

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday December 20, 2011

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

Present: Jim Lundy, Emile Sabty, Shen Smith & Renee Mischel

Absent: Dorance Amos, Jean Derenzy, William Larson

Also Present: Leonard Harrett, Zoning Administrator. Larry Nix, Planning Consultant. Audience 1.

Adoption of Agenda: M/S – Smith/Lundy. Agenda for 12-20-2011 meeting was adopted unanimously.

Approval of Minutes: M/S – Smith/Lundy. Minutes for 9-20-2011 meeting were approved unanimously.

Public Forum: None

Old Business

Medical Marijuana Zoning Ordinance

Elk Rapids Village Adopted Ordinance – Mr. Nix, Planning Consultant gave a brief review of the recently adopted Medical Marijuana Zoning Ordinance by the Village of Elk Rapids. Basically, the Village allowed the growing of Marijuana only in the Industrial District of the Village, only by a care giver and that consumption can only be done by a card holder in their own home. Otherwise the rest of the Ordinance mirrors the State Act. In advocating the use of an Industrial Area, space should be available.

A question was raised that being in an Industrial area and operated by a Care Giver, how many can locate in one building? Only one cultivating facility (single care giver person) per one lot was the answer. In comparison to the 5-5-11 draft Ordinance the TWP considered cultivating the product as a Home Occupation.

It was brought up that earlier; the Antrim County Prosecuting Attorney stated that he would take a Township to task if they were to approve the location of a MM facility in a residential area which may lead to property reduced values. Some commented that locating a facility in a residential area may not be the best of options for the TWP. Considerations should also be given to children living near the facility.

A reason for locating a facility in a residential area is to try to stop locating a “Collective there. The Village is on a better track than what the TWP is trying to do in advocating the industrial zone, but would that hold up in court? It was stated that the Village residential lot sizes and their closeness to each other had influenced their decision.

In the TWP there are two industrial areas, both are located along Herman Road, one at the corner of Herman and Cairn roads designated as wetlands. The other at the west end of Herman Rd. named “Ancient Mariner East Dry Dock Condo Association.

Attorney General Medical Marijuana Seminar – Mr. Nix briefly described the MI Attorney General seminars on the subject, and that the presentations were made by experts in their fields. In summary, nothing has changed; the subject continues to be more confusing than ever. In the process they are hoping to slowly dismantle the MM participants expansions. One presenter, Mr. Fisher, from Cooley Law School suggested some solutions to the problems facing the governing entities. He proposed three approaches. (1) Do nothing. (2) Regulate it by saying, if it is not regulated by the Federal Government, you can't do it here. (3) Regulate it consistent with State Law and the MMMA. The ER TWP proposed draft ordinance basically parallels the third option. Questions have

emerged that tie to all the short comings of the current MMMA. Proposals for revising the Act were made at the seminar that would resolve many of the ambiguous sections in the Act.

Mr. Sabty continuing the above seminar review stated that at the conclusion of the presentations there was a section on "Suggested Changes to the Medical Marijuana Law." It showed the current text of the Act and next to it a revised suggested text with all the added text appearing in bold print. Copies were distributed to the Planning Commission Members. It was hoped that the suggested revision would close the loopholes in the Act. He went on to present a summary of the main changes appearing in the suggested Act which included:

- Emphasis on the Federal Law.
- Emphasis on a valid ID card for a caregiver and patient.
- What a Doctor should include in a written certificate.
- Details of a Doctor responsibility in his relationship with a patient.
- Expanded definition of using or administering MM for a medical use.
- Patient and caregiver penalties for engaging in non-medical use of MM.
- A list of what a Physician shall not do.
- An applicant must specify their residence location, must give the address of the enclosed locked facility and give consent for the Department to conduct warrantless Administrative inspections.
- Emphasis on the confidentiality of information at the Department and when that information can be accessed.
- A revoked permit is only appealed to Circuit Court.
- Things not permitted under the Act such as harm to others, use in school facilities, public areas, cultivation in a located facility in violation of local zoning ordinance, and that there is no reimbursement to a person for costs associated with MM medical assistance, health insurance, health care etc.
- A request for a card not approved in 20 days grants the applicant a permit for 120 days but if it is determined that the application is not valid the permit is not reissued.

