

MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION REGULAR MEETING HELD ON FEBRUARY 27, 2008 IN THE CLAY TOWNSHIP MEETING HALL, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MICHIGAN 48001

1. CALL TO ORDER:

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 Kathie Schweikart, Thomas Krueger, Whitey Simon, George Lyle, Earl Lines, & Edward Sharrow.

ABSENT: Edward Keller II (excused).

Also present: Clay Township Planner - Patrick Meagher & Clay Township Attorney – John McNamee.

3. AMENDMENTS TO THE AGENDA: None.

4. APPROVAL OF MINUTES:

Motion by Antkowiak, supported by Krueger to approve the minutes of February 13, 2008 as presented.

AYES: All. NAYS: None. Absent: Keller. MOTION CARRIED.

5. OLD BUSINESS: SPECIAL APPROVAL LAND USE/SITE PLAN CONSIDERATION W/CLUSTER HOUSING OPTION:

Grande Pointe Development LLC - 74-14-514-0034-000 Harris Dr., 74-14-618-0004-000 Little Rd., 74-14-618-0031-000 Little Rd., 74-14-618-0007-000 North Channel Dr., and 74-14-618-0008-000 North Channel Dr.

Chairperson DeBoyer: Several months ago we asked for more information from the applicant and also have a review done of the Traffic Study. We have received that information and it has been presented to you tonight. Are there any questions the Planning Commission would like to ask?

Lyle: In reference to the Vacuum Sewer System, if there were a power failure would it still work?

Mr. Hennessey: It is going to have to have a back-up generator. The DEQ requires that a back-up generator is available.

Simon: I was looking at the latest information we received regarding the flushing, with a number of articles quoted and I also was missing figure 5. I wondered whether you actually modeled the flushing that you are proposing for this fairly large and involved lagoon.

Mr. Hennessey: Figure 5 was referring to the dead end segments in marinas, which are basically narrow segments. The way this basin is designed is to have a lot of curvature to it to prevent stagnate water from being created in those waters. When you model the basin flushing, there are

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a number of proponents that are present, such as how the ground water flows within that basin, which is 60 acres. One proponent is the amount of wind generation that is present through there and another is the circulators we discussed. Basin flushing, so everyone understands, is really driven by water quality issues which are mandated by the DEQ. There is pre-construction modeling and then there is post construction modeling and verification. Because you have to be able to demonstrate that you have live water. You have to have a certain amount of oxygen in the water to demonstrate that you are not going to have a water condition that becomes anaerobic. We have to demonstrate to the DEQ that the water quality standards are going to be present.

Simon: The only thing I am questioning is that in the literature you provided, they suggest it should be modeled.

Mr. Hennessey: We have done some conceptual modeling.

Discussion followed between the applicants and Mr. Simon and Mr. Lines in regards to the nutrients they will be using and seepage into the surrounding waters and that it will be stipulated in the master deed and by-laws and the association will be enforcing the contract.

Simon: In regards to the information you provided for the pipelines, you supplied information about pipelines carrying gas, could you give us some information about pipelines carrying sewage under a canal like that?

Mr. Hennessey: There are instances where pipeline technologies have gone underneath rivers. The structural drilling technology has expanded over the years, not only in it's capability of distance, but also it's ability to control the substance. It is well established and regulated by the EPA and DEQ.

Simon: Is sewage going under a live canal somewhere that we can read about?

Mr. Hennessey: We have pulled about 10 permits where we have sanitary flows that are going underneath rivers.

Lines: How far down are these pipes? I remember from one previous meeting that they would have to be down at least 80 feet. Somewhere I read that it is only going to be an 8 inch line, which I feel is too small,

Discussion followed regarding the drilling for the pipe, material of the pipe (ductile iron, pvc, steel), size of pipe, distance of pipe carrying the sewage underneath the river, pressure tests on the pipe, and regulations of the DEQ.

Simon: We initially received a Traffic Study a while ago that there was no impact on the travel. Subsequently we received a letter from a consultant who said that basically this previous study

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was flawed and did not accurately reflect this and then I believe in today's letters we received documentation that this is not our discussion because it is off-site from the development. Was it germane when you first came before us and it is not germane now that the traffic is flawed at the ferry?

