

**MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING HELD MARCH 28, 2007 IN THE CLAY  
TOWNSHIP MEETING HALL, 4710 PTE. TREMBLE ROAD,  
CLAY TOWNSHP, MICHIGAN 48001**

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

2. **ROLL CALL:**

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

Also present: Peter Briddick, Community Planner; Michael Kras, Building/Zoning Department; Ron Nelson, Zoning Board of Appeals; JoAnne Shirkey, Zoning Board of Appeals.

3. **AMENDMENTS TO THE AGENDA:**

**Motion by Antkowiak, supported by Lyle to move No. 6 - Zoning Board of Appeals Comments on Zoning Ordinance Update on agenda to No. 5 on agenda and move No. 5 – Proposed Township Ordinance Update to No. 6 on agenda.**

Agenda amended with above changes.

**AYES: All      NAYS: None.**

**MOTION CARRIED.**

4. **APPROVAL OF MINUTES:**

**Motion by Sharrow, supported by Krueger to approve March 14, 2007 Minutes.**

Changes to Minutes:

Page 6, 7<sup>th</sup> paragraph – Change “Mahar” to “Meagher”.

Minutes approved with the above correction.

**AYES: All              NAYS: None.**

**MOTION CARRIED.**

5. **ZONING BOARD OF APPEALS COMMENTS ON ZONING ORDINANCE UPDATE:**

DeBoyer: Received request that Zoning Board of Appeals desired to be placed on agenda for comments on Zoning Ordinance update.

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Shirkey: Concern was raised at ZBA meeting regarding fully enclosed boat houses and definitions of primary and secondary water frontage that would have to be applied for under Special Approval Land Use. ZBA feels that Planning Commission is making it much more difficult than just coming to ZBA for approval. Questioned whether Planning Commission has thought about Mike Kras's definitions of primary and secondary water frontage.

DeBoyer: Primary and second water frontage is addressed in the Ordinance. Feels ZBA's concern is who will decide if individual does not have to go to ZBA for approval? Problems can be created by administrators who do not follow the Ordinance closely. Amendment Committee didn't feel it would be good to place decision in hands of one individual. Possibility of having it approved by Building Administrator and a Committee from the Planning Commission. Questioned whether applicants have to have a Site Plan for ZBA?

Shirkey: Applicants have to have surveys and sometimes have rough sketches on paper.

Krueger: Implies something a little less formal than a Site Plan, such as a Plot Plan. Questioned whether there is a difference in cost between appearing before ZBA on a proposed enclosed boat house and cost of Special Approval Land Use? Would both have to be advertised?

DeBoyer: They would have to advertise both of them. Does not know cost to go before ZBA and cost of Special Approval Land Use.

Sharrow: Maybe \$100.00 more, but it is a very unique situation.

Nelson: ZBA discussion on this issue was quite lengthy. Have had quite a few applications for covered boat houses that were unique. Clarifies ZBA's problems but may aggravate Planning Commission's problem.

DeBoyer: Unique instances may still come up where residences don't face on two waterways. Also, in some areas there are a few residents who live on the canal side that would have to be considered. Questioned Mr. Kras as to differences between costs of appearing before ZBA versus Special Approval Land Use?

Kras: There is a big difference. Only charge \$100.00 to go to ZBA versus \$100.00 for Special Approval Land Use plus fee to send application to the Planner for review.

Lyle: Questioned Planner as to what his cost is?

Briddick: Would have to check contract because it would vary as to project, acreage, units, etc.

DeBoyer: Had made suggestion to Planning Commission that rather than Special Approval Land Use, had to be unanimously approved by Building Administrator and Site Review Committee.

Sharrow: Questioned whether most of enclosed boat houses were for very large boats and are quite expensive buildings?

Kras: Yes, they usually are. But, we have been getting smaller ones to have boats kept inside for security purposes. Also, most are located on double water frontage.

DeBoyer: In the instances where they are not on double water frontage, they would have to go back to ZBA. Chairperson DeBoyer read a letter from John Makuch to Clay Township Planning Commission.

Antkowiak: Only place that primary and secondary waterways is addressed in proposed Ordinance is where two lots are addressed, one on secondary and one on primary. We need more of a definition. Definition of primary and secondary waterfront from Mr. Kras was most helpful in making a prior determination and feels it should be included in the Ordinance.

