Item “G”, Agenda for 01-15-2013 meeting was adopted unanimously.

Approval of Minutes: M/S – Lundy/Amos. Minutes for 10-16-2012 meeting as amended for name correction were approved unanimously.

Zoning Administrator Report

Mr. Harrett apprised the PC of a land division application submitted to the TWP for part of 47 acres on Orchard Road, a private road, owned by Mr. Don Hayden Jr. The plan includes a Private Access Road connecting to Orchard Road. Zoning Ordinance Sec 2.19-A-13 & 14 state that PC should review the private road plan in a land division and if it meets the standards, then forward the findings to the TWP Board. At the same time the applicant in considering future expansion into the rest of the property planned the private road to be built exceeding the required standards. Nothing in the engineering aspect of the Plan show any fault in meeting the Zoning Ordinance standards.

Mr. Nix was asked to brief the PC on his findings. He stated that the plan illustrates seven (7) lots around Orchard Road which is too narrow to accommodate all the proposed lots. Orchard Road will be widened by 2-ft to comply with the standard for serving more than 12 lots. The proposed cul-de-sac will be built to meet the ordinance standards. The maps on hand show lots 1, 2 & 3 on the left side of the proposed road with open space at their end. Actually the open space does not exist there. There is a provision in the Ordinance and the Land Division Act that say the depth of a lot can't exceed four times its width (4:1 ratio); unless there is a difficult situation on the property, then it can exceed the 4:1 ratio. The designated open space area on the map is actually an environmental sensitive and swampy area that can't be built upon. The lots as shown on the updated map do meet the 4:1 ratio but because there is no reasonable way to deal with the environmental sensitive open space, and this being a land division, not a condominium, it creates a lot of open space; accordingly it was found that the 4:1 ratio can be exceeded.

The TWP involved personnel and the Plan Engineer all agreed that the best approach is to make lots 1, 2 & 3 a little deeper and to document this on the Plan that the area there is an environmentally unbuildable property; that will provide the TWP personnel with a reason to exceed the 4:1 ratio when they deal with approving the land division.

It was emphasized by Mr. Amos that the environmental sensitive area is not a recognized wetland area and should not be referred to as such.

Ms. Smith asked whether we should be requiring that it be designated as wetland because of the environmental sensitive area on this map. Mr. Nix responded that all what is needed is for the applicant and the engineer to tell us and for us to verify that it is actually a low wet area; that would comply with the provisions of the Land Division Act and is sufficient documentation. Ms. Smith went on to say that since future expansion was mentioned, should we be designating that part of the map as designated wetlands or unbuildable or unplatable from the rest? Mr. Nix responded that there is no need for that, however if a deed restriction is contemplated, then it can be there. In a land division, at a future date, they can re split any of these lots provided they comply with the lot size regulation of the zoning district in which they fall. That is when it will be looked at.

Ms. Smith asked isn't that a good reason to get a deed restriction on it now, so that a future split is restricted? Mr. Lundy in response stated that this is something for the TWP Board to handle, not the Planning Commission.

Mr. Sabty stated that according to the Zoning Ordinance Section 2.19-A-13 & 14, a land division plan that include a private road would come to the Planning Commission for review of the proposed private road that it meets the ordinance standards. In this particular case the land division part is neither our problem nor our responsibility; it is a TWP Board responsibility.

Mr. Nix advised that lots 1, 2 & 3 are designated as Agriculture "A" zone and exceed 1 ½ acres, that for them to be split they need to have road access which does not exist; so discussing their split is hypothetical at best. Other than that change between the map on hand and the submitted updated map, and based on the discussion, the plan before us should have a positive recommendation and be sent forward.

Chair Smith asked Mr. Derman, Township Attorney who was in the audience if there was any other thing that the PC should look at before coming to a conclusion. He responded that what was discussed was adequate.

As there was no further discussion the Chair asked for a motion.

M/S – Sabty/Lundy. After review move to recommend to the Township Board that the proposed private road construction plans for the Lake View proposed project does meet the standards outlined in the Zoning Ordinance Section 2.19-A-13 & 14. **Passed 6-0-0**

Mr. Harrett distributed a copy of his Annual Report of Zoning and Planning activities which was submitted earlier to the TWP Board.

