


MEMORANDUM

TO: Elk Rapids Township Planning Commission
FROM: Larry Nix, PCP Consulting 
DATE: October 2, 2020
RE: Site Condo/Private Review for Hayden Project
Tax Parcel No. 05-06-033-002-52

An application has been received to establish a private road and site condo development from Marc S. McKellar II of Kuhn Rogers of Traverse City representing Donald Hayden Jr, C-Farm LLC. Mr. Hayden is the owner of C Farm LLC, and land located adjacent to Orchard View Drive, Tax ID# 05-06-033-002-52 just east of Elk Lake Road. The property is zoned "A" Agricultural. The application represents a private road with a cul-de-sac serving 9 single family home sites on a 31.46 acre site.

There are two sections of the Zoning Ordinance that need to be reviewed for this proposed project: Section 2.18 – Lot Creation, Land Division & Condominium Development and Section 2.19 Private Road Regulation. In both of these sections of the Zoning Ordinance, the Planning Commission is responsible to provide a recommendation to the Township Board on this project and the Board makes the final decision to approve, approve with conditions or deny the project. The following is a summary of the project.

1. There are 9-units, or lots proposed in the Site Condo project.
2. All 9 units or lots meet or exceed the minimum lot size requirements of the Agricultural District. (1.5 acres and 200' of road frontage).
3. Each unit or lot can only be developed with a single-family dwelling as regulated by the Township Zoning Ordinance and the project Master Deed and By-Laws.
4. Each unit will have direct access to the proposed private road.
5. The road will need to be constructed to the standards set forth in the Zoning Ordinance.
6. Since there are no public water or sewers facilities in the area, this development will be served by private wells and septic tanks.
7. The applicant has not indicated if the existing soil conditions present a challenge to secure on-site septic permits for each of the 9 dwellings. This should be addressed when this project is presented to the Township Board for action.

A complete review of the project and review standards can be found on pages 3-10 of this memo.

RECOMMENDATION

The basic concept of this project makes sense and all lots are consistent with the Zoning Ordinance standards but there are a number of technical details that need to be worked out prior to Township

Board action. It is suggested that the Planning Commission send the following recommendation to the Township Board and all items must be addressed and reviewed by the Zoning Administrator and Township Attorney prior to submission to the Township Board:

Motion that the Planning Commission finds no planning or zoning reasons to suggest this project not move forward. The Planning Commission recommends the following conditions must be addressed and reviewed by the Zoning Administrator and Township Attorney prior to submission to the Township Board for a decision:

1. The suggested changes or clarifications by Mr. Bill Derman, Township Attorney, to the site condo documents shall be addressed before the project is submitted to the Township Board for action.
2. The layout and lot sizes shall not be adjusted from the submitted plans unless determined by the Zoning Administrator to be necessary for compliance with zoning standards or due to other site adjustments. In no event shall undersized lots be considered acceptable.
3. Only 9 single family dwellings can be constructed in the Site Condo project plus associated accessory buildings.
4. The use of the subject property shall be for single family dwellings only.
5. Information shall be submitted to the Township Board regarding the suitability of the soils or actual soil borings to determine if they are suitable for on-site septic systems.
6. The applicant will be responsible to address all aspects of Section 2.19 Private Road Regulations for review by the Zoning Administrator and/or Township Engineer prior to submission to the Township Board for action.
7. The applicant should investigate the potential of shorting the proposed private road and the location of the detention area to retain a natural tree buffer between the end of the cul-de-sac/detention area and the north property line. [(Section 2.19(7))]
8. The building area illustration on Condo Plan sheet 4, shall be corrected to properly illustrate the maximum building height shall not exceed thirty-five (35) feet in height.
9. The Condo plans need to declare if the storm water system is in a Limited or General Common Element of the Condo.
10. Others as deemed appropriate by the Planning Commission.

