

MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION REGULAR MEETING HELD ON OCTOBER 25, 2006 IN THE CLAY TOWNSHIP MEETING HALL, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MICHIGAN 48001.

1. Chairperson Dorothy DeBoyer called the meeting to order at 7:30 p.m.

2. **ROLL CALL:**

PRESENT: Chairperson DeBoyer, Vice Chair Anthony Antkowiak, Pat Sharrow, Whitey Simon, Kathie Schweikart, Thomas Krueger, Edward Keller II, Earl Lines, George Lyle.

ABSENT: None.

Also present was Community Planning Patrick Meagher, Peter Briddick, Attorney John McNamee and Building Administrator Michael Kras.

Approximately fifteen (15) citizens present.

Clay Township Board of Trustees: Supervisor Jon E. Manos, Clerk Michael P. Pellerito, Treasurer Connie Turner, Trustee David Dare, Trustee Jay DeBoyer, Trustee Pat Sharrow, Trustee John Makuch. Absent: None.

3. **AMENDMENTS TO THE AGENDA:** None.

4. **APPROVAL OF MINUTES:** October 11, 2006

Motion by Simon, supported by Lines to approve the October 11, 2006 Minutes.

Changes to the minutes as follows:

- Page 5, ZBA Representative Report, Item #7: statement by Mr. Antkowiak should read as "Brisbay revised plan: ZBA required the greenbelt, any number of legal parking spaces they could get into their space realizing they would be using other spaces that we cannot approve."
- Page 5, Correct the R/C VOTE: SHOULD BE **ABSENT:** LYLE.
- Page 6, under Public Comments: Dennis Schaible's comment last word should be changed to **seat** and not sit.

Minutes approved with the above corrections as stated.

AYES: All. Nays: None. **MOTION CARRIED.**

Chair Dorothy DeBoyer: Joint Meeting with the Township Board of Trustees and Planning Commission will be held following some old business have to take care of first and then will have the Joint Meeting.

5. **OLD BUSINESS:**

Site Plan Consideration: Water's Edge Bar & Grill (formerly Brisbay) 7291 Dyke Road

Applicant: Not asking for two much, seven (7) parking spaces.

Chairperson DeBoyer: Time for the Planning Commission members to review and discuss, what are your thoughts?

Lyle: Did applicant receive the Planner's letters.

Chair DeBoyer: Yes he did.

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Chair DeBoyer: It is not a new building or renovated, the site plan surrounding that building is our concern.

Lines: Questioned dumpster and greenbelt along the north side, when wind blows homeowner would smell the garbage. Dumpster breaks up the green belt, sets right in this guys back yard, should be moved according to the Planner.

Antkowiak: Have questions about the building plans, why is it necessary to question the elevation, floor plans, etc.

Peter Briddick: Those are site view review requirements; you have the ability to waive any of those if you think are not appropriate.

Building Official Mike Kras: The footprint has not changed; renovation requires bathrooms were made bigger per the ADA.

Antkowiak: Unloading area is in the middle of the parking lot and used only in off hours.

Planner Briddick: Would be one of your decisions, you as a Commission would have to decide if you are comfortable or seek a variance.

Kras: Maintain the greenbelt of 15', dumpster can be along side but not within the 15'.

Sharrow: Believe many of the requirements such as the footprint of the building were made unnecessary when ZBA ruled what could fit into the lot. ZBA did not waive any variance from the greenbelt. Important to the residents a full-length greenbelt on the north and south side. Relocation of the dumpster. Patios added to the building back, customers outside having a meal important there is a greenbelt on the south side to block lighting from resident's privacy.

Chairperson DeBoyer: Southside a greenbelt do agree with you. Commercial abuts residential lot should be something there as a buffer, right to require a greenbelt placed on the southside and dumpster in a different location.

Ankowiak: Can't really do anything different, all the applicant really wants is a parking lot.

Lyle: Don't think it is fair, building has been there all these years without a greenbelt on the southside, fence should be there.

Chairperson DeBoyer: The Ordinance does require when a commercial abuts residential there be some kind of buffer; 6' wooden fence on the Southside now.

Attorney McNamee: Litigation with this matter particularly with the parking and the adjacent lot. Comply with the requirements of the previous site plan or if requested he comply the normal way. Think it is a reasonable use regulation that a buffer zone is under your authority to request a buffer between a commercial and a residential.

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Lyle: Why wasn't the Commission notified about all these legal proceedings before now?

Attorney McNamee: Building violations and restrictions were decided by Judge Deegan's orders of compliance. Enforcement issue with the Building Department and necessary it complied with the existing site plan or request additional modification.

