

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday January 19, 2010

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

Present: Jean Derenzy, William Larson, Jim Lundy, Emile Sabty, Shen Smith & Renee Mischel

Absent: Dorance Amos

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

Adoption of Agenda: Agenda for 1-19-2010 meeting was adopted by consensus.

Approval of Minutes

M/S – Smith/Lundy. Minutes for 12-15-2009 meeting were approved unanimously.

Public Forum: None

Old Business

SOB Ordinance – Review Update

Mr. Nix reported on contacts made to secure legal advice on the draft SOB Ordinance being reviewed.

- Varnum did not write the existing ordinance, back then, as an official one. It was derived from legal papers on hand and was written to satisfy their customer. For lack of SOB ordinances then, communities adopted it for their own. They can't render an opinion on our draft without researching all the way back on its details. That was expensive.
- The draft ordinance overlaying the ER Village one is comprehensive with minor changes. A Traverse City law firm of Olson, Bzdok & Howard did the legal review for ER Village. Contacting them revealed they have experience with SOB ordinances, and worked with Resort Twp in reviewing their ordinance. They are a local firm with experience in this field. The cost would involve 8-10 hours at \$130/hr.

Going through another review of basically the same ordinance was requested by a member, with PC concurrence, that this draft ordinance go through a proper legal review before official consideration. The Chair stated that we now have an alternative that ER Village used. Mr. Nix stated that with PC approval he will take the proposal to the Twp Supervisor to coordinate with the Twp Attorney and make a determination on having Olson, Bzdok & Howard do the legal review. If they think it's OK, we can proceed from there.

M/S – Smith/Lundy. Move to have Mr. Nix coordinate with the Township Supervisor to determine the appropriate legal firm to perform the SOB Ordinance review. **Passed 6-0-0**

Contract/Conditional Rezoning

Mr. Nix reported on his contacts with Twp Attorney Derman re legal advice on this subject. None of Mr. Derman's clients have this item in their ordinances. When it first came up in 2006 his clients did not express any interest in adopting it. As a result it was put aside. To give an opinion now would entail going back to basics and building up on the subject before an opinion is rendered. Mr. Nix's research on the subject showed a scattered use with pros & cons on the topic. No litigation on this topic is found in Michigan since 2006. If any, it was used sparingly and did not create any litigation to date. In the coming week the MTA will hold their convention in Grand Rapids, Mr. Derman may suggest to Mr. White, Twp Supervisor making some inquiries at the convention and see, if any, what the current status is on Contract Rezoning in Michigan.

M/S – Lundy/Sabty. Move to table this review until after input, if any, resulting from inquiries made at the MTA Convention about Contract Rezoning. **Passed 6-0-0**

Mr. Nix will coordinate making the contacts with the appropriate parties for their findings.

Open Space Development

Mr. Nix referred to the Dec 7, 2009 memo on this subject concept originating in the Master Plan with the idea of having residential developments with significant areas of open space and natural features. The memo listed a number of approaches.

Review and discussion:

- The current Zoning Enabling Act allows for an open space development on half of the land normally required for the same number of homes with the other half left for open space. It is believed that there is no change in the impact on infrastructure, nor change in the tax base, which in some situations might increase because of enhancements. The zoning standards would change for such a development.
- In 2002, when it first came up, the subject was put on the PC to do list. Townships with population less than 5000 are exempt from this statute. Elk Rapids Township, a community of approximately 1500 is far back from the requirement; so why do we need now to adopt it in Elk Rapids Twp?
- This process provides another tool in the ordinance for someone to develop a property, if legal. A developer with a unique property and want to preserve part of it, but at the same time want to get their value out of it uses this tool to preserve half the land area and still achieve the same density on the whole piece of land, same cost, preserve a segment of the environment and enhance the community. In such situations the total property has to be developable. It would not apply if part or half is wetland and the other half is upland. The existing law does not allow that.
- Mrs. Smith raised the question of how does this affect shoreline property access? If the open space is on the shore, does that allow access for all the properties owned in the back? Would this defeat funneling zoning even if this statute does not apply to funneling per se? This could be a serious problem with open space when we take into account the considerable amount of shoreline properties in Elk Rapids Twp even though the idea itself might be a positive attribute in our community if done correctly.
- Originally the open space idea was utilized in developing large tracts and leaving a certain area for group use. It could be a forested tract, or farmland, and in other situations the open space was used for common septic field etc. The idea somewhat parallels a condo arrangement use process where the open space is valuable to the homeowners living there. This idea of living in a compact situation with open space is not applicable to everyone; it is not mandated for everyone in the community. It is just a different option if found applicable that it can be used.
- There was no factual showing that Open Space would have a change on home values.
- As mentioned before Open Space was not required in Elk Rapids Twp when brought up in 2002; it is still not required, why are we considering it now? When the Twp reaches a level of a large Twp, then we can apply an Open Space Development Ordinance. It is going to be a long wait before we reach a 5000 Twp population. People move to ER Twp because of open and spacious lots. The bulk of 20 acre parcels belong to a few owners in the Twp and mostly into farming.
- The Chair stated that Open Space Development is intended to look at different tools and options to maintain our world class character and maintain our open space environment planning.

- Mr. Nix explained that an Open Space Development is one devised method of owning land and having rules and guidelines to be followed in comparison to a Condo Site. The idea of clustering can happen under a lot of different zoning techniques; the Twp Zoning Ordinance does not have good guidelines for clustering. We don't have such rules other than the ones we make as we go along. So far we have never been in that situation. We have to plan for the future; we have to anticipate what may happen.
- The Chair asked if there was a way to look at other rural Townships Open Space Development and get a feedback from them as to why they did it, how it went and would they do it again? Mr. Harrett, who briefly mentioned other Townships Open Space, was asked to make contacts with such Townships and see if he can find answers to the question.
- There seemed to be diverging discussion and thought on Open Space Development in Elk Rapids Township, with no apparent consensus in exploring the Open Space Development subject.

M/S – Mischel/Lundy. Move to table this item to the next meeting. Have Mr. Nix bring more information on the subject, and ask Mr. Harrett, Zoning Administrator, to follow up with other townships and get feedback. **Passed 6-0-0.**

ZBA Chapter 18 – Review for Update

No information was available at this time.

M/S – Derenzy/Lundy. Move to table this item to the next meeting. **Passed 6-0-0.**

New Business, PC Correspondence, Public Comments & Members Comments: None.

As there was no further business Chairwoman Mischel adjourned the meeting at 7:50 PM.

The next scheduled meeting will be on Tuesday February 16, 2010 at 6:30 PM in the Government Center, 315 Bridge Street.

E. S. Sabty, Secretary
1-19-2010

Approved 2-16-2010

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