ELK RAPIDS TOWNSHIP PLANNING COMMISSION
TOWNSHIP OF ELK RAPIDS - ANTRIM COUNTY, MICHIGAN
P.O. Box 175 - Elk Rapids, Michigan 49629
(616) 264-5855

October 25, 1990

SPECIAL MEETING OF THE ELK RAPIDS PLANNING COMMISSION

The Special Meeting was called to order without a quorum at 7:09 P.M. on October 25, 1990 by the Vice Chairman, Dick Jobe.

ROLL CALL:

Present Felix Casillas
Dick Jobe
Dean Veliquette

Absent Bill White
Todd Parent
Leonard Klein
Shen Smith

Also present - Ken Smith

Felix Casillas discussed the Antrim County Planning Commission meeting of October 23rd which reviewed the Elk Rapids Township Planning Commission rezoning ordinance amendment involving parcels 05-06-029-015-00, and 05-06-029-011-00, otherwise often referred to as the "Merskin Property" or "Pine Hollow Resort" from R-1 to R-3.

The recommendation by the Antrim County Planning Commission was to acknowledge receipt of the proposed amendment but make no comments pending the outcome of the outlined Elk Rapids planning process.

Attached No. 1 - Copy of the office of the coordinator/planner staff analysis.

Felix Casillas also distributed a copy of Mr. Thomas Schluentz's (E.R. Township property owner) letter to Mr. Peter Garwood - coordinator/planner, County of Antrim - reference subject - Elk Rapids Township proposed rezoning from R-1 to R-3 property tax numbers 05-06-029-015-00, 05-06-450-006-00 and 05-06-029-011-00 and his opposition to the proposed rezoning.

Attachment No. 2 - Copy of Mr. T. Schluentz letter to Mr. P. Garwood - subject Elk Rapids Township proposed rezoning from R-1 to R-3.

The third subject that Felix Casillas reviewed with the group was his telephone conversation with Mr. Peter Garwood - coordinator/planner County of Antrim on October 25, 1990 about the amendment to the Elk Rapids Township ordinance, Section 2.12 the change is to remove the word "inland" from the section and add the words "(to include the EAst Arm of Grand Traverse Bay, Elk Lake, Birch Lake and Bass Lake)" to the section. Mr. Garwood stated they will acknowledge receipt of the change that he did not perceive any problem with the change. He also said the commission would not respond within the required thirty days.

Ken Smith distributed copies of the Elk Rapids Township Ordinance No. 3 Subdivision Control for review - discussion. It was the consensus of the group we required a better ordinance.

Attachment No. 3 - Ordinance number 3 - Subdivision Control Ordinance.

The group continued to review the subdivision control ordinance as prepared by the Michigan Township Association, Section 7 thru Section 12.

The only additional change to be made is that the township board be removed and insert Township Planning Commission where required.

It was requested that we read the Site Plan Review again for acceptance and make any additional changes for the next meeting on Monday, October 29, 1990.

Ken Smith recommended that the Planning Commission tour the entire township with the zoning map on Thursday, November 1st, 1990, at 1:00 P.M.

The meeting was adjourned at 9:00 P.M.

Respectfully submitted,

Felix Casillas
Acting Secretary

ATTACHMENT No 1

County of Antrim
Office of the Coordinator/Planner

Antrim County Building
(616) 533-6265

P.O. Box 187
Bellaire, Michigan 49615

October 23, 1990

Staff Analysis: Elk Rapids Proposed Zoning Ordinance Amendment
Received: October 5, 1990

Elk Rapids has received a rezoning request for parcels 05-06-029-015-00, 05-06-450-006-00, and 05-06-029-011-00, otherwise often referred to as the "Merskin Property" or "Pine Hollow Resort". The request is to change parts of the three above parcels zoned R-1 to R-3.

The Antrim County Planning Commission sent comment and recommendations to the Elk Rapids Planning Commission concerning a previously proposed amendment for the properties on both sides of the parcels included in this amendment. Those recommendations are attached to the packet supplied by the Elk Rapids Planning Commission. Elk Rapids Planning Commission has started an overall planning process in response to that communication, in addition to direction from their township board.

Recommendation: Acknowledge the receipt of the proposed amendment but make no comments at this time pending the outcome of the outlined Elk Rapids Planning Process.