Old Business

Proposed Zoning Ordinance Amendment

Mr. Sabty presented two locations in the Zoning Ordinance that needed correction as follows:

Amend the Elk Rapids Zoning Ordinance as follows:

1. Chapter 1; Section 1.03 – DEFINITIONS – Delete:
"Board – The Zoning Board of Appeals for the Township".
2. Chapter 18; Section 18.05 – POWERS OF THE ZONING BOARD OF APPEALS, Subsection B – Change the last sentence text to read:
"the literal enforcement of the requirements of this Ordinance would involve practical difficulty or would cause undue hardship"

Mr. Sabty stated that the word **Board** was used back in 1979, for "the Board of Zoning Appeal for the Township" that Board was later replaced by a Planning Commission and a Zoning Board of Appeals (ZBA). Board is not used any more for reference. As to Section 18.05-B, the current text uses the word "difficulties" in the plural form and should be "difficulty" in the singular form.

M/S – Lundy/Amos. Move to approve amending the Zoning Ordinance text as presented and schedule the amendment for a public hearing. **Passed 6-0-0**

Shoreline Protection Standards Ordinance Amendment

The amendment draft text was opened for discussion.

Mr. Amos stated he does not agree with the draft text on shoreline undeveloped properties. He doesn't agree to have the Zoning Administrator in the position of writing special permits for what can or can't do at those lots. At this point most of the shoreline lots have been developed and most everyone has exercised the 30% rule. There exists some shoreline undeveloped areas that would be denied that privilege when reading the text as propose; and that should not be so.

Mr. Harrett stated that there are few shoreline undeveloped lots in the Township, and so far he did not have a problems with those vacant lots when they are brought up, and usually after using the Ordinance standards they end up with an equitable solution. There should be an ordinance standard to follow, otherwise the Township would lose control.

Ms. Smith stated that we did spend much time working on this draft ordinance with assistance from Ms. Shaffer from the County and Mr. Kingon from ESLA, that there are two issues to consider, the area below the HWM and the 25-ft strip. How did all this mesh in with what Ms. Shaffer was originally proposing.

Mr. Nix stated that recalling the presentation made last May on ice dams, stumps and shoreline erosion on the water side because our Zoning Ordinance as written forbids the removal of anything in that area of the shoreline. The presentation then brought forward a viable solution to this situation that would in the most preserve the shoreline and also assist an owner in doing the same. With that this draft ordinance was developed outlining the steps to be taken by utilizing a site plan approach. An applicant who wants to remove trees, shrubs or ice dams etc. would submit a site plan covering the 25-ft protected area. We would coordinate that with Ms. Shaffer from the County and our Zoning Administrator would work with her. It then comes to PC for review and approval based on those outside recommendations. The plan has to be prepared by a person that is certified with the Michigan Shoreline Partnership. If it is an undeveloped lot, we know that there is a 30% unwritten standard we would use even if it is not in the ordinance text. Our goal is to keep that natural shoreline look, and allow owners to improve bad situations when the shoreline if deteriorating. The 30% was deleted from the text because outside of a few undeveloped shoreline lots the 30% vegetation removal in the 25-ft strip had been done already. The few undeveloped lots would exercise that privilege even though it is not mentioned in the text.

Ms. Derenzy stated that she approves the draft text as written; however we should be able to add a statement about the undeveloped shoreline lots rather than rely on unwritten rules.

Mr. Nix made a suggestion to revise the text in section 2.11-C to address the undeveloped lots, It was accepted. Then he went on to address the concern about the Zoning Administrator coordinated work with Ms. Shaffer. Section 2.11-D-3 pertains to inspection after the work is done. Ms. Shaffer gets involved because it is a soil erosion problem while the Zoning Administrator is involved because it is within the TWP and he has to keep tabs on the work being done. That is why a coordinated process is advanced here. In the past inspection would be made by the County without the Zoning Administrator being involved. Now the two would be working as a team, call it an oversight committee. This coordinated effort would be for TWP approval of the work done in the 25-ft strip and the County approval on work done on the water side. If there was a disagreement, the applicant would still have to abide by the rules of the disputed one side or the other to secure both approvals. In general the way this ordinance is written and with the help from people supplying the input, we have a good Ordinance. Yes there might be a situation that raises a future question, that is normal, but let's adopt this Ordinance, and use it; if you see that it is raising questions or disagreements, and then we can address that through a change.