Antkowiak: Original plan as it was.

Attorney McNamee: Adjacent lot was used for parking contrary to the Ordinance, to utilize that area for parking would have to come before the Board.

Lines: Move the dumpster and complete the greenbelt and it is done. Greenbelt on the Southside should do it now and do it right, biggest issue is the dumpster.

Chairperson DeBoyer: New site plan what is the pleasure of the Commission?

Antkowiak: Comments marked clearly on the sheets by the Engineer: parking same that was there, needs a variance for the lot area. Question is can it be enforced?

Sharrow: Loading and unload during off hours, think his statement will have it during off hours would be the majority of the time should provide for that.

Do feel should bring back a site plan with signature of the engineer showing some kind of greenbelt on the south side to a residential property, a wall not a fence there and a row of trees to provide buffering of noise and light especially if any outside meals.

MOTION BY SHARROW TO POSTPONE A SITE PLAN DECISION FOR WATER'S EDGE BAR & GRILL UNTIL THE APPLICANT BRINGS BACK A SITE PLAN WITH SIGNATURES BY THE ENGINEER INDICATING:

- COMPLETE 15' GREENBELT ON THE NORTH SIDE ;
- RELOCATON OF THE DUMPSTER;
- SHOW THE ACTUAL PARKING SPACES;
- GREENBELT ON THE SOUTH SIDE.

SUPPORTED BY LINES.

R/C VOTE: AYES: LYLE, LINES, SHARROW, SIMON, ANTKOWIAK, SCHWEIKART, KRUEGER, KELLER II, DEBOYER. NAYS: NONE. ABSENT: NONE.
MOTION CARRIED.

6. JOINT MEETING WITH THE TOWNSHIP BOARD & PLANNING COMMISSION

Called to order at 8:00 p.m.

Supervisor Manos opened the Township Board Meeting in conjunction with the Planning Commission.

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Chairperson DeBoyer: Reason for the Joint Meeting is new things are happening to township planning which are new to all of us. Both Boards are faced with recommendations in the future. Planner and Attorney will give us some insight as to the aspects of a P.U.D. (Planned Unit Development) and how they work, latest legislative, how they affect our township, our responsibility, etc.

COMMUNITY PLANNER PATRICK MEAGHER:

Community Planner Patrick Meager spoke of a P.U.D. from a Planner's view. A synopsis of Mr. Meagher's points was given to each Planning Commission and Township Board to follow as he precisely detailed how the recently enacted Michigan Zoning Enabling Act (ZEA) 110 of 2006 (effective July 1, 2006) continues the statutory authorization of a Planned Unit Development by local units of government, including townships.

Important thoughts: Many municipalities have a misconception of what a P.U.D. is, should not be scared of it. Township new public act permits flexibility, a variety of design, layout and construction, use of land in an innovative way, protecting our natural resources and still meet the rules and regulations of a township. They encourage open spaces to meet the needs of the residents.

P.U.D. similar to a special land use that gives the applicant the right to present his/her case according to the due process of law. Many aspects of the land have to be considered and especially the impact this development may have on surrounding areas. Before the applicant applies for a P.U.D., think the Commission would be wise in having an optional pre-conference or a pre-application phase. Just a thought but think it would work to save the applicant time and headaches.

P.U.D. can only be as good as the Township makes it. Increase value in the community, make sure compatible with the surroundings, denseness make sure it involves some conservation.

We should not look down on a P.U.D., may have to improve the requirements and look at what we are actually getting from them and if they follow your goals and objectives they will do just fine.

Planner Peter Briddick: Comments as to the use of the word "may" and "flexibility" can be applied to facilitate innovation to a P.U.D.

ATTORNEY JOHN MCNAMEE:

Attorney John McNamee also passed out literature of a guide for the Joint Meeting. He gave an interpretation of a Planned Unit Development from a legal perspective.

He expounded on the statutory intent of a P.U.D. and which local unit of government is authorized to establish the necessary P.U.D. requirements and what unit would review and approve the proposed P.U.D., public hearing procedure and approval according to the Zoning Enabling Act. Final Decision – if a P.U.D. meets the criteria, you do not have the discretion to say "no", if it does not meet the criteria, your obligation is to deny, page 5-6 of the handout

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Attorney John McNamee's Comments (Continued)

referred to the **Legal Point and Legal Factors to Consider in the Review and Analysis of a Granting or Denial of a Requested PUD.**

PRIVATE SEWAGE SYSTEMS: Attorney John McNamee legal opinion.