Lyle: Where double lots are concerned, there shouldn't be any argument that on the secondary lot, you should be able to build enclosed boat house because there is no view to obstruct on the second lot. Should be wording in Ordinance allowing this when there is a double lot.

DeBoyer: Cannot give this a blanket okay because we have instances where there are a few residences on a canal.

Lines: Refers to property on both sides of a road that are owned by two different families. Will they be able to rebuild old boathouses as what they had prior, or not?

DeBoyer: There has to be some means of determining each individual situation rather than just giving a blanket approval.

Schweikart: Questioned whether there is a cost to go to the Site Review Committee?

DeBoyer: No.

Schweikart: May be more user friendly to have them go to Site Review Committee for input.

Sharrow: We are not only protecting the homeowner who wants to build, we're protecting the neighbors and the value of the homes. If this goes to Site Plan Committee or Building Inspector, neighbors would not be aware and have no input, unlike if they had to go to ZBA or obtain Special Approval Land Use.

DeBoyer: We have an obligation to all of our citizens. The question is how do we meet that obligation without putting a hardship on anyone?

Kras: Primary and secondary definitions provide that if there is an allowable view, they would have to go to ZBA and there would be a public hearing. If there is no allowable view, the exception would kick in and they would not get approval. If someone tore an existing structure down and it's a non-conforming building, they would have to meet the non-conforming portion of the Ordinance and have to go through all the steps for a brand new building. If there were no views being obstructed or allowable views, then rebuilding would be allowed.

Simon: Remodeling the structure would be allowed, but they would have to be careful not to tear the building down and not change the footprints.

Kras: Remodeling is always a possibility, as long as you do not remove more than 50%.

Lines: Depends how you use the term “rebuild” and “remodel”.

DeBoyer: You rebuild when you tear down and rebuild. Remodel is leaving the structure there and making changes to it. And, it still has to meet the Ordinance as far as height and size, etc.

Sharrow: Would like to see Mr. Kras’s definitions.

Kras: Will make copies for all Commission members.

Antkowiak: Requested discussion regarding practical difficulty language in the proposed Ordinance addressed by Mr. Makuch in his letter.

DeBoyer: Reads from page 41, 3.01 (13)(D). Does have a problem with the expression “practical difficulties” because that is something used by the ZBA. They must, by law, determine a practical difficulty. By law, the Planning Commission is not required to determine practical difficulties. Requested suggestions for different phrasing.

Krueger: Suggested placing a period after “setbacks”.

Sharrow: Suggested “the Planning Commission may permit changes to the setbacks, which prohibit the construction of an accessory structure consistent with the criteria herein”. Questioned whether Mr. Briddick had an comments?

Briddick: It’s somewhat confusing.

Sharrow: Suggested having an additional meeting to review all the changes.

DeBoyer: Questioned whether Ordinance should be looked at a little closer and held off for another meeting?

**Motion by Lines, second by Simon for further review of proposed Zoning Ordinance update.**

**AYES: ALL      NAYS: None.**

**MOTION CARRIED.**

DeBoyer: Thanked ZBA for their interest and their input. We recognize that it’s not just the Planning Commission that deals with this Ordinance. The Building Department, Assessing Department, and Zoning Board of Appeals deals with the Ordinance. New Ordinance will

have an entirely new number once it is voted on to be moved to Township Board. It will then be assigned the next number in line.

**6. PROPOSED TOWNSHIP ZONING ORDINANCE UPDATE:**

Sharrow: Questioned whether definition for soil removal on stockpiling is needed? Regarding 3.08, fences, do we want barbed wire on top of 8 foot fences in commercial?

DeBoyer: Michigan State law prohibits barbed wire except on farms.

Sharrow: That needs to be removed from page 44, Section 3.08, Fences, (E).

DeBoyer: Reads from existing Ordinance, Section 3.09.

Sharrow: On page 59, 3.26 – Home Occupations. We have a total description of Type 1, but we have no description of Type 2.

DeBoyer: That is mentioned on page 136, Section 20.26.

Sharrow: Need to have reference in description of Type 1 as to where description of Type 2 can be found. Question regarding Special Approval Land Use, 8.03. Farm stands are listed in some of our residential, but why are they listed in R-2, canal lots?

Antkowiak: By definition, a farm stand could be allowed anywhere but is limited to items grown or produced on the property.

Sharrow: Regarding Section 20.08, service stations, and Section 20.09, auto repair, at the end of auto repair at 2(A), it starts talking about gas stations and gasoline pumps again instead of auto repair. Feels this is confusing.

