

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday September 21, 2010

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

Present: Jean Derenzy, William Larson, Emile Sabty, Shen Smith and Renee Mischel.

Absent: Dorance Amos and Jim Lundy.

Also Present: Leonard Harrett, Zoning Administrator, Larry Nix, Planning Consultant. Audience of 4.

Election of Officers:

Smith/Derenzy moved to reappoint Emile Sabty as Secretary. **Passed 5-0-0.**

Sabty/Larson moved for to reappoint Renee Mischel for Chairwoman and Shen Smith for Vice Chairwoman. **Passed 5-0-0.**

Adoption of Agenda: Agenda for 9-21-2010 meeting was adopted by consensus.

Approval of Minutes: M/S – Smith/Larson. Minutes for 6-15-2010 meeting were approved unanimously.

Public Forum

Mr. Mark Helveston from the Village of Elk Rapids Planning Commission stated that they are starting the process of revising their Master Plan, and asked if the Township PC would want to consider a joint effort work process for arriving at compatibility between the two. Mr. Sabty stated that to his knowledge the Village Zoning Administrator was to communicate with the Township on this subject, after which it will find its way to the appropriate party. Ms Mischel stated that the TWP Master Plan became effective in April 2007 and is not due for revision until 2012.

Public Hearing

The Chair opened the Public Hearing for review of adopting the updated TWP Zoning Map.

Mr. Nix advised that the map is basically the same with three minor zoning adjustments. Emphasized on the map are the TWP boundary, property line information, public and private streets and zoning districts.

With no further public input, Mischel/Smith moved to close the Public Hearing. **Passed 5-0-0.**

A question was asked why the County would have to act on the Map approval process. Mr. Nix responded that re-adopting the Map follows a Zoning Amendment procedure requiring County Planning Commission involvement.

M/S – Derenzy/Smith. Move to approve the revised September 2010 Township Zoning Map as presented and forward it for processing as necessary. **Passed 5-0-0.**

Old Business

10424 Lakeshore Road – Lot Division

Chairwoman Mischel stated that Mr. Richard Halts, owner, wish to split his lot into two (2) lots so he can utilize both lots for his family. Earlier, upon request from TWP, on 4-21-2009 PC did a preliminary review and a summary letter was sent to the applicant requesting further information. The applicant after supplying further documents, asked for PC input information regarding his proposal.

Mr. Harrett summarized that after last year submission, and because of the accessibility issues associated with a split, PC was asked to review it. Juniper Hills Subdivision consists of five lots, this being lot #3. It is a long lot approx 655'x104', or 68,000 sq ft. The split would consist of two R1 lots well above the 20,000 sq ft minimum. The five lots of Juniper Hills Subdivision currently utilize a 12' paved non-designated access trail extending from Lake Shore Road through the middle of their lots. The issue that need resolving is what constitutes access, what

documentation is needed, and what standards should be followed for access requirements. The owner is here to find out about the issues and what is needed to proceed with the split.

Mr. Nix explained that the TWP need to look at the issues arising from this lot split. In making the division the existing and the new lots have to comply with the zoning dimensional requirements. All lots need to have frontage on a designated public road or a permitted private road. Current access is from Lake Shore Road extension, but that is not a dedicated road. That access came about on a “hand shake” agreement among the neighbors, and that is a problem. The legal access to the subdivision lots is from S. Bayshore Drive (Old 31); that access area has never been defined or brought up to date, because for a long time there has never been a reason to do that. When a lot split comes up, it triggers the compliance with the rules and regulations. If there was a request for a private road for access, it would not be problem, but that is not the case.

Mr. Sabty stated that in discussing this subject with the TWP Supervisor, he understood that the current access from Lake Shore Road is a “hand shake road”. Checking further this so called hand shake road is the legal mailing address recognized by the US Post Office and by the Tax and Voting records. The three deeds copies submitted recognize an easement to the lot from S Bayshore Dr. The Certificate of Survey submitted on April 2009 describes the “New Drive-Way Easement” at the north side of the lot. The access easement was recorded in 1955 which should give it a Grandfather privilege. In doing a split the two lots would be sharing the same driveway. The two lots would have ample space for a common recorded driveway serving the two lots without creating a public road or private road. Further looking at Lot #1 in that Subdivision, it was split earlier by the Township, setting a precedent. The applicant supplied all the necessary documents, with a practical driveway easement that can be used to access both split lots, not a road. Just look at the history, there is an element of grandfathering privilege, with an added precedent used in dividing lot #1, justifying a driveway access. Why then is a road requirement with all its entanglements being advanced?

The discussion took on a general information format to find details about the property and what can be done to accommodate the applicant.

