

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday December 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 & Renee Mischel

Absent: Jean Derenzy

Also Present: Leonard Harrett, Zoning Administrator, Larry Nix, Planning Consultant and audience of 1

Adoption of Agenda: Agenda for 12-15-2009 meeting was adopted by consensus.

Approval of Minutes

M/S – Smith/Amos. Minutes for 11-17-2009 meeting were approved unanimously.

Public Forum: None

Old Business

SOB Ordinance – Review Update

Mr. Nix advised that after coordination with Mr. White, TWP Supvr. he will contact Varnum for cost estimate to update the existing SOB Ord that they previously developed; then compare it to the price quoted previously to update the draft being reviewed.

Contract/Conditional Rezoning

Mr. Nix prepared a review memo and a potential Ordinance on the subject including language from the MI Enabling Act as to the parameters we have to comply with if we decide to put that in the Zoning Ordinance. A question and answer discussion followed. Some of the pertinent points that came out of the discussion were:

- The Text in the proposed amendment does include pertinent sections of the Enabling Act rather than just mentioning it in reference. This makes for a more user friendly text.
- It applies only to residential zones and does not affect the “A” zone.
- In Contract Rezoning, the time length of a rezoning change process is not affected. If the TWP accepts the rezoning they have the ability to put a time limit to accomplish what is proposed. The TWP controls that and dictates it.
- As to what happens to the rezoning if the agreement expires and one party chose not to go ahead? Then if the parties agree not to extend it, the TWP initiates the rezoning of the property to where it was before.
- Once perfected the agreement with the rezoning and completing the structure, it stays there. It only expires if it is not perfected or the property is not developed.
- If an owner sell the property and the new owner wants to change the use; Conditional Rezoning stays with the property, the use does not change. If the use is to be changed the owner will have to go back to the TWP and request permission to change the conditional rezoning to allow a change of use. The TWP can refuse that use.
- In a scenario where there is a very large project that was agreed to and the TWP commit their resources to fulfill their part of public improvement and the applicant starts on their share, then the project does not

continue; in such case there is still a contract and the zoning of the project. If the developer owner defaults and it goes to a 'tax sale', the new owner may not want to do the existing agreement; then it becomes a renegotiation. For that kind of situation the conditional rezoning might be a better mechanism. But then with all the public improvements a TWP commits to in a large project, the TWP sometimes may not want to use contract rezoning and in place use the traditional approach.

- As to the legality of contract rezoning, the Act of 2006 specified the legality of contract rezoning and made rules for that. Until 2006 contract rezoning was illegal in Michigan by court decisions and not by statute. Traditionally In a rezoning request a TWP cannot put conditions or form a contract with the applicant that they will rezone the property as long as the applicant puts in a specific use. The courts have found that to be illegal. With the 2006 amendment, if the developer offers that with the rezoning he commits to a specific use, the TWP has the prerogative to accept that or reject it, but cannot negotiate. It is a one way offer by the developer, but cannot be counter offered by the TWP. The latitude the TWP has is in the length of time they allow the applicant to perfect that agreement. They can grant that for a set period of time, and allow the applicant to develop that. If it is not done in that time frame the TWP has the ability to rescind and pull back the offer. Nowadays developers hold informal meetings with TWP authorities and see what is feasible and acceptable before coming with a formal offer and request a rezoning to develop what is offered on the rezoned property. If a conditional rezoning offer is made it still goes through a PC public hearing where it is agreed to or rejected, then on to the TWP Board where it is agreed to or rejected.
- In rezoning, conditional rezoning is contrary to anything used in the past before the Act came along. As to the background of Conditional Rezoning, it came about from the Developing Community in Lansing. They felt that sometimes they have good ideas and municipalities want to approve them, but because of the abuses permitted in a zone district, they could not perfect it. Because of that the State suffers. With the new legislation they can make an offer that is negotiable which an entity can accept or not.
- An applicant cannot offer to develop a piece of land for a use that the zoning ordinance does not contemplate. The use has to be something permitted in the zoning ordinance. Hypothetical examples were discussed and already permitted zoned uses were brought up as to how the conditional rezoning would have applied or not in such situations or would it have been an easier process to use or not use conditional rezoning. It was also brought up that the Act itself has not been challenged in courts and that a few legislative amendments to the Act were tried but none did go through yet.
- An discussed example was a Corporate Retreat that recently required a combination of a detailed ordinance amendment then a special exception permit and rezoning. An applicant wanting to put a Corp Ret on a property that they want to have it zoned R-1; the Corp Ret has to be permitted in an R-1 district. If the applicant have a Corp Ret that is only permitted as by example in the 'A' district only, or wants to rezone this to R-1 and pulling this use from the 'A' district and stick it in R-1, they can't do that. They can't make that offer because it is not a proper offer to the TWP. An applicant can't put any use as a condition in a rezoning situation.

