

**ELK RAPIDS TOWNSHIP  
PLANNING COMMISSION**

Meeting Minutes – Tuesday September 15, 2009

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

Present: Dorance Amos, William Larson, Jim Lundy, Emile Sabty, Shen Smith and Renee Mischel.

Absent: Jean Derenzy.

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

**Adoption of Agenda:** Agenda for 9-15-2009 meeting was adjusted and adopted by consensus.

**Elections of Officers:** Ms. C. Boals, TWP Clerk presided to elect the Chairman after which the elected Chairman continued the election of officers for the coming year. All officers were approved unanimously.

Chairman – Renee Mischel  
Vice Chairman – Shen Smith  
Secretary: Emile Sabty

**Approval of Minutes:**

M/S – Amos/Lundy. Minutes for 8-18-2009 meeting were approved unanimously.

**Public Forum:** None

**Old Business**

**Sexually Oriented Business (SOB) Ordinance Review**

Professor Steve Francis, Elk Rapids Village Council Member/Planning Commission who had done extensive research in developing the Village SOB Ordinance, was invited by Mr. Nix, Planning Consultant to participate in the review. Mr. Nix reviewed the outline and emphasized that an SOB Ordinance is one of the most complicated ordinances to update. Legally the law states that SOB is not an unlawful use, and rules can be developed by local entities as long as they do not infringe on the constitutional rights involved in running such a business. Various types of SOB are all considered uses and would fall under such developed regulations. At the same time, current court decisions and regulations in use should be considered in order that a developed ordinance does not fall outside of the tried and accepted rules in use. Because the Township and the Village are physically and closely associated, and the Village developed their SOB Ordinance after extensive effort; it was felt that the Township can benefit from that experience and would develop their Ordinance parallel and compatible to that of the Village.

Prof. Francis spoke about the Village SOB Ordinance of 2009 being a new Ordinance replacing the original Ordinance of 1995 which was never updated. Because of the constant changes in law, those in SOB constantly challenge existing ordinances that are not updated to circumvent them, which make it important to update the ordinance on regular basis. He stated that SOB has its roots in the first amendment, freedom of speech, which does not lend itself to exclusion as would be for other type businesses. On the other hand, there are secondary effects brought on by SOB that carries substantial risks for a community. The Courts in dealing with SOB gave communities a road map to follow very carefully. The end result would be a long ordinance because it takes into consideration all the details of various aspects that the courts allowed. To do it outside the road map would become a basis for challenge. In a road map the steps involved would be:

1. Throughout the process there should be clear intent that one is not trying to eliminate SOB.
2. Acknowledging that SOB has to be here in a designated place, then establish what the problems of having them here might be. This knowledge is gained from reviewing various nationally assembled case studies that give insight into the problems and would give guidance when developing an ordinance.

3. One should consider the nature of the community (The Township) and how it relates to the courts three prong approach when developing an ordinance that will be allowed by the courts.
  - a. Using the Township powers to enforce reasonable restrictions on speech. They can't control speech, but can say that, 'here is where you can do it, here is when you can do it, and here is how you can do it', which is constitutional.
  - b. They can have licensing requirements, because SOB has a high risk of undesired behavior. Objectively it would be said that we will give you a license unless there is a reason not to. It should all be done in a short and reasonable time frame allowing for due process.
  - c. Many problems in SOB have to do with what goes on inside of them. There can be regulations about what the inside of these businesses is to be like, such as open viewing rooms, managers on site, comingling etc.

It is important to have periodical review of the SOB ordinance, just to make sure that it stays current with the most recent court law.

During the discussion Prof. Francis and Mr. Nix responded to the questions asked.

A question was asked about the Village Public Hearing input. Prof. Francis responded that there was no input at the public hearing itself. However, initially there was hesitation from businesses and PC members as to why we even need such an Ordinance. Later as the process progressed and all the elements were put forward, the thinking changed and there was general consensus that, yes we do need the ordinance.

