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

6/21/90

THE CONTINUATION OF THE PUBLIC MEETING OF MAY 17, 1990, WAS CALLED TO ORDER AT 7:30 P.M. AT THE ELK RAPIDS TOWNSHIP HALL BY CHAIRMAN BUD TOWNSEND.

ROLL CALL: PRESENT

BILL WHITE
TODD PARENT
DEAN VELIQUETTE
BUD TOWNSEND
DICK JOBE
BOB BRUGGER
SHEN SMITH

A QUORUM WAS ESTABLISHED

ALSO PRESENT WERE BRUCE ORTENBURGER, BILL DERMAN, MIKE TURKELSON, KEN SMITH, THE PORT OF ELK, INC. DEVELOPER, LEONARD HERMAN & ASSOCIATES AND APPROXIMATELY 80 PERSONS IN THE AUDIENCE.

JEAN RICKER PRESENTED THE PLANNING COMMISSION WITH PETITIONS SIGNED BY APPROXIMATELY 125 RESIDENTS IN OPPOSITION TO REZONING R-1 PROPERTIES.

BILL DERMAN SPOKE TO THE MEETING ADDRESSING THE POINT OF ORDER RAISED BY A MEMBER OF THE TOWNSHIP BOARD REGARDING THE LEGALITY OF THE MEETING NOTICES PUBLISHED ON THE PORT OF ELK, INC. AND LEONARD HERMAN & NATHAN HARRIS PROPOSED CONDOMINIUM PROJECT. MR. DERMAN STATED THAT INDEED THERE ARE THREE SEPARATE TAX NUMBERS AND DESCRIPTIONS REGARDING THE PROPERTIES INVOLVED IN THIS PUBLIC HEARING. HE FURTHER STATED THAT ONLY TWO TAX PARCELS HAVE RECEIVED PROPER PUBLIC NOTICE. HE STATED THAT THE QUESTION IS WHETHER THE NOTICES WERE SUFFICIENT NOTICE WITHOUT ALL TAX NUMBERS ON ALL PARCELS BECAUSE THE WATERFRONT PARCEL IN QUESTION MAKES UP BETWEEN 30-40% OF THE FRONTAGE THAT IS IN THIS PROJECT. MR. DERMAN & MR. FISHER WENT THROUGH THE CASE LAW AND THE STATUES AVAILABLE ON THIS QUESTION AND DETERMINED WITHOUT A TAX NUMBER OR A PROPERTY DESCRIPTION IT WOULD APPEAR THE NOTICE AS PUBLISHED WAS DEFECTIVE.

MR. DERMAN STATED THAT AN ADDITIONAL SIDE ISSUE WAS PRESENTED BY ANOTHER ATTORNEY IN TRAVERSE CITY AS TO THE PRESENT REZONING REQUEST SUBMITTED AS A P/D. THE ISSUE IT BRINGS IS THAT THE OPINION THAT WAS GIVEN STATED THAT SINCE THIS IS NOT A NON-ORDINARY USE AS SPECIFIED IN THE P/D THAT HE FELT IT WAS AN IMPROPER USE OF A P/D ZONE. THERE ARE ARGUMENTS AGAINST THAT PART OF IT SAYING THAT A TRAILER PARK CAN GO INTO THIS ZONE, THAT TRAILERS ARE MADE UP OF SINGLE FAMILY RESIDENCES AND A TRAILER PARK AS SUCH IS A MULTI-FAMILY RESIDENCE. THERE IS A SECOND PART OF THIS P/D ZONE THAT SAYS THAT THIS ZONE SHALL ALSO BE AVAILABLE FOR AREAS WITH PROBLEMS OF TERRAIN WHICH MAY REQUIRE SPECIAL TREATMENTS IN MATTERS OF SETBACK, OR SIDE AND REAR YARD OR LAND AREA RESTRICTIONS, WHICH WE HAVE USED THAT PORTION IN THE PAST. THERE IS AN ARGUMENT THAT THIS ONLY GOES TO SIDE/REAR/SETBACKS, IT DOES NOT APPLY TO AN INCREASE DENSITY OR AN INCREASE USE IN A ZONE AS DOES THE OTHERS.