Krueger: Feels the difference under 20.08 is that it states no repair work shall be permitted. So, you can only pump gas and fill oil.

Simon: Agreed that he wouldn't expect to see the paragraphs on gas pumps under automobile repair.

Antkowiak: States it's not inconceivable that a repair shop could have gasoline, too, and would rather have some requirements that address that.

Lyle: Feels the requirements should also be in 20.08. Questions whether there are site requirements in 20.08? Also, feels the requirements in 20.09 should be in 20.08.

Lyle: Stated that a gas station has to be 150 feet wide and an auto repair shop has to be 200 feet wide. Feels it doesn't make sense and that a gas station should have more frontage than a repair shop.

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DeBoyer: Does not agree since an auto repair facility will need space to place cars being worked on. There are requirements as to size and if they have gas pumps, there are additional requirements.

Sharrow: Regarding page 144, Section 20.39, there is a reference to Township rules but no reference to Township Ordinance 47. Questioned whether it would be more user friendly if there was a reference to realize that there is another Township Ordinance they have to also comply with beyond the Zoning Ordinance?

Shirkey: Does agree that Township Ordinance 47 needs to be referenced.

DeBoyer: If the Township replaces Ordinance 47, then we would have to amend this Zoning Ordinance.

Kras: While reviewing the proposed Zoning Ordinance, he has been noting references throughout in red and would be happy to provide copy to the Planning Commission members for their review.

DeBoyer: Feels it is a good idea, but that it's unfortunate that we've gotten to this point and are now going back and starting over again.

Kras: Feels it's good to have a copy that has all the references noted that he needs in front of him before he gives someone an answer.

DeBoyer: This will delay getting this to the Township Board until May at the earliest, and will not come back to the Planning Commission until the second meeting in April.

Sharrow: Stated that Section 20.43 mentions campgrounds and in Section 20.12 campgrounds are also mentioned. Do we have a duplication of standards for campgrounds, two different sections dealing with campgrounds? Could it be confusing to someone wanting to do a campground as to which section to use?

Lyle: Section 20.43 says you have to have 10 acres for a campground, and Section 20.12 says you have to have 20 acres for a campground. That doesn't seem fair. Feels it should be all together in one section.

DeBoyer: Feels she has to re-read the entire Ordinance.

Sharrow: On page 166, Section 21.05, states that the Planning Commission can waive the requirement for a storm water detention pond. Can we legally?

DeBoyer: Feels it refers to the Township and it would be based on an engineering report.

Sharrow: Questioned whether the Township can waive this or is this done by the State, Drain Commissioner, or County? Asked Mr. Kras for his input.

Kras: Believes MDEQ makes that determination.

DeBoyer: So, this does not give us the ability to waive the requirement.

Sharrow: Regarding Section 22.02 under Parking – General Provisions – Questions if a business buys an additional lot and wants to make a parking lot, can Planning Commission approve this if it meets the criteria such as paving, etc.?

Kras: Stated lot would possibly have to be re-zoned and would have to come to Planning Commission for Special Approval Land Use as a parking lot.

Sharrow: Questioned whether reference in Zoning Ordinance should be made to the separate Township Condo Ordinance?

DeBoyer: That may be an instance where a reference should be listed as to another applicable Ordinance.

Sharrow: Regarding Section 23.04 - Miscellaneous Signs and Posters. Last sentence does not make sense, “must be removed” or “need to be removed”.

DeBoyer: Felt it should read “is prohibited”.

Antkowiak: Questioned whether you need to put anything there and instead just eliminate “is removed” because these are a listing of prohibited signs? Questioned whether motion for further review is dealing with waterway and boathouse issues or all issues?

DeBoyer: All issues.

Antkowiak: Questioned whether a Committee meeting should be scheduled and include the Community Planner and Zoning Administrator?

DeBoyer: Scheduled meeting for Thursday, April 5, 2007 at 10:00 a.m. between Amendment Committee, Mike Kras, and Peter Briddick.

**7. PLANNING CONSULTANT’S REPORT:**

Briddick: None.

**8. Z.B.A. REPRESENTATIVE’S REPORT:**

Antkowiak: None.

**9. CHAIRPERSON’S REPORT:**

DeBoyer: Michigan Planning Magazine is working on New Planning Act which has passed House of Representatives and is now in the Senate. We will probably be seeing changes to the Planning Act toward the end of the year. Also, I am still working on the proposed Zoning Ordinance.

