ELK RAPIDS TOWNSHIP PLANNING COMMISSION
TOWNSHIP OF ELK RAPIDS - ANTRIM COUNTY, MICHIGAN
SHEN B. SMITH, SECRETARY
P.O. BOX 175 - ELK RAPIDS, MICHIGAN 49629
(616) 264-5855

9/26/90

SPECIAL PUBLIC HEARING - HERMAN/HARRIS REZONING PROJECT

THE SPECIAL PUBLIC HEARING WAS CALLED TO ORDER AT 7:30 P.M. ON WEDNESDAY SEPTEMBER 26, 1990, BY THE CHAIRMAN TODD PARENT.

ROLL CALL PRESENT - LEONARD KLEIN
SHEN SMITH
BILL WHITE
DICK JOBE
DEAN VELIQUETTE
FELIX CASILLAS
TODD PARENT

A QUORUM WAS ESTABLISHED

READING OF THE MINUTES OF THE MEETING OF SEPTEMBER 10, 1990

A MOTION WAS MADE BY BILL WHITE, SECONDED BY DICK JOBE, THAT WE DISPENSE WITH THE READING OF THE MINUTES AND APPROVE THEM AS PUBLISHED.
MOTION CARRIED

THE CHAIRMAN EXPLAINED THE ZONING PROCEDURES TO THE PUBLIC AT LARGE THEN OPENED THE PUBLIC HEARING TO THE FLOOR. THE SECRETARY READ THE NOTICE OF PUBLIC HEARING INTO THE RECORD.

"THE PURPOSE OF THIS HEARING IS TO CONSIDER A REQUEST FOR THE REZONING OF THE R-1 (SINGLE FAMILY RESIDENTIAL) PORTIONS OF THE FOLLOWING THREE PROPERTY TAX NUMBERS TO AN R-3 (MULTIPLE FAMILY RESIDENTIAL) ZONING CLASSIFICATION.

1. PROPERTY TAX NUMBER 05-06-029-0115-00 KNOWN AS THE "MERSKIN PROPERTY" OWNED BY LEONARD HERMAN AND NATHAN HARRIS. THIS PROPERTY IS CURRENTLY ZONED R-3 WITH AN UNDEFINED PORTION ZONED R-1. STREET ADDRESS IS 10376 SOUTH BAYSHORE DRIVE, ELK RAPIDS, MICHIGAN.

2. PROPERTY TAX NUMBER 05=06-450-006-00 KNOWN AS THE "MERSKIN PROPERTY" OWNED BY LEONARD HERMAN AND NATHAN HARRIS. THIS PROPERTY IS PART OF THE JUNIPER HILLS SUBDIVISION AND IS CURRENTLY ZONED R-1. STREET ADDRESS IS 10376 SOUTH BAYSHORE DRIVE, ELK RAPIDS, MICHIGAN.

3. PROPERTY TAX NUMBER 05-06-029-011-00 KNOWN AS THE "PINE HOLLOW PROPERTY" OWNED BY PORT OF ELK, INC. (A MICHIGAN CORPORATION). THIS PROPERTY IS CURRENTLY ZONED R-3 AND R-1 IN PART. STREET ADDRESS IS 10354 SOUTH BAYSHORE DRIVE, ELK RAPIDS, MICHIGAN.

PLEASE NOTE THAT ALL CORRESPONDENCE PREVIOUSLY RECEIVED PERTAINING TO THIS PROPOSED REZONING WILL REMAIN PART OF THE OFFICIAL RECORD. ALL PERSONAL INPUT FROM PREVIOUS PUBLIC HEARINGS ON THIS PROPOSED REZONING SHALL ALSO REMAIN PART OF THE OFFICIAL RECORD."

HE CHAIRMAN NOTED FOR THE RECORD THAT THIS MEETING WAS BEING TAPED TO HELP WITH COMPILATION OF THE MINUTES.