HE OPINION READS THAT AS THE MULTI-FAMILY RESIDENCE IS NOT LISTED THEREFORE IT WOULD NOT BE AN ALLOWABLE USE. THE OPINION HAS SOME MERIT TO ARGUE.

MR. DERMAN ALSO STATED WE MUST RE-NOTICE AND IF THE DEVELOPER WOULD WISH TO REAPPLY FOR THE P/D ZONE WE COULD REFER THIS TO THE ZONING BOARD OF APPEALS TO ANSWER TWO QUESTIONS: (1) WHAT DOES THAT INTRODUCTORY PARAGRAPH MEAN IN THE DESCRIPTION AND PURPOSE - DOES IT MEAN REALLY THAT YOU CAN PUT A SAND & GRAVEL PIT IN HERE BUT YOU COULDN'T PUT AN R-2 OR AN R-3 USE ON THIS PROPERTY. THIS IS AN INTERPRETATION QUESTION OF THE ZONING ORDINANCE WITH ARGUMENTS BOTH WAY. (2) YOU CAN ALSO ASK THE ZONING BOARD OF APPEALS TO DETERMINE WHERE THE DIVIDING LINE IS BETWEEN THE R-1 AND R-3 PROPERTY. WE HAVE HAD SEVERAL SUPPOSITIONS AS TO WHERE IT IS, WE HAVE TRIED TO SCALE IT OFF OUR ZONING MAPS. IF ZONING BOARD OF APPEALS WERE TO AGREE WITH THE NEW DEVELOPMENTS THEN WE COULD AMEND THE ZONING ORDINANCE TO CHANGE THE P/D CLASSIFICATION TO INCLUDE AND ELIMINATE SOME OF THESE OTHER USES THAT ARE IN THERE. THE DEVELOPER CAN ALSO PETITION TO CHANGE THE ZONING ALL TO R-3.

THE MAJOR POINT, MR. DERMAN STATED WAS THAT THIS WAS NOT DONE INTENTIONALLY BY ANYONE, HE APOLOGIZED TO THE DEVELOPER AND FURTHER STATED IF WE DON'T PUBLISH ALL OF THE PROPERTY TO BE CHANGED WE WILL HAVE A PROBLEM. WE DON'T WANT TO SUBJECT ANY ACTION THIS BOARD DOES TO A SHORT ATTACK OVER THE NOTIFICATION. MR. DERMAN'S RECOMMENDATION IS TO REPUBLISH WITH THE CORRECT TAX NUMBERS, DESCRIPTIONS AND RATHER THAN CALLING IT THE MERSKIN PROPERTY OR PINE HOLLOW PROPERTY, IT SHOULD BE LISTED ALSO WITH A STREET NUMBER.