Mr. Stopeker: There is nothing in your zoning ordinance that addresses off-site improvements. The law does not require us to address off-site improvements, because it is an issue affecting the entire community. We investigated the theory as a request from this body as well as the Road Commission. We submitted documentation in regards to that, but the ordinance itself does not include within the criteria for off-site improvement.

Simon: I believe in approving any development, that somewhere in our documents it says we are concerned with the well being of the community and I do believe that everyone here is admitting that there will be a detrimental impact on the entire community as they travel across the existing transportation system between Harsens Island and the mainland. You have admitted that there exists back-ups and you will be adding to the back-ups.

Mr. Stopeker: What we have said is that the ferry has the capability to add additional ferry service to accommodate the traffic and additional lane-age there and that can be regulated by the Public Service Commission.

Simon: It says in your documents that you are keeping the entire open space in a perpetually undisturbed state. Are you including any of your marina space as part of that perpetually undisturbed state?

Mr. Stopeker: The water areas will be maintained in the open space.

Simon: So you are telling me that dredging and digging is not disturbing the state?

Mr. Stopeker: The ordinance allows for the water areas to be included in the open space.

Simon: I am asking whether it meets the undisturbed space. It doesn't say you can dredge or dig. Or are you implying it is part of the ordinance and a part of 125.3506 – Open Space Preservation.

Chairperson DeBoyer: Are you reading from the Zoning Enabling Act?

Simon: I believe so.

Chairperson DeBoyer: This has not been applied under that Open Space Act from the Zoning Enabling Act. The application is under cluster housing from our ordinance.

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Lyle: The applicants have been saying several things about this is allowed and this is not allowed under our zoning ordinance, can we have our attorney let us know what is allowed under our zoning ordinance, especially in regards to the off-site improvements.

Mr. McNamee: The issue with respect to off-site improvements; that is an issue that has gone all the way to the U. S. Supreme Court. In fact the lead case was in 1994 involving the state of Oregon. A development may have on-site improvements as it may affect the traffic flow. You've got MDOT and St. Clair County Road Commission that all have jurisdictional issues with respect to the traffic. As to the ferry itself, it would be considered, under most of the case decisions, to be an off-site improvement. You have an issue for your purposes in considering this for the Planning Commission that it is not a zoning issue. It is something that exists off-site and is a matter for the Public Service Commission, MDOT and the St. Clair County Road Commission. We would definitely be into a dispute with respect to causing any developer or any single homeowner to be contributing to something that is a community wide enterprise in terms of transportation across the St. Clair River.

Lyle: There was one thing that said there would not be any adverse impact to public safety. I think if a person lives on North Channel Drive, west of the waterway, and they called the Fire Department, it will take them a little bit longer to get there when they have to go through that neighborhood to get to their house. So there would be an impact on some people that it would take an additional 2 or 3 minutes for the Fire Department to get to them.

Mr. Stopeker: There has been no comments from the Fire Department regarding any public safety impact.

Lyle: Personally, I would think there would be an impact on some people.

Simon: Since we are on the road issue, during the latest presentation you addressed the concerns that were expressed by the public during the public hearing. I believe you gave us two or three alternate bridge proposals, one of which you say will require a 55 foot bridge. All other discussions, you were talking about 20 feet of bridge. What changed the requirement for a 55 foot bridge?

Mr. Hennessey: That was a gentleman's proposal of up to 55 feet of clearance because of the necessity to facilitate sailboats.

Simon: But until that time of the gentleman's proposal, you were proposing a 20 foot bridge, so if you were staying with the 20 foot bridge but following his route, some of your objections would be moot as it would not obstruct the view and it would not be higher than a lighthouse. At 20 feet that would not be a bad height to go around that piece of property.

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Discussion followed between applicants and Mr. Simon regarding the bridge profiles submitted by the applicants concerning height of bridge, obstruction of view and suggestions received by residents of Harsens Island.