COMPILED COPIES OF CORRESPONDENCE AND VERBAL OPINIONS RECEIVED TO DATE WAS DISTRIBUTED BY THE SECRETARY. FOUR HUNDRED AND FIVTY-THREE (453) LETTERS AND VERBAL COMMENTS HAVE BEEN RECORDED TO DATE. 136 FAVOR RE-ZONING WITH 317 OPPOSING REZONING ON THIS PROJECT. ADDITIONAL CORRES-PONDENCE AND CORRECTIONS WERE RECEIVED AS FOLLOWS:

CORRECTIONS - GAUTHIER, WILLIAM SPELLING OF NAME

LETTERS FAVORING REZONING RECEIVED AT THIS MEETING

WILLIAM KENNEDY	612 OJIBAWA
KATHRYN PARKER	869 MILLER'S PARK
MICHAEL PARKER	869 MILLER'S PARK

LETTERS OPPOSED TO REZONING RECEIVED AT THIS MEETING

ROBERTA STACKHOUSE	10624 SUNSET SHORES DRIVE
JACK WERT	10700 LAKESHORE DRIVE
C.G. EVERSON	6705 W. HARBOR DRIVE
MAXINE EVERSON	6705 W. HARBOR DRIVE
RAYMOND CRELLIN	6814 W. HARBOR DRIVE
VIOLET CRELLIN	6814 W. HARBOR DRIVE

THE CHAIRMAN INTRODUCED MR. BRUCE ORTENBURGER, PROFESSIONAL PLANNER WHO HAS BEEN ASSISTING THE COMMISSION WITH THIS PROJECT. MR. ORTENBURGER RELAYED HIS REPORT TO THE PUBLIC AT LARGE AND OUTLINED OPTIONS THAT THIS MMISSION HAVE AVAILABLE ON THIS PROJECT. MR. ORTENBURGER'S REPORT IS ATTACHED TO THIS SET OF MINUTES.

THE FLOOR WAS OPENED TO MR. LEONARD HERMAN TO ADDRESS THE COMMISSION AND THE PUBLIC AT LARGE. MR. HERMAN EXPRESSED CONCERN THAT THE NEW MEMBERS OF THE COMMISSION MAY NOT HAVE BEEN FULLY APPRISED OF THE PROPOSED PROJECT. BOTH NEW MEMBERS STATED THEY HAD REVIEWED THE MATERIAL IN THE FILES ON THE PROJECT. MR. HERMAN INDICATED THAT HE HAS COMPLIED WITH ALL REQUESTS OF THE COMMISSION, HAS SUBMITTED ALL EVALUATIONS AND IMPACT REPORTS NEEDED TO EVALUATE THE MERITS OF THE PROJECT.

MR. JOE FISHER, ATTORNEY FOR MR. HERMAN, TOOK THE FLOOR FROM MR. HERMAN WITH A REQUEST FOR A PROCEDURE DETERMINATION. MR. BILL DERMAN, ATTORNEY FOR THE TOWNSHIP, STATED FOR MR. FISHER THAT ACCORDING TO THE ER TOWNSHIP ZONING ORDINANCE THE ONLY DETERMINATION TO BE MADE BY THIS COMMISSION AT THIS HEARING WOULD BE THE CONSIDERATION MR. HERMAN'S REQUEST FOR REZONING FROM R-1 TO R-3 ON THE PUBLISHED PROPERTY NUMBERS. MR. FISHER ASKED IF A SPECIAL USE PERMIT COULD ALSO BE GRANTED AT THIS TIME FOR THE CONSTRUCTION OF THE THIRTY CONDOMINIUM UNITS MR. HERMAN WISHES TO CONSTRUCT. THE ANSWER FROM MR. DERMAN WAS IN THE NEGATIVE.