JOE FISHER ADDRESSED THE PLANNING COMMISSION AND STATED THAT IN JANUARY MR. HERMAN ADDRESSED THIS BOARD, HE FURTHER STATED THAT IT WAS THE OPINION OF ONE OR MORE MEMBERS OF THE PLANNING COMMISSION THAT HE USE THE PUD CLASSIFICATION. MR. HERMAN REALIZED THAT THERE WERE SOME PROBLEMS WITH THE PUD ZONE AND SOME OF THOSE PROBLEMS WERE OUTLINED BY WILLIAM DAVISON IN HIS LETTER TO SHEN SMITH. THERE IS NOTHING NEW THAT HAS HAPPENED THAT HASN'T BEEN PREVIOUSLY BEEN CONSIDERED BY THE DEVELOPER AND THEY HAVE REASON TO BELIEVE THAT THE PUD MIGHT WITHSTAND A CHALLENGE IN CIRCUIT COURT. ANTICIPATE NEVER THE LESS THAT YOU WILL PROBABLY BE SUED, THE DEVELOPER WILL BE SUED OR THE TOWNSHIP WILL BE SUED, OR BOTH WILL BE SUED BY THE OPPOSITION. WE ARE NOT GOING TO COURT WITH AN ISSUE TO LITIGATE THAT REALLY DOESN'T NEED TO BE LITIGATED. OF ALL THE COMMUNICATION GENERATED BY THE ANTI-GROUP, HE HAS NOT READ ANYTHING THAT WOULD INDICATED THAT THEY WERE CONCERNED THAT THIS WAS A PUD OR R-3, THEIR POSITION HAS BEEN AND CONTINUES TO BE THAT THEY DO NOT WANT ANY MULTI-FAMILY THERE WHETHER IT BE R-3 OR PUD. IF YOU LOOK AT SECTION 9 OF THE ORDINANCE WHICH PROVIDES FOR THE R-3 DEVELOPMENT YOU WILL FIND THAT SECTION 9 DIRECTS YOU TO SECTION 14.01-14.02 OF THE ORDINANCE WHICH SAYS THAT IF YOU ARE GOING TO REZONE THIS OR ZONE IT R-3 YOU MUST SUBMIT THE SAME DOCUMENTATION AS SUBMITTED FOR A PUD SO WE COME BACK TO SQUARE ONE IN ANY CASE AND THAT IS ARE WE GOING TO HAVE MULTI-FAMILY HOUSING THERE AS A PUD OR AS R-3. WE FELT AT THE TIME WHEN WE PETITIONED THIS BODY THAT YOU SAID IT WOULD BE PUD AND WE AGREED, WE ALSO THOUGHT THAT IT WOULD GIVE THIS COMMISSION MORE FLEXIBILITY IN MAKING CERTAIN DEMANDS ABOUT THE PROJECT THAT MIGHT NOT BE AVAILABLE UNDER THE R-3 SECTIONS.

SO IF YOU DIRECT US TO COME BACK AS R-3 WE WILL COME BACK AS R-3 AND E REALLY DON'T BELIEVE WE SHOULD HAVE TO SUBMIT ANY NEW INFORMATION. .T WILL BE A QUESTION OF GOING THROUGH THE PUBLICATION AND NOTICE. WITH RESPECT TO THE NOTICE, MR. HERMAN IN ONE LETTER TO ONE OF THE MEMBERS OF THIS COMMISSION ENCLOSED LEGAL DESCRIPTIONS OF THE PROPERTY.