Krueger: As I understand it we have basically one or two issues on the table tonight. One is the approval of a Special Approval Land Use for single family cluster homes and the other one is the Site Plan. Now we have a Site Plan Committee, what were their findings with respect to the site plan as it exists today with all their updates since the last report in November.

Chairperson DeBoyer: Actually there were not any changes to the site plan. We asked for information on the flushing, which they provided, and we asked for information on the Traffic Study, which they also provided, but those really have nothing to do with the site plan. Basically, there has not been a change to the site plan since it came before this Commission in October.

Krueger: Okay, and in October didn't we talk about lighting around the clubhouse maybe that was not on the site plan and about a berm?

Chairperson DeBoyer: I don't think that in the motion that was made there was any request for any additional information on those things.

Krueger: In the determination for the Special Approval Land Use for Cluster Housing we have those nine standards that were supposed to be considered as part of that approval or denial process. I noticed in their form of a resolution, they went through the nine standards and scripted answers to all of them. When I looked at those I had some different opinions. Item one and two deal with the general objectives, intent, and purpose of not only the ordinance, but also the master plan. I just do not believe that our ordinance or our master plan ever really considered or conceptually saw a 350 unit subdivision on Harsens Island. I know the zoning reads that way. I just don't think the people who crafted these foresaw 350 houses on Harsens Island. I believe they crafted the ordinance to reflect individual ownership on RS or R-1 lots. Item three says that the cluster homes will be designed, constructed, operated, and maintained in harmony with the existing or intended character of the general vicinity and that such use will not change the essential character of the area in which it is proposed. I just can't see that at all. The general character of the area is going to change dramatically because we are re-routing a road around the thing and they are dredging a 60-acre basin in the middle of the property. Item four is will not be hazardous or disturbing to existing or future uses in the same general vicinity and in the community as a whole. Basically, they mentioned there is going to be a 10 or 12 year build out on this project. So for 10 or 12 years we are going to have construction in the area not to mention a 348 slip marina in the basin. I think this will create some ongoing problems with members of the community. Item 5 states will be served adequately by public facilities and services. I don't have a problem with that. Item 6 states will not create excessive additional requirements at public cost for facilities and services will not be detrimental to economic welfare of the community. I believe that to be true also as long as the build out is there and as long as

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there is not some kind of stoppage in activity that is not covered by some kind of performance bond. Item seven states will not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any person, property or general welfare by reason of excessive production of traffic, noise, vibration, smoke, fumes, flare or odors. Again a 10 or 12 year build out and a marina, I think some of those issues of noise, odors, dust, etc. have to be addressed. Item eight states will ensure that the environment shall be preserved in its natural state, insofar, as practicable, by minimizing tree and soil removal and by topographic modifications which result in maximum harmony with adjacent areas. Again, a 60 acre basin and moving all that dirt around I got to believe it won't be preserved in its natural state. Item nine states will not impede the normal and orderly development and improvement of surrounding property for uses permitted within the zoning district. It probably will not. But I believe that some of these issues make that project extremely invasive to Harsens Island. I started thinking to myself, if we were looking at other projects down M-29 and one of those developers and said we want to build a canal in from the North Channel and cut off M-29 and reroute it 3 and a half miles around the back part of Clay Township and then reconnect it back to M-29 and then put a marina back there, I don't think it would go. I really don't have a problem with cluster housing. I think it is a good thing. I don't think this project fits the nine standards we have in our ordinance as neatly as the applicants have projected.

Chairperson DeBoyer: What if they came to us and wanted to develop it as a subdivision?

Krueger: In my own opinion, if they just wanted to develop it as a cluster housing community with no relocation of road and no 60 acre basin, I think that would be a lot more palatable to me.

Chairperson DeBoyer: So basically what you are saying is you don't like the idea of rerouting the road or digging the lagoon.

Krueger: Yes.

Simon: I would like to reiterate what Mr. Krueger just indicated. The developer keeps telling me that it's perpetually in an undeveloped state and I can't fathom that this is perpetually undisturbed. I went through the nine points and I have the same red markings there also.