- Mr. Hults distributed maps and pictures of the property showing lines and areas of access.
- Ms. Smith asked who actually owns the vacated property known as S Bayshore (Old 31); is it the Township or a neighbor? Also, why not have an easement to Lake Shore Road that all can use? Or an easement to Old 31 on the east side?
- The Chair indicated that we may still need additional information. Mr. Nix, Harret & White could review the information on hand and advise us where the easement comes out & the accessibility as it applies to this property.
- Mr. Sabty asked why we need more study, when the documents submitted and past precedent, provide us with the detail about the easement and its location. If anything, you may want to find out if when the Juniper Hills Subdivision was created with its five lots, long before the Roads Ordinance was written, what constituted acceptable access, how was it established in place, and does it establish a grandfathered privilege in that subdivision?
- The Chair stated that, still we need to make sure of what we are looking at, since we are having two different views of information presented.
- Mr. Tom Dame (audience) stated that he would not agree to a road through his property, and that enough documents are submitted and an established access is in place.
- Mr. Hults stated that he has an easement on record in the deeds whether it is used or not, it is there. He offered to have another survey done of all the property lines and easements etc on the property.
- Mr. Harrett stated that the easement comes in to the vacated Old 31. We should take Mr. Hults’ offer for a survey. Further, the primary issue requirement appears in Ord Sec 2.18 & 2.19. Is it possible that if everybody in the neighborhood is comfortable with, (a) what is there now? And (b) what is being proposed? Could then the ZBA grant a variance regarding the road standard in the Zoning Ordinance?
- Ms Smith stated that we should stay with the Ordinance stated requirements for a solution.
- The Chair asked Mr. Nix as to what he would recommend? He has not reviewed the documents thoroughly, as well as the survey document. However the subdivision now has frontage on Old 31 and it is the legal access. The existing access being utilized is an extension of Lake Shore Road, which is not a legal access. How lot #1 split was made is not available to us here, it could have been based on the ordinance or not. Our concern is to decide on lot #3. It has a legal frontage on Old 31, but when split, the

legal frontage on the west side creates the issue of what is the legal access point which the applicant has to answer. Where is that access? Lake Shore Road current extension is not a legal road. Can make extension from S Bayshore and make a private road with its required width and setback; but that would reduce the minimum lot width drastically, even on a long but narrow lot with ample sq ft. The concern is with access to create a legal lot. We can advise the applicant of the options in a message that also goes to the TWP, advising him of the requirements to create a legal lot that complies with the ordinance. This makes the final decision for the TWP Board and their attorney to make. In reality, because of physical logistics, the options we reviewed are not necessarily practical. To have the applicant do more research, it may not resolve the problem.

- Ms. Smith stated that there is no opposition to what the applicant wants to do; it is just that we don't know how to do it in adherence with the ordinance requirements.
- The Chair asked Mr. Nix to compose a letter to the TWP Board advising them that we have reviewed the legal egress options with Mr. Hulst and what our conclusions on this matter are. This was put into a motion by Mischel/Smith which **passed 3-2-0**. (Yes -Derenzy, Smith & Mischel. No – Larson & Sabty).
- Mr. Larson explained the No vote; that with a described driveway easement on the north side and the owner owning both properties that the driveway easement goes through, that should settle the issue.
- The Chair stated that this is an option that the TWP Board can consider.
- Mr. Larson asked if that is going to be included in the letter to the TWP.
- The Chair stated that the letter will state what the legal options are.
- Ms. Derenzy asked to state what those legal options are.
- Mr. Nix stated that the legal options in the letter would be: (1) Lake Shore Road to become a legal private road. (2) Make a private road on the north side of the lot from S Bayshore Drive; though this reduces the lot width to keep it useable. (3) The TWP Board to look at lot #1 split and considers if that philosophy applies to lot #3. The Options do not include the No Vote explanation or a ZBA approach. On paper the current access used and on the ground situations are not going to change, but to affect a split we have to have a legal lot.
- In a question to Mr. Harrett if there was similar situations like this in the TWP. Yes is on the south side of Winters Road between US 31 & GT Bay.

Mr. Sabty had asked Mr. Nix if this situation can be appealed to the ZBA. Considering that this situation deals with dimensional problems, yes it can be appealed to the ZBA.

New Business

Subdivision Control Ordinance & Land Division Ordinance

Mr. Nix referring to distributed draft copies explained the need for updating the two ordinances even though they were adopted by the TWP Board and is not part of the Zoning Ordinance, but is referred to in name. With the New State, Act it made it necessary to update the two ordinances. The review time frame has been reduced. There is no need for a public hearing when adopting the two ordinances. The Subdivision Control Ordinance requires substantial changes, while the land Division Ordinance requires minor ones. We may have not used these ordinances in the past, but it is important that we make the necessary updates in case needed.

M/S - Mischel/Smith. Move to table the review until the next scheduled meeting. **Passed 5-0-0**.

Correspondence, Public Comments, Members Comments: None.

As there was no further business Chairwoman Mischel adjourned the meeting at 8:15 PM.

Next scheduled meeting will be on Tuesday December 21, 2010 in the Government Center, 315 Bridge Street.

E.S.Sabty, Secretary
9-21-2010

Approved 10-19-2010

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