A question was raised about the relationship of case studies from big cities to our very small community. Mr. Nix responded that the courts have found that the size of a community, large cities vs. small townships, is not a major issue; the secondary effect of these uses was found to be very similar on both. Reviewing the court cases on hand would give an insight to the review process. It was determined that throughout the Country various crimes around SOB are much higher than in other areas. This would lead to separating these uses when applying them to the Township. Another aspect to consider would be the effect on property values being decreased. The Township could reasonably permit this type of use so it minimizes the impact in the community. A map needs to be established that would indicate where such a use can be located. All those findings would be kept on file to be used if needed and to become a basis for future ordinance update

A question was asked about the distance allowed for SOB from certain types of community establishments. In answer it was stated that the courts have used the 1000-ft limit to be utilized; but when establishing such a limit the court would look at what is found to be tolerable and is it a functional number. When the 1000-ft limit is used, would it eliminate any potential location within the community. The key is to have a location within the community where this can occur.

A point was made that the Township should be notified and be aware of any change in ownership at any time. The Village Ordinance as written requires a yearly license issued to one party to operate and needs to be identified yearly. It was suggested that between years, if there is change in ownership, they must disclose the ownership to the Township such as was developed in the Group Retreat Ordinance (Sec 7.06-J).

Mr. Nix reviewed the Village SOB Ordinance. It consisted of two parts, an SOB Zoning Ordinance and a General Law Ordinance on Licensing (copies on file). He went over the various parts of the Zoning Ordinance, the relationships between them and why the need for adopting such an ordinance. The Definitions part pertained to specific SOB definitions. Under permits required the Township would use the Special Exception approach. PC review, hearings and issuing a permit or not. How measurements are made and are they reasonable and possible. Zoning regulations used for operating different types of SOB. Regulatory aspect affecting the operation of an SOB, one must have a license, and to get a license one must have a special exception approved; it's a two prong approach, one cannot operate using only one without having the other. The ordinance would include details as to what can go on and what cannot go on in that business. An SOB cannot have material visible from outside the establishment. Signage requirements, age limits, hours of operation, and notices process. Another important part pertains to violations, whether they are considered 'municipal civil infractions' vs. the other Zoning Ordinance violations being 'misdemeanor'.

Using the Village SOB Zoning Ordinance is a good basis for updating the Township SOB Ordinance. Should the PC so approve, an ordinance can be developed on that basis using the zoning elements of a special exception.

M/S – Mischel/Smith. Move to have the Planning Consultant revise and revamp the Village SOB Zoning Ordinance for Township use format. **Approved 6-0-0.**

The Licensing Ordinance was reviewed by Mr. Nix starting with the section on definitions pertaining to SOB. Reviewing the licensing section indicated that the SOB license is issued by the Township Clerk. Also all personnel and workers within the SOB have to obtain a license to work there. A license had to be issued or denied within a specified period of time (20 days) of filing. It carries its own fee schedule independent of the Township normal fee schedule. The Ordinance would include many operational procedures, facility content and appearance, as well as behavioral requirements that affect licensing. It also would include a section on penalties and certain Township responsibilities when dealing with SOB.

General discussion dealt with explaining certain parts of the Licensing Ordinance criteria. How an adult motel differs from a normal motel, use of the term 'knowingly' in conjunction with infractions and the need for a licensing requirement of all employees and workers.

M/S – Lundy/Larson. Moved to authorize the Planning Consultant prepare a Township SOB Licensing Ordinance for review, using the Village SOB Licensing Ordinance as basis. **Approved 5-0-0**

Mr. Nix will use a write up format, supplied by Prof. Francis, of the Court Case Study Folder to select two full case write ups for review, and summaries of the balance of the cases for use by the PC members. The master folder will be kept at the Zoning Administrator Office for review as needed.

The Chair tabled the SOB Ordinance discussion until the next meeting.

Sign Lighting Amendment – Update: The Township Board reapproved the amendment and is due to be noticed on 9-17-2009 after which it will become effective on 9-24-2009.

Zon Ord Chapter 15, Wireless Telecommunication Towers and Antennas – Update: As was requested, the completed text was forwarded to the Township Attorney for review and report when ready.

Elk Rapids Township Community Character – Visioning: The Chair tabled this item until the next meeting.

**New Business, Correspondence, Public Comment, Members Comments - None**

As there was no further business Chairwoman Mischel adjourned the meeting at 8:40 PM.

The next scheduled meeting will be on Tuesday October 20, 2009 at 6:30 PM in the Government Center, 315 Bridge Street.

E. S. Sabty, Secretary  
9-15-2009

**Minutes Approved 10-20-2009**

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