THE FOLLOWING PERSONS SPOKE AGAINST THE REZONING OF THESE PROPERTIES: GLORIA WHEELER, PAT DUGAN, PAUL TEGEL, NEIL PADILLA, TOM DANE, JOAN BRAUN, DICK HOADLEY, ROBERTA STACKHOUSE, RICK PATTERSON, BOB BRAMBLETT, BOB BRAMBLETT - SPEAKING FOR ROBERT STREIT, ABBY HUSBAND, MIKE HUSBAND, TOM SCHLUENTZ, ROBERT FARMER AND JEAN RICKER. THE PROBLEMS EXPRESSED THOSE OPPOSED WERE: PROPERTY VALUES, SPOT ZONING, PRESCEDENCE SETTING, PROTECTION OF THE SINGLE FAMILY (R-1) ZONING CLASSIFICATION AND COMPATIBILITY OF PROJECT TO EXISTING R-1 LAKEFRONT HOMES.

THE FOLLOWING PERSONS SPOKE IN FAVOR OF THIS REZONING: DEBBIE GEORGE, SYLVIA KEIVET, RUSS MOLITER AND JOE FISHER. MR. HERMAN SUMMED UP THE CLOSING ARGUMENT IN FAVOR OF REZONING WITH THE FOLLOWING POINTS: (1) HE FEELS THIS PROJECT WOULD NOT SET A PRECEDENT (2) IT WOULD NOT BE SPOT ZONING (3) NO NOISE IMPACT (4) NO TRAFFIC IMPACT AND (5) NO CRIME IMPACT.

KEN SMITH, TOWNSHIP ZONING ADMINISTRATOR SPOKE INDICATING THAT A DETERMINATION FROM THE ZONING BOARD OF APPEALS STILL MUST BE MADE TO DETERMINE THE EXACT DIMENSION OF THE R-1/R-3 AREAS INVOLVED IN THIS PROJECT. HE STATED THAT APPROX. 1/2 OF THESE PROPERTIES ARE R-1 AND APPROX. 1/2 ARE R-3 BUT ARE STILL UNDEFINED.

AT THIS POINT THE CHAIRMAN CLOSED THE PUBLIC HEARING PORTION OF THE MEETING AND THE COMMISSION WENT INTO THE DECISION MAKING STAGE OF THE MEETING. COMMISSION MEMBERS WERE ASKED IF THEY HAD ANY QUESTIONS OR CONCERNS ON THE PROJECT.

QUESTIONS FROM THE COMMISSION COVERED THE FOLLOWING TOPICS:

1. ANNEXATION INTO THE VILLAGE OF ELK RAPIDS IF REZONING WERE DENIED.

2. POSSIBILITIES OF REQUIRING GREATER SETBACKS FROM EAST ARM OF GRAND TRAVERSE BAY AND SIDELINES AS A REQUIREMENT NOT A RECOMMENDATION.

3. DISCUSSION ON NUMBER OF UNITS.

4. R-3 ZONING COMPARED TO P/D ZONING CLASSIFICATIONS.

5. CONCERN OVER "CATCH-22" LOOPHOLE IN R-3 CLASSIFICATION.

6. OPTIONS OPEN TO THE COMMISSION:
   (1) ACCEPT
   (2) DENY
   (3) TABLE TO:
      COMPLETE THE TOWNSHIP MASTER PLAN.
      AMEND THE P/D CLASSIFICATION IN THE ORDINANCE TO SET GREATER CONTROL OVER R-3 PROJECTS.

THE CHAIRMAN ASKED FOR A MOTION ON THE REZONING OF THIS PROJECT. AS NO MOTION WAS FORTH COMING TO RECOMMEND APPROVAL OF THIS PROJECT, A MOTION WAS MADE BY SHEN SMITH, SECONDED BY FELIX CASILLAS, TO DENY THE PROPOSED REZONING.

WITH NO ADDITIONAL DISCUSSION THE QUESTION WAS PUT TO A ROLL CALL VOTE:

L. KLEIN	YES
S. SMITH	YES
B. WHITE	NO
D. JOBE	NO
D. VELIQUETTE	NO
F. CASILLAS	YES
T. PARENT	NO

VOTE 4/NO 3/YES THE CHAIRMAN DECLARED THE MOTION DENIED.

BILL WHITE THEN MADE A MOTION, SECONDED BY DICK JOBE, TO APPROVE THE PROPOSED REZONING.