**10. PLANNING COMMISSION MEMBER’S COMMENTS:**

Sharrow: Recounted approximately 15 years ago people being upset with elected officials or Planning Commissioners for lack of comments in opposition or support to a rumored project at the Boy’s Club. According to the newspaper, there is an informational meeting scheduled on Harsens Island. Would like Mr. Briddick to speak as to how easy it is for elected officials or Planning Commissioners to cause law suits sometimes by just being in the wrong place at the wrong time. Stated the Township Attorney is also available to any of us. She would just like to caution all Planning Commissioners, appointed or elected officials, that you must not issue opinions. You must be very careful. If we get involved in a lawsuit, a Court could lift Clay Township’s right to judge a project or set standards for it. You would be putting the Township at risk. Until applications are made and fees are paid, a project does not exist, and we cannot prejudge something that does not exist in front of us yet.

DeBoyer: As a member of the Metropolitan Planning Commission, St. Clair County, I recall at one point developers had requested to go through the County Planning Commission rather than the local Planning Commission. That is not possible. Things cannot be done that way. The first step to any project in the Township is applying to the Planning Commission. Mrs. Sharrow is right, there are a lot of ramifications if we are involved in anything before it ever comes to the Planning Commission, the least of which is the requirement to recuse yourself from any discussion or voting on a project, and also goes beyond that. Requested Mr. Briddick speak to the Planning Commission of what our responsibilities are as to the oath of office we took.

Briddick: When you look at the seminars that are put on by Michigan Association of Planning, the modules for the Citizen Planner Program that are put on by Michigan State University, some of those deal with ethics. There is absolutely no question the situation you are speaking about could be a violation of ethics and I would go so far as to say that it goes beyond the potential. As citizen planners, you are charged with a duty to be objective. This can arise simply from the perception that a decision has been made by nothing more than mere presence. Once we take a position elected or appointed in our community we, in effect, give up some of our rights as citizens. We want to be very, very careful of not only how we conduct ourselves in a public forum, but how we’re perceived as conducting ourselves in a public forum. Perception is reality. Exercise extreme caution and err on the side of caution in how we conduct ourselves in a public forum. Suggested following the Code of Ethics put out by Michigan State University’s Extension Service.

Simon: There was a presentation at the St. Clair County Road Commission. A number of HISCFA officers and other elected officials from Clay Township were at this meeting and listened to a presentation by the developer who was not, in essence, talking about the development and only indicated his plans because he is trying to close North Channel Road. Based upon the meeting, the Road Commission encouraged a meeting of information exchange between the developer and the residents of Harsens Island. This meeting is scheduled for Thursday on Harsens Island. If my presence at the meeting three weeks ago would impugn my ability to look at that development, I will certainly recuse myself. Questioned whether he was allowed to sit in as a member of any governmental agency simply to gather information?

Sharrow: Questioned whether the Road Commission assumed that the developer had obtained preliminary Site Plan approval and that is why they are talking to them.

Briddick: The point is that we do have to exercise great caution when we're meeting outside of this particular forum when we sit on a body that makes decisions. It's a personal decision everyone is going to have to make.

Simon: The process and the procedure for getting approvals through various agencies is severely flawed if somebody can go to an agency and give the impression that the proposed project has, in fact, been brought in front of other agencies. You can go into the MDEQ website and access all permit applications, so the information is readily available to all citizens including the Planning Commission. This is information that may, in fact, help us be able to understand what is going on. Without that understanding, how can we serve the Township and the citizens?

Briddick: It's a very fine line and it's going to come down to making personal decisions.

DeBoyer: As far as a road within Clay Township that happens to be on Harsens Island, the Road Commission will hold a public hearing. We all have to be very careful because very likely the project may come before this Commission. Feels that if we didn't address the ethics in relation to this situation, we would be remiss in our responsibilities.

**11. PUBLIC COMMENTS:**

Ron Nelson, Zoning Board of Appeals: Thanked the Planning Commission for including the Zoning Board of Appeals in the development of the proposed Zoning Ordinance. Also stated that he tells members of the ZBA to exercise caution for the same reasons discussed.

**12. ADJOURNMENT:**

**Motion by Antkowiak, supported by Krueger to adjourn the meeting at 9:15 p.m.**

**AYES: All. NAYS: None.**

**MOTION CARRIED.**

Respectfully Submitted,

Christine Holcomb  
Recording Secretary