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ATTACHMENT No. 2

THOMAS G. SCHLUENTZ
ATTORNEY AND COUNSELLOR
16252 TOURAINE DRIVE
MOUNT CLEMENS, MICHIGAN 48044

TELEPHONE: (313) 286-5423

RECEIVED
OCT 22 1990

October 19, 1990

Mr. Peter Garwood
Coordinator-Planner
County of Antrim
P.O. Box 187
Bellaire, Michigan 49615

Re: Elk Rapids Township proposed rezoning from R-1 to R-3

Dear Mr. Garwood:

It is my understanding that the Antrim County Planning Commission will review a rezoning request for Elk Rapids Township at its October 23, 1990, meeting. The request made by Mr. Leonard Herman asks the Township to rezone R-1 (single family residential) property into R-3 (multiple family residential) property. There are three property tax numbers involved in this rezoning request. They are: 05-06-029-015-00, 05-06-450-006-00, and 05-06-029-011-00. These three properties have commonly been called the "Pine Hollow property" and the "Merskin property". The development plan that was filed with the rezoning request indicates that if the rezoning is approved, the developer will attempt to construct 30, two and three bedroom condominiums in six, 2 1/2 story buildings, with 13 unattached garages on the property.

I am sending you this letter to oppose the requested rezoning. My wife and I own a home approximately 600 feet south of the Merskin property. My opposition to the proposed rezoning is based upon a number of factual and legal considerations. I have set them forth below. I would appreciate if you and the Planning Commission would consider them as part of your review of the requested rezoning.

FACTUAL CONSIDERATIONS

1. The R-1 property that is sought to be rezoned borders on Grand Traverse Bay. All of the other waterfront property in Elk Rapids Township that borders Grand Traverse Bay, Elk Lake or Birch Lake has been zoned R-1. It, therefore, would seem that the original intent of the zoning ordinance was to preserve waterfront property for single family residential usage. Furthermore, all of the property to the north and to the south of the property requesting rezoning has been developed as single family residential property.

2. The two parcels of land that comprise the Merskin property are presently developed as single family residential property. The Merskin property has constructed on it a ranch home approximately 24 feet x 40 feet plus attached front and side decks. Furthermore,

all of the bayfront portion of the Merskin property is part of lot 5 of the platted subdivision of Juniper Hills. A copy of that plat is enclosed herein for your reference.

3. There is no change in condition that would warrant rezoning the property from R-1 to R-3. As you know, Michigan law, only allows a change in an established zoning classification to occur if there has been a change in conditions in the surrounding area that results in the zoning classification no longer being consistent with the actual usage of the property in the surrounding area. Here, the exact opposite has occurred. Originally the Pine Hollow property was being run as a seasonal resort with 7 cottages having weekly property rentals. Furthermore, the 2 lots to the north of this property were originally undeveloped vacant land, along with many of the lots to the south of this property. However, since the enactment of the Elk Rapids Township Zoning Ordinance, the properties' usage and the usage of surrounding property have become predominately single family residential usage. The 2 lots to the north have had single family residences constructed upon them. Most of the lots to the south have had single family residences constructed upon them, and other lots to the south, that already had single family residences upon them, have had major renovations made to them. The actual usage of the 7 cottages constructed on the Pine Hollow property has changed from weekly seasonal rentals to year-round, long term single family rentals. Clearly, the usage of the Pine Hollow property itself, and of the property in the surrounding area, has changed to a far greater single family residential usage than when the zoning ordinance was originally enacted, and as such no change in the zoning from R-1 to R-3 should be allowed.

4. The condominium project that the developer plans upon building if the R-3 rezoning is granted creates an obvious overcrowding problem in relationship to the surrounding property. All of the lots to the north and south of this property are approximately 1 acre in size and have approximately 100 feet of frontage on Grand Traverse Bay. As previously stated, they all have been developed as single family residential properties. The 2 and 3 bedroom condominium development proposed by this developer would result in a density of from 60 to 180 people on the property. If the property were developed in accordance with the surrounding area, it should result in only 5 or 6 families.

5. Although a portion of the Pine Hollow and Merskin properties is already zoned R-3, as is the rear, nonwaterfront portion of the 2 lots to the north of these properties and the 8 lots to the south of these properties, the R-3 rear portion of the Merskin property is not suited for multiple family development. That is so because this

rear R-3 portion consists primarily of a steep hill running up to South Bayshore Drive. This steep hill continues to run to the south through the other 8 properties that are also zoned R-3 on their rear nonwaterfront portions.