WITH NO ADDITIONAL DISCUSSION THE QUESTION WAS PUT TO A ROLL CALL VOTE:

L. KLEIN	NO
S. SMITH	NO
B. WHITE	YES
D. JOBE	YES
** D. VELIQUETTE	NO
F. CASILLAS	NO
T. PARENT	YES

** DEAN VELIQUETTE REQUESTED TO ABSTAIN FROM THIS VOTE AS HE FELT THE ENTIRE PROJECT WOULD BE BETTER HANDLED UNDER THE P/D ZONING CLASSIFICATION. DEAN WAS INSTRUCTED BY THE CHAIRMAN THAT IN A ROLL CALL VOTE HE MUST VOTE. DEAN VELIQUETTE THEN CAST HIS VOTE IN THE NEGATIVE.

VOTE 4/NO 3/YES THE CHAIRMAN DECLARED THE MOTION DENIED.

A MOTION WAS MADE DEAN VELIQUETTE TO AMEND THE ZONING ORDINANCE TO ALLOW MULTIPLE FAMILY APARTMENTS TO BE CONSIDERED IN THE P/D ZONE. NO SECOND WAS RECEIVED. TODD PARENT PLACED THE TOPIC ON THE AGENDA FOR THE OCTOBER 1, 1990 REGULAR MEETING.

A QUESTION WAS RAISED AS TO THE STATUS OF THE PROJECT IN QUESTION. AN OPINION WAS ASKED OF THE TOWNSHIP ATTORNEY AS TO WHETHER AN OUTRIGHT DENIAL OR A STALEMATE HAD OCCURRED WITH THE RESULTS OF THE VOTE ON THIS PROJECT. THE MEETING WAS RECESSED TO CONSULT ROBERT'S RULES ON THE QUESTION. AS NO ANSWER WAS IMMEDIATELY AT HAND, MR. DERMAN STATED THAT HE WOULD HAVE AN OPINION AT THE NEXT MEETING.

AS THERE WAS NO FURTHER BUSINESS, A MOTION WAS MADE BY DICK JOBE, SECONDED BY LEORNARD HERMAN, TO ADJOURN. MOTION CARRIED

MEETING WAS ADJOURNED AT 10:58 P.M.

RESPECTFULLY SUBMITTED,

Shen Smith

SHEN B. SMITH
SECRETARY

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5152 US-31 North
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Acme, MI 49610-1645

ELK RAPIDS TOWNSHIP
Rezoning Request 3-90

A Proposal to Rezone a parcel of land
from Residential R-1 to Multiple Family Apartment R-3
Property known as the Merskin (2 parcels) and Pine Hollow Resort

Comments by Bruce Orttenburger; Planning Consultant
September 26, 1990

This is a request to rezone a portion of a 7 acre parcel of land located in Section 29, T29N-R9W; commonly known as the Jarvis parcel (Pine Hollow Resort), and the Merskin parcel (containing a platted lot and small metes and bounds parcel), from Residential R-1 to R-3; Multiple Family Apartment district;

The project consists of two existing parcels that would be combined into one parcel, located 250 feet south of the Elk Rapids Village limits. Size of the parcels are about 4.5 and 2.5 acres. Existing land use of the larger parcel is a 10 unit resort, including manager's quarters and office, and two storage buildings. The smaller parcel contains a seasonal single family dwelling. The Resort, referred to as the Pine Hollow Resort, provides for monthly rentals, which could be viewed as an existing multiple family use or as a non-conforming commercial resort.

Both parcels are heavily wooded; consisting of mature species of white and red pine, cedar, cottonwood, maple, oak, and poplar, some species are very stately with diameters over 30 inches. Both parcels obtain access from Emmet State Road (Old US-31), a primary road. Both parcels contain on-site water and septic systems.

Wetlands exist only on a small portion of the Merskin parcel which appears not to significantly affect the parcel. Both parcels contain frontage on East Arm of Grand Traverse Bay, an approximate flood plain contour has been determined to be 584.7 feet USGS datum and a normal high water line elevation of 583.5 foot IGLD datum.