I ALSO BELIEVE THAT MR. PHILLIP DID LIKEWISE WHEN HE SUBMITTED A FOLLOW UP PLAN. THE NOTICE WAS DRAFTED BY SOMEBODY ON THIS BOARD, WE ALL MAKE MISTAKES PERHAPS MY MISTAKE WAS IN NOT CHECKING OUT THE TAX NUMBERS. I KNOW THAT WHEN MR. HERMAN PURCHASED THE PROPERTY THERE WERE TWO TAX NUMBERS USED FOR THE MERSKIN PROPERTY. I CONCLUDE FROM LOOKING AT THE FIRST NOTICE THAT SHEN SMITH PRESENTED TO ME, AND I AM NOT SUGGESTING THAT SHEN DRAFTED THIS NOTICE, THAT WE HAD ONE TAX NUMBER AT THAT TIME AND WE HAD ONE TAX NUMBER FOR THE NOTICE OF THIS EVENING PROCEEDING THAT THE NUMBERS HAD BEEN COMBINED FOR WHATEVER PURPOSE. FOR THOSE OF YOU WHO ARE UNCERTAIN ABOUT THE PIECE WE ARE TALKING ABOUT INCLUDED IN THE PUBLIC NOTICE - TO THE NORTH OF THE LEGAL PLAT KNOWN AS THE PLAT OF JUNIPER SHORES IS A TRIANGULAR SHAPED PIECE OF PROPERTY THAT HAS A LONG SIDE ON THE BAY. MR. FISHER FURTHER STATED THAT THIS PIECE IS IMPORTANT TO THE PROJECT BECAUSE OF THE AMOUNT OF LAKE FRONTAGE INVOLVED. THEY BELIEVE THAT THE ELIMINATION OF THAT PARCEL FROM THE PUBLIC NOTICE WOULD BE ONE MORE ARROW IN THE QUIVER OF THE ANTI GROUP IF AND WHEN THEY DECIDE TO START SUIT OR WHATEVER ELSE THEY PLAN TO DO. THEREFORE THEY WOULD ASK THAT PERHAPS BEFORE THE NEXT NOTICE FOR A PUBLIC HEARING BE SUBMITTED TO THE NEWSPAPER FOR PUBLICATION IT BE REVIEWED BY TOWNSHIP COUNSEL TO AVOID THE SITUATION THEY ARE IN TONIGHT. THEY FEEL THAT IT WOULD BE INAPPROPRIATE TO SEND THIS MATTER TO THE ZONING BOARD OF APPEALS ND THAT THE ENTIRE PUD SECTION SHOULD BE REVIEWED AND BE OVERHAULED S IT IS NOT UP TO DATE WITH RESPECT TO AMENDMENTS UNDER STATE LAW THAT HAVE OCCURRED SINCE 1978 WHEN THE ORDINANCE WAS DRAFTED.

WE STATED BRIEFLY IN A LETTER TO BILL DERMAN, BUT IT IS APPARENT TO US THAT OUR RIGHTS BEFORE THIS COMMISSION ARE BEING SIGNIFICANTLY DIMINISHED BY THE ACTIONS OF MEMBER SMITH AND WE THINK THAT ISSUE OUGHT TO BE ADD- RESSED BY THIS COMMISSION AS WELL. IT IS ONE THING FOR US TO TRY TO PRESENT TO AN IMPARTIAL TRIBUNAL OUR CASE AND EXPECT THE RIGHT TO RECEIVE A FAIR HEARING. IT IS SOMETHING ELSE WHEN ONE OF THE MEMBERS UNDER TAKES ON HER OWN TO BECOME AN ADVOCATE FOR ONE SIDE OR THE OTHER. THAT DOES TREMENDOUS HARM TO THE ENTIRE PROCEDURE THAT IS ESTABLISHED BY STATE LAW. IT DOES AWAY WITH THE IMPARTIAL TRIBUNAL THAT THOSE AGAINST THE PROJECT SHOULD EXPECT, IT DOES AWAY WITH THE IMPARTIAL TRIBUNAL THAT THOSE THAT WANT THE PROJECT SHOULD EXPECT. IT SEEMS TO ME THAT WHEN YOU TAKE AN OATH TO SERVE IN A PUBLIC CAPACITY THAT YOU SHOULD LAY ASIDE CERTAIN PERSONAL CONVICTIONS IN ORDER TO CARRY THAT OUT. I HOPE THE REST OF YOU WOULD SUBSCRIBE TO SUCH STANDARDS.

SHEN SMITH ADDRESSED THE MEETING TO GO ON RECORD STATING THAT AT NO TIME HAD SHE EVERY RECEIVED COPIES OF ANY LEGAL DESCRIPTIONS. THE INFORMATION FOR THE PUBLIC NOTICE WAS RECEIVED FROM THE TAX ROLLS THAT WERE RECEIVED FROM THE TOWNSHIP SUPERVISOR. IF THERE ARE COPIES OF DESCRIPTIONS THAT WERE SUBMITTED, WE DON'T HAVE THEM, MAYBE SOMEONE ELSE ON THE PLANNING COMMISSION DOES HAVE THEM, BUT THE SECRETARY HAS NEVER RECEIVED THEM.