Section 2.18 - LOT CREATION, LAND DIVISION & CONDOMINIUM DEVELOPMENT (review comments are provided in bold print)

A. Approval Required - For the purposes of this Ordinance, the Township of Elk Rapids shall not recognize any lot which was not a lot of record as of the effective date of this Ordinance, or any amendment thereto, is not of sufficient size and configuration to meet all zoning requirements, or which has not been subsequently approved by the Elk Rapids Township Board as established under this Section. Subdivisions, site condominiums, or plats may be made only in accordance with the Michigan Subdivision Control\Land Division Act or the Michigan Condominium Act as amended and in accordance with the conditions of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance and the Elk Rapids Township Zoning Ordinance.

B. Application for Lot Creation, Land Division & Condominium Development - Application for a lot creation, land division & condominium development shall be made to the Elk Rapids Township Clerk. If generally complete, the application shall be processed in accordance with this Ordinance and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance. The application shall be signed by all parties of interest in the property.

C. Required Application Information -The following required information shall be included on all applications for lot creation, land division & condominium development:

1. Property survey signed and sealed by a land surveyor registered in the State of Michigan, including the following:

- a. North arrow, date, and scale. **OK, All plan sheets.**
- b. Existing and proposed lot lines and dimensions. **The existing 31.46 acre parcel is fully dimensioned and the proposed 9 units are illustrated and fully dimensioned.**
- c. Existing utilities and official County drainage courses within fifty (50) feet of the lot(s) to be created. **Existing utilities have not been identified on the survey plan sheets. The applicant has stated in an email that there are no official County drainage courses within fifty (50) feet of the development.**
- d. Location and dimensions of existing and proposed easements, lot numbers, roadways and lot irons. **This information has been provided on the Survey Plan sheets 2 and 3.**
- e. Existing structures on the proposed lot(s) and all structures within 50 feet of the proposed lot lines. **There are no existing structures on subject property based on my site walk and as illustrated on the Mansfield plan sheet C 5.0.**
- f. Zoning classification of the lot(s) to be created and all abutting lots. **The information is illustrated on the Survey Plan sheet 2.**

g. All required front, rear and side yard setbacks resulting from the requested lot creation. **All zoning lot setback information has been illustrated on Survey Plan sheet 4 and all information is correct.**

h. All required open space. **There is no required open space associated with this project.**

i. Location of natural or artificial drainage courses, lakes, streams, wetlands, and dunes, high risk erosion zones, threatened or endangered species, unusual topography, and major stands of trees. **All natural and man-made features of the site and surrounding area have been illustrated on Mansfield plan sheet C 5.0.**

j. At the discretion of the Elk Rapids Township Board, the owner shall provide a preliminary plan for the feasible plan development, division and access to any remaining or abutting lands affected by the proposed lot creations. The Elk Rapids Township Board may also at their discretion, require the preliminary plan to be reviewed by the Elk Rapids Township Planning Commission. **A Preliminary Site Condo plan has been provided along with the information associated with a new private road to serve the proposed 9-unit site condo project. Since the proposed private road requires Planning Commission review, both the Site Condo project and the private road information have been submitted to the Planning Commission for review and comment to the Township Board who have jurisdiction on final approval.**

2. A written instrument fully executed in a form legally sufficient for recording with the Antrim County Register of Deeds, including a legal description of the requested parcels. Areas shall be shown to the square foot on parcels of less than one acre and acres to the one-hundredth of an acre on parcels larger than one (1) acre. **This information has been provided on sheet 1 of the Survey Plan.**

3. All existing and proposed deed restrictions for the property(s), including any required easements for drainage, roads or utilities attached in recordable form. **A draft Master Deed and Condominium Bylaws have been submitted by the applicant for review and comment. Mr. Derman has these documents for review.**

4. Name, address and phone number of the property owner(s) and all others holding interest in the property. Satisfactory evidence of ownership or interest shall be presented to the Township. **Property ownership information has been provided including a Quit Claim Deed has been provided indicating Mr. Donald C. Hayden, Jr. (C-Farm, LLC) is the sole owner of the property.**