Issue: What rights or obligations does the local township have with respect to regulation of a private package sewage system?

The Michigan Department of Environmental Quality has jurisdiction pursuant to MCLA 324.4104 to approve or disapprove a private sewage system within the Township.

Attorney McNamee cited a case with Lake Isabella, June 10, 2004.

Questions from the Board of Trustees and Commission.

Commissioner Krueger: Do we have control over the placement of the system?

Attorney McNamee: Permits and location process would be the permit requirements.

Trustee Dare: Adjust lots within reason:

Attorney McNamee: DEQ cost issue, consideration

Supervisor Manos: As property develops, private septic systems may be a more efficient way; FEMA raising the height to make more land nonconforming.

Trustee Dare: Special Assessment District could that be done?

Attorney McNamee: Go through P.A. to establish it. Example: user association.

Clerk Pellerito: Prior to 2005 to rescind your responsibility of your permit?

Chairperson DeBoyer: We appreciate all the information from Township Attorney John McNamee and Community Planning Patrick Meager and Peter Briddick. Thank you again for coming to the joint meeting.

7. PLANNING CONSULTANT'S REPORT

Patrick Meager: Update on the Zoning Ordinance, small issues still need to be addressed with the Committee, outside of that about as close as we can be.

Clerk Pellerito: Like to address legal council with one more question. If Township were to adopt the new Zoning Ordinance into repeal or disallow these easements into the geographic boundaries of the township, anything existing would still be existing in other words could not repeal a PUD that is already in the works?

Attorney McNamee:

8. **ZBA REPORT:** None.

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9. CHAIRPERSON'S REPORT

Review Committee to review the final stages of our amendment and the new Zoning Ordinance as required under the new Zoning Enabling Act and clean up some items in our existing ordinance. Afterwards it will be sent to the Township Board for your review for approval or wish to send it back to the Commission.

Reminder of the St. Clair County Metropolitan Commission Winter Class is tomorrow.

10. PLANNING COMMISSION MEMBER'S COMMENTS

Anthony Antkowiak: Thank you to Township Board for their insightfulness to allow us on this Commission to have the educational opportunities that we get to help us in our job.

Supervisor Jon Manos: PUD, single family, site condo development about water supply, pressure, etc. nothing can occur that requires a water main extension unless we go through the DEQ and they require a certain pressure and flow test, etc. these things are all mandatory before any extension would be granted to a developer. Standards must be met with the DEQ before anything can happen. Township is on top of this requirement.

Pat Sharrow: Comment regarding the preservation of rural and agricultural land and how P.U.D. can help eliminate the sprawl into the rural areas.

John Makuch: Thanks for inviting Township Board to this Joint Meeting.

11. PUBLIC COMMENTS:

Dee Edwards, 6242 Swartout Road: Requesting a copy of what the Commission is looking at re: P.U.D. What was the date of the application for the P.U.D.?

Chairperson DeBoyer: The new MI Zoning Enabling Act came in after the applications were received for the P.U.D. in Clay Township. Our local ordinance has been working on amendments for a period of time, must amend our ordinance to comply.

Mary Lorraine, 7303 Dyke Road: Site plan for Water's Edge Bar & Grill will we get a chance to address those before a final approval?

Chairperson: Will not be a public hearing, can say something at public comments.

Mary Lorraine: Lights a photometric study was suppose to be done, lights still shining, needs to be checked out.

Chairperson DeBoyer: Enforcement issue, Bldg. Adm. would handle, there is a meter available and that will be done.

Mary Lorraine: Existing fence, should be a solid fence, like to have what the ordinance calls for.

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Chairperson DeBoyer: 15' green belt, will all be looked at when it comes back to the Commission.

Mary Lorraine: Garbage consideration, three weeks and not picked up, garbage sitting on the ground.

Chairperson DeBoyer: It will be moved to a different location. Not asking for anything special, just want the ordinance as written to be followed.

Attorney McNamee: Numerous actions were taken in Court, prevailed every time we have gone to the Court. Nothing has happened in the last two years, four (4) enforcement actions resulting in four orders. Lighting: original lighting shielded. It meets compliance if changed can be brought to our attention. Have kept you and your husband informed and meet with you both, not been left unenforced.

Patrick _____, 6368 Swartout: Opening up a can of worms septic field not the solution.

12. **ADJOURNMENT:**

Moved by Lines, supported by Krueger, to adjourn the meeting at 9:23 p.m. AYES: All. NAYS: None. ABSENT: None. **MOTION CARRIED.**

Valerie J. Kulba
Recording Secretary