Existing land use in the area is in a transitional stage, because of the variety of land uses that exist. Along the west side of South Bayshore Road, most of the parcels have been divided into 100 foot wide lots containing seasonal single family dwellings. The Merskin parcel and all parcels north to the Village Limits, all contain driveway access onto South Bayshore Road. The remainder parcels, south containing primarily seasonal single family dwellings on Grand Traverse Bay, obtain access from an extension of Lakeshore Road which is a part of sunset shores, a single family residential subdivision. About 700 feet south of the Merskin parcel, there's an existing 4 unit resort, the Sand

Piper Resort, gaining access from Lakeshore Road, and in front of this on South Bayshore Road, a Commercial Use (professional office use). On the east side of Emmet State Road, most of the land use is a mixture of commercial; boat storage, commercial resort, professional office, etc. Farther south, farming is the predominate use.

The existing zoning for these parcels, R-1 and R-3; splits the parcel in half, in fact, all the parcels of land from the Professional Office (United Real Estate) north to the Village Limits, contain the same two zoning districts, R-1 on the bayfront and R-3 along Emmet State Road. The R-3 zoning appears to be about 300 feet in width.

R-1 permits one-family dwellings on unplatted or platted lots; lot width of 100 feet, lot size of 25,000 and 20,000 square feet respectfully, and private boat storage buildings within 10 feet of the water' edge.

R-3 permits one-family and two-family dwellings on platted lots; lot width of 150 feet, lot size of 15,000 square feet, on unplatted lots; lot width of 150 feet, lot size of 17,500 square feet. R-3 also permits multiple family dwellings, by Planning Commission approval, providing that general area acceptance determinations are positive. Density is 1 unit per 6,000 square feet. Both districts have a height limit of 35 feet or 2 1/2 stories; whichever is less. Building setbacks are front; 50 feet, (on the subject parcels from Lake Michigan) sides; 10 and 15 feet, and rear; 35 feet.

Under the proposed zoning change, both parcels combined would allow a maximum development of 50 multiple family dwelling ~~units, subject to Planning Commission approval.~~

Under existing zoning, the subject parcels could provide for densities of between 12-31 units (refer to the planning consultant's comments regarding the Pine Hollow PD proposal).

The subject parcels will be able to be served by municipal water and sewer from the Village of Elk Rapids.

The parcel combined lends itself to be a very attractive multiple family project providing that building setbacks are greater than the minimums, that many of the stately trees can be saved, and other controls are provided for, to preserve the parcel. To rezone this parcel as proposed, would not allow the Township with such controls, and the parcel could very well be carved up with buildings located close to adjoining property lines, and few of the trees remaining. The R-3 district requires that the Township Planning Commission must determine that any multiple family project "will not be injurious to the surrounding neighborhood and not contrary to the spirit and purpose of this

Ordinance"(section 9.02.B). This section of the Zoning Ordinance further describes the procedure for application as per Sections 14.02 and 17.07, but it's unclear that this section doesn't specifically allow the Planning Commission the authority to recommend alterations to the site plan such as; requiring greenbelts, stricter setbacks, lighting, etc., that the PD district clearly provides for.

To rezone this parcel to a more intensive development with fewer controls is difficult to determine without knowing the long range plan for the Township. Historically, it appears that bay front property was not intended to contain anything more intensive than detached single family dwellings (originally E-1 changed to R-1). The more intensive development waste targeted to be along the primary roads such as Emmet State Road. The problem with this strategy was that the district didn't follow property line boundaries so therefore 12 parcels contain two zoning districts. To further complicate this issue a rezoning request is currently before the Township to delete the R-3 zoning for 9 of these parcels which would then create two isolated R-3 spots; subject parcels of this rezoning and a location consisting of the rear portion of the sand Piper resort and the United Real Estate Office parcel. Again, not knowing the long range plan for the Township makes it difficult to recommend a favorable change.

The intent of providing for a PD district regulation was to assist in these complicated situations. The PD district is intended to provide for acceptable uses in areas where the natural resources and amenities of a site can be preserved while providing an acceptable development plan. It becomes a win-win situation.