6. The R-1 portions of these properties should not be rezoned to R-3 simply because the rear portions of them are already zoned R-3. That is particularly so because all of the other properties that have similar R-1 and R-3 zoning have been developed into single familiy residential property. Furthermore, all of the other owners that have similar R-1 and R-3 property have petitioned the Elk Rapids Township Planning Commission to have those portions of their R-3 property rezoned to R-1. As your letter of September 4, 1990 to the Township concerning the request to rezone from R-3 to R-1 indicates, the Township would be better off if the entire strip was rezoned either to R-1 or R-3. Since 10 of the 12 properties with this dual zoning have already been developed into single family residential and 10 of the properties' owners want their properties rezoned to all R-1, it would seem that R-1 would be the most logical and appropriate zoning for all of these properties.

7. A portion of the R-1 part of the Merskin property has been determined by the Department of Natural Resources to be wetlands. A copy of the DNR determination is enclosed herein for your reference. Such property is clearly not suitable for multi-family use. Furthermore, there has been no formal survey or staking of these wetlands to determine exactly what percentage of the Merskin property is wetlands.

8. I believe that allowing this property to be rezoned R-3 and developed into condominiums will result in an overcrowded and dangerous traffic situation on South Bayshore Road. Although the developer did submit what was called a "traffic study", it merely cited national averages for road use by condominium users. No actual traffic study of the site itself was made. Many vehicles already use South Bayshore Road as a short cut into, and out of, downtown Elk Rapids. Incoming traffic enters South Bayshore Road just north of these properties. Because those vehicles are just exiting from U.S. 31, they are frequently traveling at a high rate of speed. The proposed entranceway for the development sits at the bottom of a steep hill, which combined with the high rate of speed of the vehicles exiting U.S. 31, will most likely result in a dangerous traffic situation.

9. All of the residents living north and south of the property seeking the rezoning oppose the rezoning. Furthermore, 317 of the residents living in the general area have sent letters or expressed their objections to the proposed rezoning.

10. Rezoning of the property from R-1 to R-3 would violate the stated purposes of the Elk Rapids Township Zoning Ordinance, as they are set forth in Section 1.02 of the Ordinance. Allowing the rezoning and condominiums would not permit the orderly development of the Township as stated in 1.02A, but rather would create a small area of multiple family dwellings in an already existing single family residential zone. Allowing the rezoning for condominiums would not encourage the use of land in the Township in accordance with its suitability as required by 1.02B. This land is clearly suited for what part of it has been used for and for what all of the surrounding property has been used for, which is single family residential property. I believe that allowing the rezoning so that condominiums can be built on this property will not protect and enhance the property values of the Township, as is the stated purpose in Section 1.02C. Rather, I believe that all of the surrounding single family residential property values would be decreased in comparison to what those values would be if this property were developed, as presently zoned, into single family property. Finally, promoting safety in traffic and providing protection in the spread of fire and other hazards, as is the purpose stated in Section 1.02D, would clearly not be accomplished by allowing this R-1 property to be rezoned to R-3 for the construction of condominiums. As stated above, serious traffic problems would be created by putting this many people with vehicles in an otherwise single family area. Furthermore, the same problems exist as to fire and other hazards, when so many people are placed in a wooded area such as this property and the surrounding property.

LEGAL CONSIDERATIONS

I believe that there are two basic legal doctrines in Michigan which should prevent the requested rezoning from R-1 to R-3. For your reference, I have set forth those doctrines and cases that support them below.

A. A ZONING CLASSIFICATION THAT HAS BEEN RELIED UPON OVER A PERIOD OF TIME BY AREA PROPERTY OWNERS SHOULD NOT BE CHANGED.

The law in Michigan, as it has been established by the Supreme Court, is that once a zoning ordinance establishes a zoning classification, and the area property owners rely upon that classification, then the zoning classification should not be changed. Such was the ruling of the Michigan Supreme Court in the case of Brandau v. City of Grosse Pointe Park, 383 Mich. 471, 175 NW2d 755 (1970). In the Brandau case, Brandau and other plaintiffs sued the City of Grosse Pointe in an attempt to force the city to change their zoning from single family residential to commercial. The property

that was owned by the plaintiffs all bordered on busy Jefferson Avenue and all had commercial property adjacent to it and across the street from it. Nevertheless, the Michigan Supreme Court ruled that the law required the property to remain zoned single family residential because the other owners of single family residential property in the area had come to rely upon that zoning classification. In rendering its ruling the Court made the following statements:

> "(T)his case does meet the proposition that zoning, once ordained and relied upon for a fair period of repose by property owners, should not be readily upset."
>
> "It may be regrettable from Plaintiffs' viewpoint that they cannot utilize their properties for commercial purposes and thereby realize a handsome profit. On the other hand, to permit them to do so on the facts of this case would result in zone busting and consequent detriment to the city and to other property owners that zoning is designed to prevent. (Underling added).