In another example an applicant wants to rezone something commercial where they want to put a factory in that commercial area. They cannot do that. The use they are proposing with the rezoning has to be permitted in that zone district.

- Under the current rezoning system, once rezoning is approved the owner can change the use from one kind to another as long as it is permitted in that district, such as from light manufacturing to a heavy industrial. In conditional rezoning the use is set at the time the property is rezoned.

The Chair suggested that further discussion should be deferred until the next meeting, and for Mr. Nix to discuss the subject with the TWP attorney for a guiding opinion.

M/S – Amos/Lundy. Move to table the discussion to be continued at the next meeting and have the Planning Consultant discuss the subject with the TWP Attorney for an opinion. **Passed 6-0-0**

Mixed Use Development

Mr. Nix memo of 12-7-2009 outlined a different outlook to mixed use than what previously was perceived. He sought the PC members' guidance to the approach the TWP should follow. In discussion, at ER TWP, mixed use had its origin in applicable uses along the west side of US-31 South, with reference to the Master Plan. The idea was to avoid developing a commercial strip along US-31 South similar to that on the same Hwy in Traverse County. The idea was to have residential combined with commercial and light manufacturing, all in the same strip making for a mixed community, rather than only one zoned use area.

Mr. Nix stated that the current mixing at the west side of US-31 South is not the intent of his memo. Discussion brought up to stay off the east side and concentrate only on the existing area on the west side. It was felt that this does not require a major ordinance change; it is a simple process. There can be a mixture of zoning districts with applicable use on the west side, not mixed uses that have two or more different uses. On the west side of US-31 South area we have now a mixture of zoning districts together with mixed use.

There was consensus that there is no need for a Mixed Use Development process. We should not pursue it further. We would continue to operate in accordance with the present process we are now utilizing in that area when needed. That process, though not perfect, is working now and we do have control over it.

M/S – Sabty/Amos. Move to remove the Mixed Use Development item from the agenda. **Passed 6-0-0**

Open Space Development

M/S – Amos/Lundy. Move to table the Open Space Development item until the next meeting. **Passed 6-0-0**

New Business

Criteria for Variance for ZBA

Mr. Sabty explained that after all, and upon further study it was found that the current Zon Ord Ch 18 on ZBA dates back to 1979 when the first Zon Ord was adopted creating a Zoning Board later changed in 1982 to a Zoning Board of Appeals. This chapter needs to be updated to current times and procedures. Such an update would be very beneficial to the current ZBA members where most of them are recent appointees. He asked that it be reinstated to the agenda of priority list for review.

M/S – Sabty/Smith. Move that the Criteria for Variance for ZBA, Zoning Ordinance Chapter 18, be added to the Priority Review List. **Passed 6-0-0**

Correspondence: None

Public Comments: Mr. Brady asked for more detail review of conditional rezoning and the legal ramifications when it is discussed at the next meeting.

Members Comments

Mr. Sabty gave a status summary of the Towers Amendment 2009-03 that it was approved by the Township Board on 12-8-2009, will be noticed in the paper on 12-17-2009 and becomes effective on 12-24-2009.

As there was no further business Chairwoman Mischel adjourned the meeting at 8:00 PM.

The next scheduled meeting will be on Tuesday January 19, 2010 at 6:30 PM in the Government Center, 315 Bridge Street.

E. S. Sabty, Secretary
12-15-2009

Approved 1-19-2010

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