ELK RAPIDS TOWNSHIP
PLANNING COMMISSION

Meeting Minutes – Thursday December 6, 2007

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

Present: Don Glowicki, William Larson, Jim Lundy, Renee Mischel, Emile Sabty and Shen Smith.
Absent: Brian Altonen.

Also Present: Leonard Harrett, Zoning Administrator, Larry Nix, Planning Consultant and Audience of 3.

Adoption of Agenda: Agenda for the December 6, 2007 meeting was approved by consensus.

Approval of Minutes
M/S – Lundy/Larson. Minutes for 11-1-2007 meeting, approved by the Planning Commission unanimously.

Public Forum: None.

Public Hearing
Lighting Standards - Zoning Ordinance Amendment
Mrs. Mary Cooper inquired about the ordinance effect on lighting of migrant housing on a farm. Mr. Nix, Planning Consultant, explained that there is no conflict. Migrant housing and its lighting on a farm falls within an AG zone and as such is not affected by this ordinance and by a site plan review. This ordinance relates to illumination placed on buildings or on poles in parking lots and the like.

Mr. Harrett, Zoning Administrator, asked if the light pole is increased from 20' to 25' high, is 20 foot candle illumination affected. In response it was indicated that the change is minimal and has no effect.

A letter from Mr. Fred Farage supported the proposed Lighting Standards, but was concerned that it did not address "one form of lighting, the distracting and over-illuminating bright florescent signage." Mr. Nix, Planning Consultant, explained that the proposed ordinance is not about how a sign is illuminated, but that the illumination of a sign and similar uses shall be shielded and directed away from residential districts and so arranged as not to adversely affect driver visibility on adjacent streets. Basically the ordinance addresses performance standards used when reviewing a site plan, it does not deal with internal or external illumination or intensity.

Chairwoman Mischel summarized that the ordinance evaluates wall fixtures, poles and similar fixtures and how they direct the light. Signs, whether illuminated internally or externally, should not become a lighting hazard. The ordinance is only a site plan review guide. Sign illumination can be considered as a future agenda review item.

Mrs. Carole Brady suggested that in the text of the ordinance replace the words "should" with "shall." Discussion showed that, when going through a site plan review, "shall" implies specificity, while "should" is more embracing. Mr. Nix, Planning Consultant, explained that this ordinance is a standard used in reviewing a site plan. The wording is a guide for the applicant to follow. Dark skies and downward not outward lights give them a clue as to what they have to do. The example in the text implies how the light is pointed when using fixtures and setting the light downward rather than outward. The ordinance is seeking performance. Using "shall" in implementing the dark skies requirement is acceptable, but using "should" in the example is more useful.

Mrs. Mary Cooper asked about the ordinance effect on Flag Pole lighting. In response it was explained that as long as it does not have an adverse effect, it is OK, but if it does, then it would require a corrective change.

M/S – Mischel/Lundy. Moved to close the Public Hearing. Approved Unanimously.

M/S – Mischel/Larson – Move to recommend the approval of Zoning Ordinance Amendment -Lighting Standards, as written with word change *should* to *shall* be implemented.

Amend Chapter 17, "SITE PLAN REVIEW," Section 17.04 – APPLICATION PROCEDURE, Sub-Section B-17 to read as follows:

17. All exterior lighting including lighting for parking areas or for the external illumination of buildings or grounds, or for the illumination of signs and other uses shall be directed away from and shall be shielded from residential districts and shall also be so arranged and directed as to not adversely affect driver visibility on adjacent streets. Dark sky lighting principals ~~should~~ shall be implemented in the design of lighting. For example, lighting fixtures should be of the shoebox variety directing light downward not outward, including wall and pole mounted fixtures. A fixture proposed on a light pole shall be no greater than twenty five (25) feet in height. Site lighting shall not exceed twenty (20) foot candles directly under the fixture as measured six (6) feet above the ground surface.

Vote: Yes – Glowicki, Larson, Lundy, Sabty, Smith and Mischel.
Motion passed 6-0-0. (Forward to County)

Old Business

1. US-31 Corridor – Advisory Committee Update:
Mr. Glowicki apprised the Commission about the past two meeting being positive. Setbacks on non-AG properties were discussed.