Therefore the Planning Commission has the following options;

1. **Approve the rezoning request.** An R-3 zoning designation on both parcels provides for a maximum 50 dwelling units with the potential of being within close proximity of both side property lines and Lake Michigan, providing the Planning Commission approves a project. Further, to allow for multiple family developments, the Planning Commission must make a determination on whether a use is injurious to the surrounding neighborhood; this determination is on the **use** not the scope of the use, ie., number of units.

2. **Deny the rezoning.** A project still is possible on the remaining portion of the subject parcels, maximum density projected is 27 units, within a smaller area, with the removal of many trees.

3. **Table the rezoning and table the R-3 to R-1 rezoning.** Table these requests until the Township develops a comprehensive land use plan and/or revise the PD district to specifically

allow for multiple family developments; also it is intended to eliminate the confusion within section 14.01. The PD district Section 14.01 should be revised either of two ways;

a. Delete "non-ordinary" and add "multiple family developments". Also add "providing that the project is accessed by a major thoroughfare plan designated on the major thoroughfare plan for the Antrim County (it would also be for Elk Rapids Township when they adopt one), and provides for infrastructure including central water and sewer systems". or;

b. Delete the first sentence of Section 14.01 and add instead "It is the purpose of this section to permit in the Township, flexibility in the regulation of land development, and to encourage innovation and variety in land use and design of projects of sufficient size to be considered self-contained, to the extent the projects are physically and visually separated from other land uses in the immediate vicinity, are not an integral part of other already developed or committed land uses, are directly accessible from major thoroughfare as designated on the major thoroughfare plan for Antrim County, provide for necessary infrastructure; specifically central water and sewer systems, and will not have any adverse economic, social, or environmental impact on surrounding land uses".

This parcel is particularly suited for a Planned Development because of its basic amenities; bay frontage on Grand Traverse Bay (over 550 feet), heavily wooded, topographic considerations, access to a primary county road, and being able to obtain municipal water and sewer. A project properly designed could have lesser impact than the permitted zoning, because of the flexibility that the site can offer, so that minimal removal of the vegetation can occur. Under traditional zoning, both parcels can be easily carved up with much of the mature trees removed without Township review, further the site could allow for an additional 10 septic systems and wells without the option of extension of needed fire service through hydrant development. Storage structures could be located a greater distance from the water than what is normally enjoyed by existing residents. One could construct buildings within existing topography that would allow minimal filling and the sensitivity of the parcel then would be preserved.

The PD district is a lawful option of land use development designed to accomplish the objectives of the intent and purposes of local zoning. The district is based on Township Rural Zoning Act, as amended, that refers to Planned Unit Developments. Within the law, Townships may approve these developments by an amendment to the Ordinance (rezoning). The proposed project must be held within its own restrictions as specified within the

Ordinance, and meet the general standards of the Ordinance and the law. The statute indicates that a Township may establish a planned unit development if the proposed use encourages innovation in land use and variety in design, layout, type of structures constructed, achieve economy and efficient use of the land, encourages useful open space, and provide for better housing opportunities particularly suited to the needs of the residents of the State.

When discussion of approving planned unit developments require an amendment to be done, the issue of spot zoning sometimes becomes an issue. Normally, a spot zoning exists where a small parcel of land is proposed to be changed to a use that is not similar or incompatible with the general area, or when it violates the requirements of the State enabling acts. However the State acts permit flexibility in its zoning, through planned unit developments and provides for a set of standards that the development should attain. Proposed uses under this technique if in compliance with Township standards, become lawful spot zoning. The one option under the Township Ordinance that is not possible, is to rezone an area of the Township to a planned development district only on the basis of a potential use, and not a specific use. The project's regulations are not general as in other zoning districts, but are specific to the project and the conditions specified at the Township Board level become the general regulations for the project and no other.

Therefore this option may be the best strategy to pursue since it would provide for an attractive development on a unique parcel implementing greater control, and also providing for needed extension of public infrastructure into this area.