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September 3, 2002 –

The Elk Rapids Township Planning Commission Regular Monthly Meeting was called to order by the chairman, Renee Mischel, at 6:30 PM, Tuesday, September 3, 2002, at the Elk Rapids Township Hall, Corner of River & Spruce Streets, Elk Rapids, Michigan 49629. Present: Emile Sabty, Harry Potter, Shen Smith, Renee Mischel, Tom Dame & Don Glowicki, Jr. Absent: Jim Lundy. A quorum was established. Also present: Len Harrett (Twp Zoning Administrator) & Larry Nix (Williams & Works), Charles Meyer, Gerald & Rosemary Filar, Patricia Pioszak, Ann Borysiak, Shirley & George Landon, and Patrick & Carole Brady.

PUBLIC HEARING – Gerald & Rosemary Filar: The public hearing was opened to the public. Chairman Mischel indicated that the public meeting notice indicated a "reconsider", but in fact hearing is for a "new" hearing. The purpose of this hearing will be to consider a request for a Special Use Permit in order to build a garage on Environmentally Zoned "E" Zone, for property owned by Gerald H. Filar and Rosemary Filar, 14930 Williams Drive, Elk Rapids, Michigan 49629. Property tax number – 05-06-625-002-00 – Lot #2, Subdivision – Woodlands.

Mr. Meyer's spoke for the applicant indicating that the previous Filar request was declined by the Planning Commission because the two lots were not legally merged, thus the Woodland lot did not have a primary structure. He indicated that the Filar's have secured permission from the Elk Rapids Township Board to legally merger the two lots. Also, indicated was a reduction in building size and a site plan delimitating the wetland areas.

Shen Smith, spoke indicating that Mr. Meyer was incorrect in his statement that the Planning Commission had declined the previous proposal (June 13, 2002) for the lack of a primary structure on the Woodland lot. Reasons for the previous decline were referenced in the minutes of the June/02 meeting, and did not note any reference to the lack of a primary structure with the Woodland lot as a reason for the decline.

Public Comments: No correspondence was received for this hearing. Speaking from the public: Patrick Brady (questioned "Clean Water Protection Act" in reference to the Woodlands lot), George Landon (Williams Court), no objection, Ann Borysiak (Williams Drive) – supports, Patricia Pioszak (Williams Court) – indicated the property "looks dry and she doesn't think she could see the project from the road". With no additional public comment, a motion was made by Renee Mischel, 2nd by Shen Smith to close the public hearing. **MOTION CARRIED: Y-6 N-0**

Chairman Mischel called for discussion from the Planning Commission. Emile Sabty read his personal opinions the record: "Special land uses are typically described as those uses of land which upon special review are determined to be compatible with permitted land uses in a zoning district. They are also known as "conditional uses, special exception uses, special approval uses, and special uses. (Administrating Twp Zoning – Pg. 25)

Our ordinance uses special exception designations (Sec. 17.07) which we follow here. In Section 17.07 D it sets the provisions of Chapter 15, SITE PLAN REVIEW, as the base to follow when considering approvals of Special Exceptions.

The Master Plan of Elk Rapids Township in its Mission Statement (Page 3), '*The Plan will profess a comprehensive vision for Elk Rapids Township in regards to land use, capital improvements, transportation, economic development and growth management with emphasis on protection of environmentally sensitive areas and natural resources in the Township'*. That sums up what our Master Plan is all about.

On Page 4, last paragraph it emphasizes that '*The Township must have rigorous development standards and enforce them*', and goes on to conclude, *the Township resolve through the Master Plan to protect and maintain the natural resource asset base for the quality of life that exists here today'*.

On Page 24 of the Master Plan, the area in which this property is located is designated as "1C", i.e. "*Forested and Intermittently/Seasonally/Temporarily Flooded Wetland*". When the Master Plan was approved and adopted, the intent as shown above was to protect this designation from being compromised.

This designation is also covered in the Zoning Ordinance in Chapter 10 – "E" Environmental Zone. The Ordinance is specific in protecting this designation as stated in Section 10.01 – Purpose, where it states *"The provisions of this chapter are intended to prohibit the alternation of these areas except where such alteration can contribute to the overall use and enjoyment of the area by the people and/or the preservation of such areas as historic sites; and where such alterations have no deleterious effect upon the natural environment*".

The Township, thru the Master Plan and the Zoning Ordinance did put through an extensive effort to protect the Environmental Zone from being pried upon in bits and pieces. There is no truth to the statement (Mr. Charles Meyer), that the Ordinance is vague and lacks standards. When we go over the Master Plan and the Zoning Ordinance, Chapters 10, 15, & 17.07, we find adequate detail and guidance, covering this subject, to base our decisions on.