Lyle: Has the County Road Commission decided whether they will let them reroute the road?

Chairperson DeBoyer: No, they have not.

Schweikart: I did the same basic review that Tom did. I looked at the nine standards. I personally have to say that the applicants spent a lot of time and energy and have made a wonderful presentation. I pretty much agree with Tom on #1 and #2 of the nine standards. I guess my biggest problem is with #7 – the excessive production of noise etc. I am not just looking at it from a traffic point of view with cars, but what about all the boats that will be going back into this property? I can't imagine that the neighbors in that surrounding area ever

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imagined that they would have three hundred and some boats with the noise that goes with it and with the lighting that goes with it. That one was kind of a problem for me. Number eight is a real issue. I have sat and looked at the property. I just don't understand how the applicants are preserving the natural features. You are manufacturing a site by moving the dredged materials to have your canals and to have your houses on and to have your boats. I don't blame you, I think it is probably a great idea from your perspective, but as a community that we live in, especially Harsens Island, I'm not sure that this is an acceptable burden to put in our community at this point.

Lines: I agree with Mr. Krueger that as far as the cluster housing goes, I can live with that. I do have problems with the land fill and I have a problem with the stability of the land in which they are going to build the homes on. I have worries regarding the flushing of the front portion and the back portion of the basin and if it will become stagnate water over the 10 to 12 years of building the project.

Mr. Hennessey: The DEQ, Army Corps of Engineers, and the EPA will require that post-monitoring, post construction water quality measures are done and that is why we have augmented that existing design with sub-surface circulators. We will have to prove to the DEQ, before they sign off of the project, that we are turning over the water to promote high water quality; because they do not want stagnate water.

Chairperson DeBoyer: We have the application and we had a motion at our last meeting, requesting the information. We have the information. We have reviewed the information. It is time for us to make a decision.

Motion by Krueger, supported by Simon to deny the Special Approval Land Use/Site Plan Consideration for Cluster Housing Option for Grande Pointe Development LLC based on the nine standards that are listed in our Special Approval Land Use Ordinance as they do not meet Standard #3, where it says the project will be designed, constructed, operated and maintained in harmony with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed - the general character of the area will be dramatically changed. Also they do not meet Standard #8 – will ensure that the environment shall be preserved in its natural state, insofar, as practicable, by minimizing tree and soil removal, and by topographic modifications which result in maximum harmony with adjacent areas - the dredging of the 60 acre pond and the relocation on the property of those spoils, raising the whole elevation of the area, is not in keeping with the intent of the standards and for those reasons we should deny the project.

Chairperson DeBoyer: Is there any further discussion by the Planning Commissioners?

Antkowiak: I think what everybody is saying here makes sense. But I think it is also an issue of vision. I am not an islander and obviously I don't that same kind of vision, because I look at this

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project and I think it is going to be a very nice thing for our community not just Harsens Island. I also think it would be great for Harsens Island. I think we are kind of nitpicking in terms of looking at the dredging, which has nothing to do with us and we have talked about whether or not this whole thing, of people coming in and out of there, will affect the neighbors. Yes, it will affect the neighbors. So will a 350 unit subdivision. So I think we are on the wrong track with this. In terms of what I have read, the comments we have received from our planner, the rebuttals that the applicant gave, the answers they gave to our questions, I feel they have met our standards.

Lyle: I agree with Tony and I think they have gone to a lot of work and I think it will be an asset to the island, although the people who live there might not think so. It is going to take many years to do it and eventually it will be an asset over there. It is going to increase their tax base.

Chairperson DeBoyer: Is there anything our attorney wants to address to us?

Mr. McNamee: No, the decision by the motion to accept it or deny it, if contested, will be reviewed by the articulated reasons.

Chairperson DeBoyer: Any comments from our planner?

Mr. Meagher: No

Chairperson DeBoyer: We will have a Roll Call vote

ROLL CALL VOTE ON ABOVE STATED MOTION

AYES: Lines, Krueger, Schweikart, Sharrow, Simon

NAYS: Antkowiak, Lyle, DeBoyer

ABSENT: Keller

MOTION CARRIED.