5. If the division or partition of the parcel will result in a lot size less than the requirements of the Land Division Act, Michigan Public Act 288 of 1967, as amended, and/or the applicable provisions of the Zoning Ordinance or its successor ordinance, if any, then the applicant shall submit in addition a fully executed affidavit in form legally sufficient for recording with the Antrim County Register of Deeds and signed by all persons who have any legal or equitable

interest in the parcel, acknowledging that they understand the partitioned or divided parcel or parcels may not thereafter be developed or used separately, but only in conjunction with the adjoining parcel or parcels of land. **All 9 units (lots) proposed meet or exceed the lot size requirements of the Agricultural District. (1.5 acres minimum lot size with 200' of width)**

Section 2.19 - PRIVATE ROAD REGULATION (review comments are provided in bold print)

Private Road - Any road or thoroughfare for vehicular traffic which is privately owned and maintained and which provides the principal means of access to abutting properties.

A. When private road development occurs in the Township of Elk Rapids and is not subject to the standards established under the Land Division Act, Michigan Public Act 288 of 1967, as amended, and the requirements of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, the following minimum private road standards shall apply. No person, firm, or corporation shall hereafter divide any land as hereinafter described without providing for public or permanent private easements for access to such divided lands with said private easements to conform to these minimum requirements:

1. All lots must be on a public or private road frontage and meet all Ordinance requirements. **All lots proposed in the Site Condo project that will be served by the proposed private road meet zoning requirements for frontage and lot size.**

2. All private roads constructed in Elk Rapids Township shall be accessible, usable, and constructed to the Antrim County Road Commission Standards parallel to and centered with the centerline of a permanent right-of-way easement duly recorded with the Antrim County Register of Deeds. Rights-of-way or easements, while not required to be dedicated, will be reserved for future dedication and preclude any development within this designated area. All plans as submitted for approval must show the private road easement including a legal description, the grades for the roads, and any drainage facilities and structures. **The road specifications provided on Mansfield sheet C 2.1 are generic in nature and do not reference Antrim County Road Commission standards. The Survey plan sheets indicate the road will be constructed within the right-of-way created for the road. The Township Engineer will need to be involved in the technical requirement of the road construction prior to Township Board action.**

3. All private roads shall have names approved by the Elk Rapids Township Board, be consistent with the County address numbering system and the County Road Commission requirements. **The applicant has several proposed road names and has not made a final selection for the road.**

4. There shall be a clear vision zone at corners of intersecting roads, or road junctions, consisting of a triangular area defined by the point of intersection of the right-of-way lines and the two points extended along such lines a distance of twenty-five (25) feet from the point of intersection, and within which area no obstruction to vision, excluding existing topography, shall be permitted from a height of two (2) feet to eight (8) feet above centerline elevation of abutting streets, except that not more than two (2) trees with trunks of not more than thirty (30) inches in diameter each, and clear of any branches for such heights may be located within such area; provided, however, that this section shall not prohibit the requirement of a greater clear vision area where such is necessary in view of permitted traffic, anticipated traffic volumes, or geographic conditions. **Clear vision corners have been noted on Survey plan sheet 3 and Mansfield plan sheet C 4.1.**

5. All private road easements shall meet the following requirements:

a. Unless otherwise specified in this Ordinance and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, easements shall be a minimum of sixty six (66) feet wide. The Township of Elk Rapids Planning Commission or its designated agent may require additional width to the right-of-way easement to insure for adequate construction in specific situations. **The proposed right-of-way is 66 feet as illustrated on the Survey plan sheet 3. Addition width should not be necessary but a final decision on this point should be made by the Township Board upon Township engineer recommendation.**

b. The right-of-way easement width on curved portions of roads shall be the same as for tangent portions. **This is not applicable as the road is straight.**

c. The minimum distance between private road outlets on a single side of a public road shall be six hundred (600) feet. **There are no intersecting roads or road outlets within 600 feet of the proposed private road.**

d. Shall be posted with speed limits of fifteen (15) mph or less. **This item has not been addressed and can be a condition in the Planning Commission recommendation to the Township Board.**