When the applicant purchased this property he knew that the property lies in an environmental zone. If he did not, then that is no justification for seeking relief from the body to alleviate a problem that he created.

On the other hand if the applicant knew that the property was in an environmental zone and that he will have a problem building on it, then, he had the alternative to purchase and relocate on a different property that will accommodate his needs. Again by not doing that, he created his own problem.

Prior to adopting the Zoning Ordinance in May,1979, the owner of said property created in 1960, the Woodland Subdivision limiting the use to residential purposed only, subject to restrictions. Later, those who established the Zoning Ordinance had the wisdom and foresight to see to it that environmental zones are protected, and they were specific in what can and can not be done with that zone. The Ordinance negated the Woodland subdivision as a residential area which became an environmental zone. This lot fell into that category.

Now, the applicant chooses to merge the environmental zoned property to his R-1 zoned property and as such is asking for a rehearing to build a polebarn/garage on it. He already has a very large garage on his R-1 property. The fact is that the merged part will always be environmental zoned property subject to environmental zone restrictions. Until the zoning designation for that area is changed, anything short of that is nothing but strip or spot zoning, and that is something the people of this Township do not support. For what I just stated and for the facts brought up in the June 13, 2002 meeting, I can't support the request on hand"

Following a request by Chairman Mischel for more input, Shen Smith indicated that she was in agreement with the premise of Emile Sabty's statement basing on the protection of the "E" Zone, and for those reasons also could not issue support the request. Chairman Mischel, indicated as she was having some similar problems with the proposal, as was Tom Dame, Chairman Mischel then asked for the matter to be tabled until the legal ramifications could be reviewed by a planner. A motion was made by Tom Dame, 2nd by Shen Smith to table further consideration on the Filar Proposal until a review of the ramifications for the Township can be made. **MOTION CARRIED: Y-6 N-0**

Minutes of August 6, 2002 Meeting: Typo corrections: Open Space – delete the word "amended", Shared Planner – correct "planter" to "planner". As there were not additional corrections, a motion was made by Don Glowicki, Jr., 2nd by Renee Mischel, to approve the minutes as corrected. **MOTION CARRIED: Y-6 N-0**

Unfinished Business:

Township Planner: Chairman Mischel, introduced Willams & Works representative – Larry Nix. Following work by the ad hoc committee to interview and secure a planner for the Township, the committee has selected Willams & Works as the company of choice. Discussion regarding the securing of Williams & Works by contract instead of on a "piece by piece" basis to represent the Township was assigned to Don Glowicki, Jr. to present to the Township Board for contract approval to hire Williams & Works on a regular/part-time basis. Until Township Board contract approval is secured, the Planning Commission will use Williams & Works on a

"project by project" basis in accordance with the approved budget of the Planning Commission. A motion was made by Renee Mischel, 2nd by Shen Smith, to hire Williams & Works as the part-time Township Planner, pending Elk Rapids Township Board Approval & contract. **MOTION CARRIED: Y-6 N-0**. Chairman Mischel requested Don Glowicki, Jr. to present the proposed contract with Williams & Works at the next Township Board meeting for review in hopes that we can secure approval for the part-time hiring and a contract.

A motion was made by Shen Smith, 2nd by Tom Dame, to assign the Filar Proposal to Williams & Works from the Planning Commission's - "project by project" budget. **MOTION CARRIED: Y-6 N-0.**

Elk Rapids Township Zoning Ordinance: Shen Smith reported that she had been in contact with Twp. Attorneys, and The Antrim County Planning Commission regarding adoption/re-adoption of both the Master Plan and the Twp. Zoning Ordinance. Mr. Mix (Williams & Works) indicated that as the Twp Zoning Ordinance ***was only being reformatted and updated to include the S.O.B. and the Tower Ordinance, with NO other changes in text other than a few typographical errors***, the correct procedure would be to repeal all old ordinance copies and adopt the new ordinance with copies of the new ordinance to be placed in the public library and Township offices for review by the public. A motion was made Shen Smith, 2nd by Tom Dame, to hold a public hearing to repeal all previous versions of the Elk Rapids Township Ordinance in order to adopt the newly reformatted ordinance. **MOTION CARRIED: Y-6 N-0**. Emile Sabty will work with the typist to secure two copies of the reformatted ordinance for the library and Twp offices prior to the public hearing.

Zoning Application Form: Following discussion regarding how certain zoning application review processes could be paid for, it was determined that the existing clause from the Zoning Ordinance regarding payment by an applicant for certain "special needs" work secured/hired in a review of an application be added to the Zoning Application Forms. Additional details and terms will need to be specified within the ordinance and on the application forms.