In one area of the seminar on "use of marijuana" it was emphasized that only the leaves are considered eligible for use in Michigan, the stem, bark and seeds are not permitted under marijuana definition in Michigan.

Mr. Nix stated that at present the TWP has a MM moratorium in place expiring on April 14, 2012, that would be a one year of review, which is the accepted length of time to review and develop an ordinance. With the current information on hand there is a lot to look at. What the village did is acceptable and is appropriate for them. The TWP does not have an industrial area parse to follow the Village approach. The effect on neighboring children is an item of contention. We are dealing with the marijuana as a crop but what about the byproducts of it such as pills, food products, liquids, etc. A one year moratorium is acceptable, but beyond that, only if there is actually an ordinance being worked on, then an extension beyond the year would be accepted to finish the work on hand. Maybe the draft of 5-5-2011 which parallels the State Act should be the basis for going forward from here, and if later a Revised Act comes along, we can change the ordinance then. Mr. Nix pointed that the way for going through the discussion is to review the current draft of 5-5-2011 and how it would fit in with the concerns raised here, with adjustments made as needed.

A suggestion was made to locate a facility only in an Agricultural Area where the residential homes are on a 1½ acre lots, and leave it out of the R-1 Area.

The Chair stated that it is important to consider certain areas in the TWP that MM can be fitted in similar to the approach taken for the SOB area where it can happen in.

Mr. Nix stated that the way the law is written, it allows a person who is the primary caregiver to grow and distribute from their home, and that appears to be the original intent of the law. The Village has taken a position, and other communities did that too, that "NO," we want the growing facility to be in a separate growing district and that they select the individual district to do that in. To consider a commercial district would lend itself to retailing and selling to the public, and using a commercial district for MM is less comfortable to live with. Here at the TWP we don't have the adequate industrial district option choice, but then what are the restrictions associated with the industrial/Manufacturing area Condo Complex or Wetlands.

It was mentioned that caregivers do transport the product to their customers, but then transporting the product or to sell it is not a zoning jurisdiction.

The Chair stated that we need to realize that now we are examining a whole different way of looking at part of this subject as to where we are going to grow it. The village approach limited the location to lots in their industrial area which takes it out of residential areas and we should see if at all possible the TWP can take a similar approach. She then asked Mr. Nix for his recommendation as to how to proceed from here.

Mr. Nix advised that he can draft various alternatives to the limited options we have, including one on an industrial option and its being tied to a Condo Association, but he would need to review the Condo Association rules before going into that area. The other option being the residential/agricultural option the way it is proposed currently in the draft. As to a commercial option we would have to be extremely cautious about that approach for it is not a clear avenue to pursue. It was suggested then to wait until the next meeting, meanwhile would look at the draft ordinance, and would look at the different options and what they mean and have them available for the next meeting.

M/S –Lundy/Smith. Move to table the MM discussion until the next scheduled meeting. **Passed 4-0-0**

M/S – Mischel/Lundy. Move to have the Planning Consultant prepare different options on MM for PC review at the next scheduled meeting. **Passed 4-0-0**

New Business

2012 PC Meeting Dates

A listing of a 12 monthly 2012 meeting dates was presented for selection of meeting frequency. The TWP had advised that the PC budget could cover every other month meetings rather than the current quarterly cycle. It was mentioned that we have a few agenda future work items that will be coming up after the MM work is completed. Also it was pointed that at present our work load is not such to justify six scheduled meetings. It was felt that we should continue to hold quarterly meetings with the option to call extra special meetings as needed. At the same time it was felt that holding quarterly meetings in January, April, July and October would avoid holiday disruptions.