Mr. Nix stated that Mr. Lundy did bring up a point about Section 2.11-D concerning the removal of the 30% rule and the need for clarification of the remaining text. He made a suggestion to change the text to address that point. The suggestion was accepted. The completed revised Ordinance Amendment text would read as follows:

Amend Section 2.11, RESTRICTIONS APPLICABLE TO PROPERTY ABUTTING LAKES, RIVERS OR STREAMS, as follows:

Many lands within the Township are connected to, adjoin or abut lakes, East Arm of the Grand Traverse Bay, rivers, streams, and wetlands. In the interest of protecting the water quality, controlling erosion, and preserving the natural setting of the shoreline, the following provisions are applicable:

- A. No permanent groin wall structure, as defined by the Michigan Department of Natural Resources, shall be installed as a shore land erosion control device on any of the inland lakes, rivers and streams within the Township.

- B. Man-made extensions from the shoreline into or over said inland lakes, rivers and streams shall have an open sub-structure construction so as to allow the free and unrestricted movement of the inland waters natural current.
- C. A strip of natural vegetation shall be maintained paralleling the shoreline or streambed and traversing the property in question for a depth of twenty-five (25) feet beginning at the edge of surface loam soil or a contiguous root system, whichever occurs nearest to the shoreline. For underdeveloped lots only no more than thirty (30) percent of all living trees and shrubs may be removed by cutting them to grade level. Trees and shrubberies may be trimmed and pruned for a view of the water from the property. No land alterations including the removal of tree stumps and natural ice dams shall be allowed within this native protection strip.
- D. If living trees and shrubs are proposed for removal in excess of those permitted in Section 2.11-C above or if land alterations will occur within the native protection strip specified above, the following requirements must first be met:
 - 1. The applicant shall submit a site plan in accordance with Chapter 17. The submission requirements for the site plan shall include items 17.04-A 1-14, and 17.04-B 1-7 and item 22. The site plan shall be prepared by a Natural Shoreline Professional certified by the Michigan Natural Shoreline Partnership and shall detail the proposed modifications to the property to enable the Planning Commission to determine the extent and potential impacts of proposed changes. In addition to the review process outlined in Chapter 17 and prior to Planning Commission action on the request, the applicant shall submit the site plan to the Antrim County Soil Erosion Control Officer for review. The Planning Commission shall not approve the site plan unless the Soil Erosion Control Officer recommends approval in writing.
 - 2. The shoreline erosion design shall make every effort possible to maintain a forested/wooded shoreline character by maintaining existing trees and shrubs in the design and construction of the new shoreline protection system.
 - 3. The Planning Commission may require a performance guarantee as outlined in Section 17.08 to insure completion of any restoration, native landscaping or other features of the proposed modifications. An inspection, coordinated with the Township Zoning Administrator, conducted by the Antrim County Soil Erosion Control Officer shall take place after the modifications have been completed to determine whether stipulations have been met and whether Township permits can be issued. A second inspection, coordinated with the Township Zoning Administrator, shall be conducted by the Antrim County Soil Erosion Control Officer one year after Township permits have been issued to determine whether any required performance guarantee can be relinquished to the applicant. If the condition of the site is in compliance with approved plans, any such performance guarantee shall be returned to the applicant.
 - 4. The Planning Commission shall consider the recommendation of the Soil Erosion Control Officer, the extent of proposed vegetation removal or land alteration, proposed restoration, existing and proposed topography, and the location of any nearby structures. The application shall be approved where it is shown that the proposed modifications will not be injurious to shoreline on adjacent properties, and where the plan demonstrates an intent to improve a situation that is dangerous to the general public or harmful to water quality because of unchecked or potential shoreline erosion, sediment runoff or water pollution.

The Chair asked for a motion.

M/S – Sabty/ Derenzy. Move to approve the new revised text as written and amended, for Zoning Ordinance Chapter 2, General Provisions, Section 2.11 Restrictions Applicable to Property Abutting Lakes, Rivers or Streams and move it for a Public Hearing at the next scheduled Planning Commission meeting. **Passed 6-0-0**

Accessory Structures Ordinance Amendment

As the draft amendment text was opened for discussion, Mr. Sabty stated that the amendment text as written meets all the required standards that were contemplated.

