

**ELK RAPIDS TOWNSHIP
PLANNING COMMISSION**

Meeting Minutes – Tuesday October 20, 2009

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

Present: Dorance Amos, Jean Derenzy, William Larson, Jim Lundy, Emile Sabty and Renee Mischel.

Absent: Shen Smith

Also Present: Leonard Harrett, Zoning Administrator, Larry Nix, Planning Consultant and audience of 2.

Adoption of Agenda: Agenda for 10-20-2009 meeting was adopted by consensus.

Approval of Minutes:

M/S – Lundy/Amos. Minutes for 9-15-2009 meeting were approved unanimously.

Public Forum: None

Old Business

SOB Ordinance – Review Mailed Draft

Mr. Nix, Planning Consultant, started reviewing the SOB Land Use Case Studies on hand, concentrating on the Ellicottville, NY, and New Hanover CO., NC, which parallel the Elk Rapids Township Community. Following a 1997 study, Ellicottville, concluded that the esthetics and economic values of their community are interrelated, and SOB would have adverse effects on their community; leading them to develop an SOB Ordinance. As the PC Members review the case studies, they can determine if there is a relevant need to revise the current SOB ordinance.

Mr. Amos inquired if in Michigan there are such cases that had been tried or are similar to the situation we are contemplating. **Mr. Nix** responded that most cases in MI are in large cities, and are different than ER TWP. The case studies in review, are based on freedom of speech and expression, and are tried in a federal court rather than local court. It is appropriate to review national litigation studies rather than concentrate on MI studies. **Mr. Amos** observed that with the small size of ER Twp, locations for SOB would be very limited, which comes down to identifying an area in which SOB can be located. **Mr. Nix** stated that what is said is true, but should it happen, it is important to have regulated what can be done, and to make sure it become part of the TWP record, and also show that sample case studies were reviewed.

Chairwoman Mischel advised that it is imperative that the PC review some of the case studies and their effects, and note that in the minutes for future reference in case it is needed.

Mr. Amos stated that the Twp Board had Attorneys Varnum Riddering Schmidt & Howlett of Grand Rapids (Varnum) do all the SOB work on the existing SOB Ordinance, they usually defend this work in MI. Most probable, the TWP Board will ask Varnum to review what we are doing, then look at what they suggest; because they are the ones who would defend the Twp if needed.

Chairwoman Mischel stated that the intent of the PC review is to make sure that we are totally up to date on this subject, because it was realized that the existing SOB Ordinance is lacking.

Mr. Amos suggested using Varnum to review this ordinance and see what their advise would be, they are the ones who have been writing SOB Ordinances in MI and doing the defending; they wrote our current ordinance, see how it differs, we can then review their report and decide if we want to address this ordinance. It is my strong belief that using someone who tried such cases in MI would be more important and advantageous than looking outside the state at this point.

Prof. Francis commented that the case studies in review would somehow apply to the state of Michigan, and their outcome effect would be reasonably similar to that affecting this TWP. This review would show the court that a reasonable review of past case study has taken place in preparing an Ordinance.

Mr. Amos emphasized that regardless of what the Planning Commission does at this time; eventually the TWP Board would be going through Varnum. My suggestion is to go to them at this early stage, see what they are suggesting for MI or our TWP, and start from there before we go too far with it, specially if we have to alter it. At this time, if all what we are doing is going through the exercise of an SOB study, then that is fine; but when it comes to changing the SOB Ordinance, we at the TWP Board will go to Varnum and look for their support, such as we did the last time when we adopted an SOB Ordinance.

Chairwoman Mischel stated that the suggestion is well taken; however, it is important that we continue this exercise and establish that this Commission feels that the case studies are similar in showing us the effects of SOB on our community so that we have the ground work established properly for why we need to have an SOB Ordinance.

Prof. Francis commented that using the developed Ordinance and sending it to Varnum for review and comparison to the SOB Ordinance they have developed would be a good step to take at this stage.

Mr. Nix advised that in his conversation with Twp Attorney Derman, he was told that SOB was not his specialty and that he would defer it to others in that field. As such, there should be no problem in taking this draft to Varnum for their review and advice. He then asked the Planning Commission, if there is reasonable belief that the reviewed case studies make sense, that the impacts of SOB, if one is established in Elk Rapids Township, would have the same type of effects on the community as indicated in these case studies? After discussion, **Mr. Lundy** expressed the PC consensus saying that it is possible, that something may not happen now, but down the road, several years from now, it might. There is reasonable belief that ill effects of an SOB shown in the studies would be similar here in Elk Rapids Twp.

Chairwoman Mischel related that while reading through the case studies, it became obvious that the findings are almost the same no matter where the location was. That, anywhere a study was done, negative impact to the community was found; concluding that the PC should establish the need for continuing the work of improving our Ordinance.

Mr. Lundy observed that many of the case studies were in big cities and those situations are not going to happen here. **Chairwoman Mischel** responded that the case studies did show a net effect that the impacts on smaller towns or villages, when they happen, were greater than in a large city.

Mr. Nix advised that locating an SOB in ER Twp could happen, and the likelihood may be limited. But if it does happen, we need to be prepared properly so that we give our attorneys any tools they need through our minutes, our actions, and what we have in our files, so it becomes a straight shot for them and they can defend us and minimize the pain and suffering of the cost incurred by this Twp in defending our position.