M/S – Lundy/Smith. Move to hold PC quarterly meetings during 2012 in January, April, July and October with the option to call additional meetings as needed. **Passed 4-0-0**

Adequate Zoning Administrator Determination on Nonconforming Use

Mrs. Smith stated that she brought this subject up for review by the PC to see if there was something that should be added to the Zoning Ordinance that will assist the Zoning Administrator and strengthen his position when making a decision in that area that might avoid a court case.

The Zoning Administrator advised that usually something is there to base a nonconforming determination on, and he considers that to be part of the Zon Adm job, not the Zoning Ordinance. In his work, he documents his observations at all possible times, right from the start of all noticeable changes when something is changing or is being worked on, which gives him a reference history when needed to handle a nonconforming activity. This is not something that can be put in an ordinance, it is something that can be required or expected from the Zon Adm.

M/S – Smith/Lundy. Move to have the Planning Consultant do a quick review of the Township Zoning Ordinance as to the recent Court Case Law on the “Adequate Zoning Administrator determination on nonconforming use.” **Passed 4-0-0**

Joint Village Township Master Plan Coordinating Committee - Update

Chairwoman Mischel apprised the PC on the activities of the joint Coordinating Committee working on a joint Master Plan project. At the meetings different views were presented. The Township emphasized that they prefer to stand alone, independent, as a Township Planning Commission. They agreed to work jointly with the Village in developing a joint Master Plan to be approved independently by the Township and the Village Administrations.

Originally a grant was obtained by the Village for such a study and an outside company was hired to assist in the project. The hired company has left. At the last joint meeting the joint Committee requested the services of Williams & Works to develop a joint Master Plan. Williams & Works, the Township Planning Consultants are currently reviewing the Township Master Plan for an update if needed. Williams & Works were approved and are now the Plan Consultants for the joint project and would be coordinating the combining of the two Master Plans into one plan that both can use without infringing on one another jurisdictions.

Mr. Nix added that briefly put, there will be the common goals and the separate goals within the document. As to the future land use portion, there is to be a coordinated effort of what each one wants. Within the document there will be two documents that each deals with one group but not the other, each will approve their section. The document recognizes that the two are working together as a community in a coordinated effort to use the document as it applies to their jurisdictions. He emphasized that a Master Plan is not regulatory and is amendable to accommodate a zoning change of use that was not considered in the Master Plan. A change prior to a zoning change would usually avoid community conflicts.

The Chair stated that as progress is being made by the Coordinating Committee in developing a Plan the intent is that the developed parts would be brought for review by the Planning Commission as they are developed and the work progresses.

Future Agenda

Agenda items were considered as to which items should be moved up for the next meeting discussion. Easement Setback was discussed. When easements are granted they create setbacks. The Zoning Ordinance should include a segment or a definition on easements so that it is clear to a person what is involved when a request is made for an easement.

M/S – Smith/Sabty. Move to include Easement Setbacks in the January 17, 2012 meeting and have the Planning Consultant prepare the subject for review. **Passed 4-0-0**

As to the agenda item, “Antrim County Soil Erosion and Stormwater Control Ordinance,” it was explained that the subject does not require a TWP Ordinance work. The County has developed a County Ordinance on this subject and it is customary that such an Ordinance is presented to all Townships within the County for their consent. The County requested from the Township that ER PC set a time to have Ms. Heide Lang, Antrim County Soil Erosion Control, come to the meeting and make a presentation on the subject. The set time should be coordinated with Ms Lang.

Correspondence – None

Public Comment

Mr. Pat Brady asked about the length of time it would take to complete the Joint Master Plan? The first meeting coming up should be on January 12, 2012. As to the total project, a good guess would be approximately one year.

Members Comments – None

As there was no further business Chairwoman Mischel adjourned the meeting at 8:35 PM.

The next scheduled quarterly meeting will be on Tuesday January 17, 2012 at the Government Center, 315 Bridge Street, Elk Rapids MI.

E. S. Sabty, Secretary
12-20-2011

Approved 1-17-2012

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