Mr. Lundy asked about the allowed size of a detached accessory structure built on single family lots of over one acre. Mr. Harrett responded that Zoning Ordinance does not restrict the size of such a structure.

The complete ordinance amendment text would read as follows

Part 1. Amendment of Section 2.06, C.

- C. Detached Accessory Structures
 - 1. May only be built on a lot upon which there is a principal structure.

2. Are prohibited in the front yard, as defined in Section 1.03-Yards-Front Yard, or in either of the front yards on a corner lot, unless the following conditions apply:

On a waterfront lot, one (1) detached accessory structure may be located on that Portion of the lot between the water and the principal dwelling provided the following criteria are met:
 - a. It shall not exceed one hundred (100) square feet in area and ten (10) feet in height to the peak.
 - b. Shall meet all setback requirements of the zone district in which it is to be located.
 - c. The area of such accessory structure shall be counted as part of the overall lot coverage on the lot.
3. Shall not be used for dwelling purposes. If plumbing facilities will serve the structure, the structure shall be limited to no more than two (2) internal plumbing fixtures located on the ground or first floor of the accessory structure.
4. Shall maintain a minimum of ten (10) feet of separation from each other and from the principal structure.
5. Shall comply with all yard, setback and lot coverage requirements applicable to the permitted principal structure, except for accessory structures on lots less than or equal to one (1) acre (43,560 sq ft), the following shall apply:
 - a. The accessory structure shall not exceed eighteen (18) feet in height to the peak.
 - b. Within any zone district that permits a residential use, a maximum of two (2) detached accessory structures are permitted, one of which shall not exceed one hundred (100) square feet in area and ten (10) feet in height to the peak.
 - c. When a lot is less than or equal to one (1) acre (43,560 sq ft), the total ground level gross square footage of all detached accessory structures shall not exceed the gross square footage of the first floor of the principal structure, exclusive of all attached accessory structures.
6. Lots under common ownership that are adjacent to one another or separated only by a public road (e.g. lots are directly across from one another) may be legally combined to form one lot. Once combined, an accessory structure may be erected across the street from the principal building lot provided all yard requirements for a principal structure are maintained.
7. If the detached accessory structure has an attic or second story, it shall be used for storage purposes only and access to the attic or second story shall be by interior access only; exterior access or stairs shall not be permitted.
8. A site sketch shall be submitted along with a zoning permit application and approved by the Zoning Administrator prior to erection of a detached accessory structure. Such site sketch shall be drawn to scale and shall illustrate information necessary to determine compliance with applicable Ordinance requirements, including but not limited to dimensions and height of the structure, setbacks from lot lines and other structures on the property, location of the structure, and elevation renderings.

Part 2. Amendment of Section 2.06, D-2 and D-3.

2. An attached accessory structure may include second floor living space provided that such living space is a contiguous extension of living space within the primary structure. Access to the second story shall be by interior access only; exterior access or stairs shall not be permitted.
3. Attached accessory structures shall comply with all yard, setback, height and lot coverage requirements applicable to the permitted principal structure, except accessory structures on lots less than or equal to one (1) acre (43,560 sq ft), the following shall apply:

An attached accessory structure, including a garage, shall not exceed sixty (60%) percent of the ground floor area of the attached single family dwelling. Notwithstanding the above, an existing single family dwelling less than 960 square feet is permitted an attached garage up to five hundred and seventy six (576) square feet, or 24'x24', in area regardless of the ground floor area, subject to standards within the applicable zone district.

Chair Smith asked for a motion.

M/S – Lundy/Derenzy. Move to approve the revised text, as written and amended, for Zoning Ordinance Chapter 2, General Provisions, Section 2.06 Accessory Structures, Sub Section C Detached Accessory Structures, and Sub Section D-2 & 3 Attached Accessory Structures, and move it for a Public Hearing at the next scheduled Planning Commission meeting.

Passed 6-0-0

New Business

Collaborative Master Plan Review

The Collaborative Master Plan draft was opened for discussion.