SHE ALSO STATED THAT SHE IS NOT ALIGNED WITH ANY GROUP, THAT HER OPINIONS ARE HER OWN. SHE HAS NEVER STATED THAT SHE IS OPPOSED TO MR. HERMAN'S DEVELOPMENT, THAT SHE HAS HER OWN VIEWS OF WHAT SHE FEELS THE RESIDENT'S OF THE TOWNSHIP ARE LOOKING FOR IN A PLANNING COMMISSION. SHE ALSO STATED THAT SHE DIDN'T FEEL ANY OPINION SHE HAD WOULD JEOPARDIZED ANY VOTE ON THE BOARD.

BUD TOWNSEND SPOKE STATING THAT IT APPEARS CLEAR THAT THE PUBLIC HEARING OR THE CONTINUATION OF THE PUBLIC HEARING SHOULD SIMPLY BE ADJOURNED. HE STATED THAT IT IS UNFORTUNATE TO HAVE THIS SORT OF THING HAPPEN AND OBVIOUSLY SOMEBODY INTENDED IT THAT WAY, A LEGAL GLITCH, UNFORTUNATE TO ALL CONCERNED.

HE STATED HE HAD SPENT A GREAT DEAL OF TIME PREPARING FOR THE PUBLIC HEARING BACK ON THE 17TH, HE SPENT THE BETTER PART OF TODAY PREPARING HIS COMMENTS FOR TONIGHT WHICH AT THIS POINT WOULD BE RATHER IMMATERIAL. HE WOULD GUESS SOME OF THEM NEEDED TO BE MADE NEVER THE LESS. FIRST, HE OWES A THANKS TO THE PLANNING COMMISSION FOR SCHEDULING THE MEETING TONIGHT AT HIS REQUEST BECAUSE OF HIS HEALTH PROBLEMS. HE DOES HAVE AN AGENDA ... AS ATTORNEY FISHER HAS INDICATED HE DOES HAVE SOME FEELING ABOUT THE PUD MATTER, HE DID IN FACT ENCOURAGE ... MR. HERMAN REGRETS THE PUD ... AND I FEEL STRONGLY THAT OBVIOUSLY GIVES CONTROL TO THE PUBLIC UNIT OF GOVERNMENT THAT IT WOULD OTHERWISE NOT HAVE AND THAT HE THINKS THIS IS A SERIOUS MATTER AND HE FEELS THAT THE OPPONENTS HERE DON'T QUITE REALIZE HOW, THAT THEY WERE REALLY MISGUIDED, MISLEAD AND I THINK THERE HAS BEEN AN AWFUL LOT OF EMOTION, AN AWFUL LOT OF DEMAGOGUES THAT HAS GONE ON THAT IS TOTALLY UNREASONABLE AND IS JUST WRONG. I DON'T THINK THAT YOU REALIZE THAT IF WE ALLOW THE DEVELOPMENT UNDER A PUD YOU HAVE CONTROL, IF WE DON'T - WE HAVE NO CONTROL, OR VERY LITTLE. ONE OF THE THINGS THAT REALLY DISTRESSES ME HERE IS THE AND I KNOW, I HAVE READ ALL OF THE LETTERS AND UNDERSTAND WHEN I CAN SYMPATHIZE TO SOME EXTENT, TO SOME EXTENT I SAID, BUT UNDERSTAND THAT I GET THESE LETTER THAT BASICALLY SAY THAT THEY WANT TO REPEAL THE CONSTITUTION FOR ... TO EXPROPRIATE PROPERTY NOW THAT IS THE REASON THAT WE HAVE A CONSTITUTION IN THIS COUNTRY - I FEEL VERY STRONGLY ABOUT THAT WHEN YOU START TALKING ABOUT RETROACTIVE CHANGES IN THE ZONING ACTS SO THAT WE CAN'T HAVE ANY R-3 DEVELOPMENT ANY PUD DEVELOPMENT THAT'S WHAT THEY ARE TALKING ABOUT. THIS IS A UNIQUE SITUATION HERE AND YOUR TALKING ABOUT THE FEAR, I UNDERSTAND, THAT YOU WILL HAVE CONDOMINIUMS LINING THE BAYSHORE. THAT'S NOT GOING TO HAPPEN IT CAN'T HAPPEN.