2. Township Planning Commission by-Laws:
The By-Laws draft was reviewed in general. Items brought up concerned the extensive use of the word "shall" throughout the document. Interpretation of the Open Meeting Act relative to meeting schedules to be published in a newspaper annually rather than posted only. Use "Government Center" in place of "Township Hall." The effort in adhering to all the rules listed. The text is too long, and may be it should be shortened. Mr. Nix, the Planning Consultant, explained that the by-laws are intended to provide proper procedure to establish and follow all the time. The word "shall" is focused and directive emphasizing the intent to follow the same type of format all the time. Further discussion concerned the developing of the agenda and how to deal with requests that fall outside the formal application procedure. There is no policy for miscellaneous submissions, such as informal discussion by a potential applicant. Chairwoman Mischel asked the Planning Consultant to review the concerns for further refinement of the by-laws.

3. Master Plan – Zoning Recommendations:
A summary list of the seven Zoning Recommendations was presented, which also included another list of seven "Other Subjects" collected over past sessions. A new item Sign Lighting was added to the Other Items list. Chairwoman Mischel advised that the list is not prioritized. Should an item require fast action, it will be brought forward for consideration. Otherwise the list will be reconsidered after the Commission completes reviewing the items already on the agenda. With that the list was tabled for future consideration.

New Business

Non-Conforming Structures:
Chairwoman Mischel stated that the revised Non Conforming Ordinance which was adopted in October 2004 eliminated the B-A upgrade process. The question that came up concerns those who went through the upgrade process B-A prior to the change to protect against structure destruction, what is the status of their non conforming structures?

Mr. Nix, Planning Consultant, explained that the B-A system allowed people certain rights under those provisions. Similar to having a parcel zoned residential and the zoning changed to a different classification; what happens to their rights when the zoning or the rules of the property changed? They can continue to operate, with the only difference being that if a physical change is made to the house, they have a different process, because they can not be conforming under the rules and regulations of non conforming provisions of the ordinance. If they had changed from B-A from the previous non conforming status, that whole system is gone now, and they now come

under the new rules of non conforming. If one had a status and had certain rights, and those rights are no longer in the zoning ordinance, they are gone because the rules have changed. They can continue to use the property as they always have, but if they want to make a change or expansion, they need to follow the rules and regulations of the current adopted non conforming use or structure elements in the zoning ordinance. Unless there is a provision there, and it is doubtful, that the rights one had can move forward, or if one was granted something for a specific period of time at the actual granting of an upgrade, those rights could still be maintained through the specific period. In our opinion, when a new ordinance was adopted, the B-A system was thrown out, and the rights a person had under that system are lost.

Mr. Harrett, Zoning Administrator, stated that B-A requests were made for one reason, having non conforming structures on lots. The upgrades dealt mainly with setbacks with the A status allowing it to be expanded and replaced as it was if destroyed. The concern here is whether the person rights as recipient of A status still exist. Most of the A status awards were for the right to expand with a small number (under 10) who only were seeking the right to rebuild in case of total destruction. With the ordinance change, what are the ramifications, and is there case history addressing this? Mr. Nix, Planning Consultant, responded that the B-A nonconforming standard was used north of Cadillac. Most users found it to be onerous and hard to manage, thus they changed. The rules and rights changes are sometimes what happen with zoning. Very few might be affected under the new rules. Nothing of this nature has happened here in over twenty years. In such requests, seldom does the ZBA turn down an applicant; they usually try to improve the situation some. It is the notion of having to go through a process if there was destruction over 60%; the fee is not considered a problem. Rules can be adopted to rebuild on the same foundation, pertaining to certain neighborhoods in place of creating a separate zoning district with separate zoning rules.

In summation Chairwoman Mischel stated that from the Planning Consultant explanations, and the Zoning Administrator statement, and on what the status is, and that we have not had any such concerns that came to us at this point in time, and barring any further discussion, this item is now a closed matter.

Correspondence - None

Training
Mr. Nix, Planning Consultant, briefly reviewed the mission of a Planning Commission, and its impact on the Township and the community since a Township can develop their own Planning and Zoning. Chairwoman Mischel recommended developing a short mission statement which can be incorporated into the By-Laws.

Members Comments
Mrs. Smith apprised the Commission about her personal tour of Pine Hollow, and the owner's vision about the preferred intended use. The conversation included setting an educational non profit entity. Changing the zoning to R-1 throughout. Changing the zoning to R-3 at the property they own across the street, and desiring to have a vineyard there.

Mr. Harrett, Zoning Administrator, advised that a Traverse City attorney requested an application for Special Exception permit on behalf the Pine Hollow Estate. He advised the attorney about all the required steps to be taken and approvals to be secured before such an application can be submitted.

The next scheduled meeting will be on January 3, 2008 at the Government Center, 315 Bridge Street.

Having no further business Chairwoman Mischel adjourned the meeting at 8:45 PM.

E. S. Sabty, Secretary **Minutes Approved 1-3-2008**
12-6-2007

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