Mr. Lundy referring to the appendix asked why we have the appendix appearing in the Master Plan. Mr. Nix stated that it represents a study of public ideas that were collected and to avoid losing them were included under the appendix.

Ms. Smith stated that one would not be able to refer back to the appendix if somebody was challenging something in the Master Plan.

Mr. Sabty stated that this appendix does not belong in the Master Plan. In 2007 when the TWP published their Master Plan, we used three different studies, and we did not include any of them in the Master Plan. Such studies are no more than thoughts. They are collected statements by a narrator who summarizes what a person says into a useable sentence. Basically they are opinions put into readable sentences to aid the Plan writer. A Plan gets input from multi sources and they don't get to appear in an appendix. The appendix should be deleted.

Mr. Nix asked if the Planning Commission would like to remove the appendix from the Collaborative Master Plan. The consensus was in the affirmative to remove the appendix.

After further discussion the Chair asked for a summary of the PC concerns expressed in the review of the Master Plan including the Village part.

1. Remove the appendix from the Master Plan.
2. Opening page – Acknowledgements - under Elk Rapids Township Board – update the listed names to show current members, Shelley Boisvert and Aaron Isenhardt.
3. Page 21 – Conservation Recreation – 2nd paragraph – property opposite the generator building is now a Village Park. (The old Mustard Bldg.) Should be included.
4. Page 35 – Future Land Use, 7th line – “...one of the Planning Commissions may determine...” Does one PC overrule or override the other? Maybe some more clarification is needed.
5. Page 21 – Future Land Use – 3rd paragraph re golf course use. Why identify specifically that one private property for potential future use. Should be left out.

The Chair asked Mr. Nix about the next step to take. Mr. Nix explained that the changes requested would be incorporated. With joint agreement on the text, a recommendation is made at the same time yet independently by each PC to the legislative bodies to have them authorize the Master Plan distribution to adjacent communities and the Regional County PC for review. After a 63 day waiting period for review, any comments received are addressed, and then the Planning Commissions can hold a Public Hearing. I would encourage the potential of a joint Public Hearing for both Planning Commissions at the same time and place. That way if there are further changes to the text that need to be addressed, we can do it jointly at that time. Then the document can be approved subject to those changes at that time, and forwarded to the legislative bodies for final approval.

With no further discussion the Chair asked for a motion.

M/S – Smith/Lundy. Move to approve the draft of the Collaborative Master Plan as presented with the suggested additions, corrections and deletions and forward it to the Township Board for distribution authorization. **Passed 6-0-0**

Planning Commission Application Form Update Review

Mr. Sabty explained the suggested PC Application update as presented in the draft. In addition further revisions were made, to delete the word Form from the title, to revise the Numbering system following the Zoning Ordinance sequence, to add page numbers, In item 1 to delete the entry “Non-Conforming USE/STRUCTURE Upgrade, and add text to item B-9. A completed copy would be presented at the next PC meeting. With no further discussion, the Chair asked for a motion:

M/S – Lundy/Amos. Move to approve the Planning Commission Application as updated. **Passed 6-0-0**

2013 Meeting Dates

Traditionally the Planning Commission would hold monthly meetings on specific dates and time; but must hold a minimum of four (4) meetings each year. On May 18, 2010 the Planning Commission changed their scheduled meeting frequency from monthly meetings to quarterly meetings. The dates of the eight (8) months designated as “NO MEETING” months would continue to be listed on the Meeting Schedule, to be used as a regular special meeting when needed.

After review of holding the PC meetings on a bimonthly schedule, it was determined to continue having four (4) scheduled (Quarterly) meetings, but can also call a regular Special Meeting as needed on any of the eight monthly “NO MEETING” dates during a year.

A Special Meeting was scheduled for March 19, 2013 to hold a Public Hearing on the three Zoning Ordinance amendments that were approved today. Notice will be published as required.

Correspondence – None

Public Comments – None

Members Comments - None

As there was no further business Chairwoman Smith adjourned the meeting at 8:50 PM

Next special meeting will be on Tuesday March 19, 2013 in the Government Center, 315 Bridge Street.

E.S.Sabty, Secretary
1-15-2013

Approved 2-28-2013

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