6. A drainage plan shall be submitted on a topographic map, indicating the manner in which surface drainage is to be dispersed. In no case shall runoff from a private road be diverted beyond the limits of that private road onto adjacent roads or property unless appropriate easements are provided. **Drainage for the road will flow to the north and collected in a detention basin. The Township engineer will need to provide review comments to the Township Board prior to Township Board action. Consideration should also be given to shorting the road and moving the detention basin south 30-50 feet to provide a natural buffer between this property and the property to the north.**

7. All roads constructed in Elk Rapids Township shall be constructed so as to sufficiently control storm water runoff and permit effective storm water drainage and prevent soil erosion and shall have all required storm water and soil erosion control permits. No runoff shall be discharged to lakes, streams, or wetlands without adequate best management practices. Private roads shall be laid out to the greatest extent feasible to achieve the following objectives: (Listed below in order of priority, as it is recognized that some may not exist or may conflict with others on any given site)

- a. Not on soil classified as “hydric” (wetland soils) by the USDA Soil Conservation Service or through wetland area as delineated pursuant to the Unified Federal Method of Wetland Delineation.
 - b. Not in areas of steep slopes (fifteen percent (15%) or greater), within two hundred (200) feet of a shoreline or over streams if they can be avoided.
 - c. Along fence rows or the edges of open field or other open spaces adjacent to any woodlands.
 - d. Within marginal areas of woodland (note: marginal areas shall extend a maximum of two hundred (200) feet into the interior of said woodlands).
 - e. On areas not considered prime or unique farmlands or in areas not considered as prime forestland soils on a national or regional basis.
 - f. In locations least likely to impact scenic vistas, as seen from public roadways or water.
- The proposed layout of the road appears to avoid major stands of trees, hydric soils, scenic vistas from public roadways, prime or unique farmlands and major features of the site. It is noted the north end of the road including the cul-de-sac and the storm water detention pond are north of the slope area and the detention pond is adjacent to the north property line. There appears to be an opportunity to shorten the road, save trees along the north property line, and still meet the requirements of the Township.**

10. A private road serving or to serve a minimum of seven (7) and a maximum to twelve (12) lots, parcels, or condominium units shall at a minimum meet all of the design standards presented in Item 8 of this section with the exception of the following:

- a. Shall be located on a right-of-way easement a minimum of sixty-six (66) feet wide. **Compliant.**
- b. Have a roadbed not less than nineteen (19) feet wide. **Compliant, 20 feet is proposed.**
- c. Paving shall be required in those areas that have grades greater than three (3) percent. Pavement in said areas shall be a minimum of eighteen (18) feet in width and other than pavement width meet or exceeding County Road Commission standards and specifications for materials, thickness, and roadbed construction. (Note: grade shall be determined by determining the differences in elevations at stations located at one hundred (100) feet intervals along the centerline of the final road grade). **This standard will need to be**

addressed by the Township engineer prior to the Township Board making a final decision on this project.

11. A private road serving or to serve more than twelve (12) lots, parcels or condominium units shall meet design specifications and road construction standards as presented in Item 10 of this section with exception of the following: **Not applicable.**

12. Construction permits from the Antrim County Road Commission are required for connection to County roads. Permits are required from the Antrim County Drain Commissioner under the Soil Erosion and Sedimentation Control Act, P.A. 347 of 1974, MCLA282.101 et seq., when applicable. No zoning permit shall be issued on any private road until such private road reviewed by the Elk Rapids Township Planning Commission and then approved by the Elk Rapids Township Board. **This can be a condition of approval.**

13. Application for road construction shall be made at the same time as a land division occurs creating a lot(s) without frontage on an existing public road. Applicant shall prepare a general property development plan complying with the requirements of this Ordinance, and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, as amended. Prior to review by the Elk Rapids Township Planning Commission and then approval by the Elk Rapids Township Board, the applicant will prepare and provide three (3) sets of:

- a. Engineered road construction plans.
- b. Drainage plan.
- c. Road maintenance agreement and deed restrictions satisfactory to the Elk Rapids Township Attorney, signed by applicant/owner, providing for:

- 1) A method of initiating and financing of such road and/or easements in order to keep the road in a reasonably good and usable condition.
- 2) A workable method of apportioning the costs of maintenance and improvements to current and future users.
- 3) A notice that if repairs and maintenance are not made within six months of the date of official notice from the Elk Rapids Township Board of Elk Rapids Township may bring the road up to the design standards of this Ordinance and assess owners of parcels on the private road for the cost of all improvement, plus an administrative fee in the amount of twenty-five (25) percent of the total costs.
- 4) A notice that no public funds of Elk Rapids Township are to be used to initially build, thereafter repair, or maintain the private road.
- 5) Easements to the public for purposes of emergency and other public vehicles for whatever public services are necessary.
- 6) A provision that the owners of any and all of the property using the road shall refrain from prohibiting, restricting, limiting or in any manner interfering with normal ingress and

egress and use by any of the other owners. Normal ingress and egress and use shall include use by family, guest, invitee, vendors, trades persons, delivery person, and others bound to or returning from any of the properties having a need to use the road. **All of these items will need to be addressed by the Township Attorney and Township Engineer prior to Township Board action.**

14. No private road shall be incorporated into the public road system unless built to the specifications of the Antrim County Road Commission for a public road. **This item can be a condition of approval.**

B. The Elk Rapids Township Planning Commission shall review the plans of the private road and forward recommendations to the Elk Rapids Township Board. A Professional Engineer, who reports to the Elk Rapids Township Zoning Administrator, shall be hired by the private road developer. The Engineer and the Elk Rapids Township Zoning Administrator shall consult with water resource experts and/or Michigan Department of Natural Resources officials for a written review of environmental impacts. After road plans are reviewed by the Elk Rapids Township Board, a conditional construction permit may be issued by the Zoning Administrator which are subjects to performance bonds as established by the Township Board. The Engineer and Township Zoning Administrator will inspect and review the road during construction. Upon completion of construction of the road, a site inspection of the road will be made by the Engineer and the Zoning Administrator who shall forward his/her recommendation to the Township Board who shall then grant a final approval. **This element can be a condition of the Planning Commission recommendation to the Township Board.**

C. All private roads shall be designated as such and have a sign and name meeting county sign standards erected by the property owner. In addition to road identification, private road signs shall also include the wording "Private Road" in a minimum of four (4) inch letters and "Not maintained by the Antrim County Road Commission" in a minimum of two (2) inch high letters. **This element can be a condition of the Planning Commission recommendation to the Township Board.**

D. An application fee is to be established by the Elk Rapids Township Board. Before final approval the cost of review of plans and inspection by the Township Zoning Administrator of the private road and drainage shall be paid for by the applicant/developer. **This element can be a condition of the Planning Commission recommendation to the Township Board.**

E. All purchasers of property where a private road provides access to the premises shall, prior to closing of the sale, receive from the seller a notice of easement, in recordable form, substantially conforming to the following:

"This parcel of land has private road access across a permanent _____ (insert size of easement) foot easement which is a matter of record and a part of the deed. This notice is to make the

purchaser aware that this parcel of land has egress and ingress over this easement only.” **This element can be a condition of the Planning Commission recommendation to the Township Board.**

F. Neither the County nor the Township of Elk Rapids has any responsibility for maintenance or up keep of any improvement across this easement. This is the responsibility of the owners of record. The United States mail service and the local school district are not required to traverse this private improvement and may provide service only to the closest public access. (Michigan P.A. 134 of 1972 as amended) **This element can be a condition of the Planning Commission recommendation to the Township Board.**

G. Where a private road or access easement is present on a lot, minimum required yard setbacks shall be measured from the private road or access easement right-of-way, regardless of whether the right-of-way provides frontage for the lot. **This element can be a condition of the Planning Commission recommendation to the Township Board.**