Master Plan: Larry Nix, reported that Master Plan work could extend beyond the State mandated time from as the Elk Rapids Township Master Plan is only five years old at this time. Several items were mentioned as needing updating in the current plan: Census figure, Zoning Administrator schedules, etc. A motion was made by Renee Mischel, 2nd by Tom Dame, to table master plan review at this time.. **MOTION CARRIED: Y-6 N-0**.

Non-Conforming Upgrades:: Williams & Works will be asked to review the Elk Rapids Twp Zoning Ordinance in reference to the Non-Conforming Upgrade issues previously tabled indefinitely by this Commission.

Open Space: Chairman Mischel reported that Elk Rapids Township is currently not in compliance with the State mandated "Open Space Act". A motion was made by Renee Mischel, 2nd by Shen Smith, to table further review of the Open Space requirements until a planner has been hired. **MOTION CARRIED: Y-6, N-0.**

Farm Land Preservation: The Farm Land Preservation panel is a tri-county panel comprised of 24 people on a task force meeting twice monthly. Chairman Mishel has been attending meetings and will report with any information necessary for the Elk Rapids Township Planning Commission.

New Business:

Public Section:

E.R. Sportsman's Club: Mr. Patrick Brady spoke indicating that while in research regarding "E" – Environmental Zoning he found a will regarding "E" zoned land, and then presented a copy of a will from Mrs. Mina Wilcox's estate granting land for a public park. The land in question currently resides under the E.R. Sportsman's Club which is owned by the Township. Mr. Brady indicated that in his opinion, the will granted the land in question to the Township for a public park. He also indicated his feeling that the current use of the land was not in keeping with the conditions of the will, and that the original three acres which were designated as "park land" has been incorporated into the 21 acres of the E.R. Sportsman's Club. Chairman Mischel indicated this issue was not a Planning Commission issue and requested that Don Glowicki, Jr. take the matter to the

attention of the Township Board at their next meeting. Len Harrett reported to the Planning Commission that he had issued a building permit for expansion of the E. R. Sportsman's Club the previous week.

Ground Water Protection: Len Harrett reported that the Village Planning Commission is currently working on addressing ground water protection, and that our Chapter 15 needs to be amended to include protection for ground water within the Township. Chairman Mischel instructed Mr. Harrett to secure more information from the Village Planning Commission as to the direction and recommendations they are working on for the Township Planning Commission to consider.

Zoning Permits: Discussion with Len Harrett regarding the issuing of a building permit within the "E" Zone on the grand fathered E.R. Sportsman's Club uses – it was noted that the permit was issued: without a special exception (as required in the "E" Zone), without non-conforming use (and possibly a non-conforming structure) upgrades, and without a site plan review hearing (commercial use) being conducted, resulted in a motion by Renee Mischel, 2nd by Shen Smith to rescind the issued building permit for the ER Sportsman's Club, and table any further action on the project until a Twp planner is hired to review and determine exactly which non-conforming (structure/use) upgrades, special exceptions, site plan reviews, etc. are needed to allow for further construction and operation of the E.R. Sportsman's Club in the current "E" Environmental location.

Discussion:
Mr. Harrett informed the Planning Commission that the E.R. Sportsman's Club had attended a PC meeting some time in the past year (or so) requesting a site plan review. Upon the recollections of all members present at this meeting, none could indicate they had ever heard such a request regarding the E.R. Sportsman's Club. Minutes will be checked for any reference, but Chairman Mischel indicated that an informal site plan review would not clear the way for the issuing of a building permit. Shen Smith indicated that in her opinion, the above requirements are necessary and needed by each and every organization conducting business within the Township which would fall into such categories. The Sportsman's Club being no different than Wandawood Resort, and several other operations within the Township requiring the same or similar Planning Commission approvals - all being operations which do require combinations of special use permits, non-conforming use upgrades, non-conforming structure upgrades, and site plan review hearings in order to increase their uses or operations. It was pointed out by several members of the Planning Commission, that this motion to rescind the issued building permit ***was not being made in any way to prohibit the existence of/or eradicate the use of the Sportsman's Club, but only to bring it into compliance with the conditions of the Township Ordinance***. As there was no further discussion on the motion, the question was called: **MOTION CARRIED: Y-6, N-0.** The building permit previously issued to the E.R. Sportsman's Club was officially cancelled at this time until planner/attorney information can be secured.

As there was no further business, a motion was made by Shen Smith, 2nd by Tom Dame, to adjourn. MOTION CARRIED: Y-6, N-0 Meeting was adjourned at 9:04 PM.

Respectfully submitted,

Shen Smith
Secretary