MIKE HUSBAND ROSE TO THE FLOOR, HE STARTED TO SAY WHAT HE FELT MR. TOWNSEND SOUNDED LIKE WITH HIS SPEECH. MR. TOWNSEND YELLED THAT HE HAD THE FLOOR AND THAT MR. HUSBAND HAD HAD HIS CHANCE TO SPEAK AND THAT IF HE DIDN'T LIKE WHAT HE HAD TO SAY THEN THEY COULD LEAVE AS THE DOOR WAS OPEN. HE SAID THAT IF MR. HUSBAND DIDN'T SIT DOWN, THAT HE WOULD SIMPLY ADJOURN THE MEETING. MR. HUSBAND SAT DOWN AND TOLD MR. TOWNSEND TO CONTINUE. ANOTHER GENTLEMAN WHO IS NOT IDENTIFIED, SPOKE TO SAY THAT MR. TOWNSEND HAD ALLOWED SHEN SMITH TO BE CRITICIZED FOR HAVING PERSONAL OPINIONS, BUT NOW THE AUDIENCE WAS TO BE SUBJECTED TO MR. TOWNSEND'S PERSONAL OPINIONS. MR. TOWNSEND THEN STATED "OKAY, THAT'S IT THE MEETINGS OVER, THE MEETINGS ADJOURNED". THE MEETING THEN WENT OUT OF ORDER AND MR. TOWNSEND LEFT THE BUILDING. A POINT OF ORDER WAS CALLED, AS THERE WAS FURTHER BUSINESS TO BE CONDUCTED AT THIS MEETING.

THE VICE-CHAIRMAN DICK JOBE TOOK OVER THE MEETING AS A VOTE WAS NEEDED TO RE-PUBLISH THE CORRECT PROPERTY DESCRIPTIONS ON THE APPLICATION WE PRESENTLY HAVE, OR ASK THAT A NEW APPLICATION SUBMITTED AS A REZONE TO R-3.

LEONARD HERMAN ASKED PERMISSION TO SPEAK REQUESTING THAT HIS ORIGINAL APPLICATION BE WITHDRAWN THEN STATED HE WILL SUBMIT A NEW PROPOSAL TO REZONE HIS R-1 PROPERTY TO R-3. THE PLANNING COMMISSION ACCEPTED HIS REQUEST TO FORMALLY WITHDRAW THE P/D PROPOSAL. MR. HERMAN ALSO REQUESTED THAT HIS FILING FEES BE REDUCED AND THE DIFFERENCE BE REFUNDED.

BOB BRUGGER MADE A MOTION, SECONDED BY TODD PARENT, TO REDUCE THE FILING FEES TO THE REGULAR REZONE FEE AND REFUND THE DIFFERENCE FROM THE P/D TO MR. HERMAN. MOTION CARRIED

AS THERE WAS NO FURTHER BUSINESS, A MOTION WAS MADE BY BILL WHITE, SECONDED BY TODD PARENT, TO ADJOURN. MOTION CARRIED

THE MEETING WAS ADJOURNED AT 8:10 P.M. BY THE VICE-CHAIRMAN.

RESPECTFULLY SUBMITTED,

Shen B. Smith

SHEN B. SMITH

NOTE:

THE SECRETARY APOLOGIZES FOR THE SOMETIMES UNCLEAR THOUGHTS, CHANGES OF TENSE AND UNFINISHED SENTENCES REPORTED IN THIS DOCUMENT BUT A LARGE MAJORITY HERE HAS BEEN TRANSCRIBED VERBATIUM FROM THE OFFICIAL TAPES OF THE MEETING ON JUNE 21, 1990.