The Michigan Court of Appeals followed the Supreme Court in the case of Shilling v City of Midland, 38 Mich App 568, 196 NW2d 846 (1972). In that case, the city was sued by its local residents after it had rezoned land to a business classification that had originally been zoned single family residential. The Court held that the rezoning by the city was invalid. In its opinion the Court noted that zoning should not be changed unless there was a mistake or the character of the neighborhood had changed. The Court also found that since predominantly single family residences had been built in the area after the original zoning ordinance was inacted, the character of the neighborhood had not changed. Therefore, the Court ruled that the single family zoning should not be changed.

The bay front zoning on both the Pine Hollow and Merskin properties was originally enacted to be R-1, single family residential. The Merskin property has been developed and used as single family residential property for over 20 years. The Pine Hollow property has had cottages on it which have been a nonconforming use, but which have been transformed in recent years to less of a nonconforming use, since they are now used as monthly rentals, rather than the weekly rentals that they previously had been. Since the zoning ordinance was enacted, the two properties immediately to the north of the property have been developed as single family residential. Furthermore, all of the properties to the south of the Merskin property have been developed as single family residential. The residents relied on the Township's zoning when they built their single family homes. The law, therefore, should prohibit the changing of the R-1, single family residential, zoning classification to R-3 .

B. THE LAW MAKES INCONSISTENT SPOT ZONING INVALID

A zoning classification cannot be changed if it will result in spot zoning. In the case of Penning v Owens and Plainfield Township, 340 Mich 355, 65 NW2d 831 (1954), the Supreme Court declared a Township rezoning invalid because it was spot zoning. In that case, local residents sued the Township after the Township had rezoned two lots from residential to commercial. The Court ruled that the rezoning by the Township was invalid because it would result in two commercial lots in an area that was zoned and primarily occupied by single family residences.

Another case that supports both the propositions that inconsistent spot zoning is invalid and that once a zoning classification has been established and relied upon, it should not be changed, is the the case of Raabe v City of Walker, 383 Mich 165, 174 NW2d 789 (1970). In that case the Michigan Supreme Court ruled that the city's rezoning of a 180 acre tract of land was invalid even though the rezoning had been requested by the Grand Rapids Chamber of Commerce. The Court found that the surrounding area had been developed as a residential community, and as such, held that even though 180 acres was a large area, the rezoning was invalid.

Nearly all of the development in the area of the requested Pine Hollow and Merskin rezoning has been developed as single family residential property, including all of the development in the area that was originally zoned both R-1 and R-3. It would seem that invalid spot zoning would result if the Pine Hollow and Merskin properties were allowed to be rezoned to all R-3.

I hope that the factual and legal information provided above will help you and the Antrim County Planning Commission make the same recommendation to the Elk Rapids Township Board that was made by the Elk Rapids Township Planning Commission. That is, that this requested rezoning from R-1 to R-3 should not be approved. Thank you for you consideration of this matter. If you have any questions, please feel free to give me a call.

Very truly yours,

Thomas G. Schluentz

THOMAS G. SCHLUENTZ

TGS/dms
Enclosures

ATTACHMENT No. 8

Ordinance # 3

An Ordinance to permit the partitioning or dividing of lots, outlots or other parcels of land in a recorded plot of land in a recorded plat within the Township of Elk Rapids, County of Antrim, Michigan

The Township of Elk Rapids Ordains:

The owner or owners of any lot, outlots or other parcel of land in a recorded plat within the Township of Elk Rapids, Antrim County, Michigan, shall be permitted to partition or divide a lot, outlot or other parcel of land within a recorded plat into not more than four (4) parts; however, any lot, outlot or other parcel of land not served by public sewer and public water systems shall not be further partitioned or divided if the resulting lots, outlots or other parcels are less than the minimum width and area provided for in the Plat Act of 1929 as amended or the "Subdivision Control Act of 1967" as amended, of the completed laws of the State of Michigan.

This Ordinance shall become effective thirty (30) days from the date of its publication.

January 23, 1969