Mr. Amos asked where the current location of the designated SOB area in the Twp is, and if it was changing. It was pointed out that the location remains the same, south of the Water Tower, and the measuring distance used will be 750-ft rather than the 1000-ft. **Mr. Amos** then observed that with no change in location it becomes a matter of utilizing the most up to date Ordinance language.

Mr. Nix advised that with Mr. White's, Twp Supervisor, approval he can provide Varnum with a copy of the draft Ord.

The **Chair** asked for a motion on reasonable belief that SOB impacts The Twp as indicated in the case studies.

M/S – Sabty/Lundy. Move to make a motion that the Planning Commission supports the idea of reasonable belief that the impact indicated in the National Case Studies would be similar here in Elk Rapids Township if an SOB is established. **Voice Vote - Passed 6-0-0**

Discussion of the SOB Ord. followed. **Mr. Sabty** presented a list of concerns in the Ord. text draft, (copy on file), Sec 16.07-B states ... "within 500-ft of boundary of any residential zoned district or any residential structure", Sec 16.07-D mentions, "measure for SOB structure in straight line to the nearest property line". This need clarification when the 500-ft measurement is associated with residential zoned district, residential structure, property line or lot line etc. On the subject of offenses, in Sec 16.08-B. "commits a civil infraction", in Sec 100.16-A, "is deemed guilty of a misdemeanor", and "repeated operation in violation is public nuisance", then in Sec 16.09-B&C, "appearing in nude commits an offense". There is need for clarification in use of terms. It would be advantageous to take a look at the draft text and adjust it as needed for clarity. Another concern was, the SOB draft did not show what the PC approved to require a new owner of SOB to come to the Township when a change of ownership is made similar to the existing Zoning Ordinance Sec 7.06-J. **Mr. Nix** stated that he will add this list of concerns to the draft as he sends it on for Varnum review. **Chairwoman Mischel** reiterated that she look forward to seeing clear language and clear understanding of the text that will evolve.

A question on the source of the SOB 25% in store merchandise being acceptable was explained as being court originated. A question related to how fees were established was explained to be based on reasonable cost. A question related to Elk Rapids Township Code Enforcement Officer, was explained that the Zoning Administrator would enforce the Zoning Ordinance part, however with the licensing being a standalone ordinance the Twp would designate a person, and because the two ordinances are related it would be the Zoning Administrator.

Chairwoman Mischel asked for a motion to authorize Mr. Nix to obtain Mr. White's permission to send the draft and comments to Varnum for review and report.

M/S – Mischel/Amos. Move to table the SOB study, have Mr. Nix make the changes we have discussed this evening, and obtain Mr. White's permission to send the draft to Attorneys Varnum, Riddering, Schmidt & Howlett for their review and report. **Voice Vote - Passed 6-0-0**

Zon Ord Chapter 15, Wireless Telecommunication Towers And Antennas – As determined in the 8-18-2009 meeting the ordinance draft was forwarded to the Township Attorney for review and comment. **Mr. Nix** advised that the Attorney found no problem with the draft. However, as to the term Special Exception which is used in certain parts of the Ordinance while other parts use the term Special Use, the Attorney suggested modifying the term Special Exception in Sec 1.03 – DEFINITIONS to read Special Exception (Special Use). This will indicate that the uses of Special Exception (Special Use) mean the same thing. The draft was modified to reflect the suggestion.

Other items the Attorney addressed were recognizing the addition of monopole use to the Ordinance. How will the term opaque evergreen hedge be interpreted? There is no size or height limitation on a storage structure next to a tower. PC discussion of the storage structure as written took place. The PC did not see a need to make further text changes.

M/S – Amos/Derenzy. Move to amend the Zoning Ordinance Sec 1.03 – DEFINITIONS, **Special Exception** to read **Special Exception (Special Use)** as written, and to approve Chapter 15 Ordinance amendments Sections 15.04-D-1 and 15.07 as written.

Special Exception (Special Use) - A use that meets the intent and purpose of the zoning district, but which requires the review and approval of the Planning Commission in order to ensure that any adverse impacts on adjacent properties or public services and facilities that may be generated by the use can be, and are, mitigated; as prescribed in Section 19.07.

Section 15.04 – GENERAL REQUIREMENTS, sub sec D-1

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standard of the FAA, be painted a neutral color so as to reduce visual obtrusiveness. A monopole design is preferred and the design and appearance of the support structure and all accessory buildings shall be reviewed and approved so as to minimize distraction, reduce visibility from off site, maximize aesthetic appearance including at and from ground level, and ensure compatibility with surroundings.

Section 15.07 – BUILDINGS OR OTHER EQUIPMENT STORAGE

Buildings or other equipment cabinet's accessory to an antenna or tower shall be unmanned. Buildings or other equipment cabinets shall not exceed the maximum height for accessory structures and shall be located in accordance with the minimum setback requirements for the zoning district in which it is located. Buildings or other equipment cabinets shall be screened from view from any nearby residential properties by an opaque evergreen hedge. The provisions of this subsection may be modified by the Planning Commission to encourage collocation.

Voice Vote – Passed 6-0-0

Elk Rapids Township Community Character – Visioning, in Process – Tabled to the next meeting.

New Business None

Correspondence None

Public Comment None.

Members Comments None

As there was no further business Chairwoman Mischel adjourned the meeting at 8:05 PM.

The next scheduled meeting will be on Tuesday November 17, 2009 at 6:30 PM in the Government Center, 315 Bridge Street.

E. S. Sabty, Secretary
10-20-2009

Minutes Approved 11-17-2009

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