6. PLANNING CONSULTANT'S REPORT:

Mr. Meagher: The committee is done working on a provision to bring the ordinance into compliance with the Township Zoning Act and we are required to have an Open Space section in the ordinance. We have a draft completed and I would like to ask the Commission to set a date for the Public Hearing on this draft at this time. In no way setting the date stops us from making any changes to the draft at any point in time. Could we set this for the first meeting in May?

Chairperson DeBoyer: The first meeting would be May 14th – a Public Hearing on the amendments to the ordinance.

Motion by Antkowiak, supported by Simon to set May 14, 2008, our regular Planning Commission meeting, as a Public Hearing for amendments to our ordinance.

AYES: All. NAYS: None. Absent: Keller. MOTION CARRIED.

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Chairperson DeBoyer: In the meantime, there will be amendment committee reports off and on and if you will get the information to me then I will see that the committee is prepared to go over it when we meet.

Mr. Meagher: The second thing I wanted to bring to everyone's attention is that I have volunteered to do a presentation over on the island. It will be an educational presentation on the basics of a Master Plan, what goes into a Master Plan, how we do public participation, the understanding of the Master Plan and what its role is in the community. This presentation was set up by the group, Citizens for Responsible Development on Harsens Island, and will be at 3:00pm on March 8th at the Harsens Island Lion's Hall. It is my understanding that the group is going to invite anyone from the community who wants to attend.

7. **Z.B.A. REPRESENTATIVE'S REPORT:** None

8. **CHAIRPERSON'S REPORT:**

Chairperson DeBoyer: Those of you who were at the workshop know about the Citizens Planner Program on March 31st in Port Huron to get the credits needed to maintain your Master Planner designation. They also gave us information that there will be Citizens Planner classes held in Macomb County April 10th through May 22nd. I do have brochures on that if you didn't get one and you are interested in attending. There is very strong talk about making it a requirement before anyone even serves on a Planning Commission.

9. **PLANNING COMMISSION MEMBERS COMMENTS:** None

10. **PUBLIC COMMENTS:**

Charles Miller, 5178 Green Drive – Commented on the Master Plan meeting on March 8th, would like to post brochures for the meeting, the Master Plan is critical, we all have to work together on this business of the law.

Norman Rhodes, 3206 South Channel – Commented to Mr. Lyle, Mr. Antkowiak, and Mrs DeBoyer regarding the fact that there were 500 people who spoke about this project and this did not seem to mean anything to them and did not listen to people only what they wanted. Thanked the other Commissioners for understanding the community. Also stated that we want to be part of this community, make it an effort on all our parts, not just nine people with their personal opinions and we will continue to support and help the Planning Commission.

Chairperson DeBoyer: Commented back to Mr. Rhodes that those that didn't follow the line he thought they should, did not care about their community. We do care about our community. We all took an oath of office to uphold the law of this community. If there is a conflict with public opinion and law, we must look at the law. If we follow only public opinion, it becomes mob rule, which is not good for our community or our country as a whole.

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Father Sigismund Kowalczyk, 879 North Channel – Commented that the Planning Commission should listen to the voice of the people of Harsens Island, wants progress, but not to destroy the island.

Nick Sarzynski, 7482 Venice – Commented on everyone working together, especially in setting up the lines of communication, everyone seems to be talking.

Chris Winters, 6242 Swartout – Thanked the citizens of Clay and the Planning Commissioners for thinking independently and voicing their opinions in the best interest of the community. Clay Township is a unique community.

Roy Wroblewski, 3798 Middle Channel – Thanked everyone in the audience and the Planning Commission.

Brian Collins, 6065 Green Drive – Thanked the Planning Commission for doing the right thing, for the peace and serenity of Harsens Island.

11. ADJOURNMENT:

Motion by Simon, supported by Lines to adjourn the meeting at 8:53 pm.

AYES: All. NAYS: None. Absent: Keller. MOTION CARRIED.

Respectfully Submitted,

Patty Watson