

**MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION
REGULAR MEETING HELD MAY 14, 2008 IN THE CLAY
TOWNSHIP MEETING HALL, 4710 PTE. TREMBLE ROAD,
CLAY TOWNSHIP, MICHIGAN 48001**

1. CALL TO ORDER:

Chairperson DeBoyer called the meeting to Order at 7:30 p.m.

2. ROLL CALL:

PRESENT: Whitey Simon, Vice-Chairman Tony Antkowiak, Secretary Kathy Schweikart, Thomas Krueger, Edward Keller, II, George Lyle, Earl Lines, Edward Sharrow, Chairperson Dorothy DeBoyer

ALSO PRESENT: Patrick Meagher, Community Planning & Management

A quorum was established.

3. AMENDMENTS TO AGENDA:

None.

4. APPROVAL OF MINUTES OF APRIL 23, 2008:

Motion by Vice-Chairman Antkowiak, supported by Lyle to approve Minutes of April 23, 2008 as submitted.

AYES: All NAYS: None

MOTION CARRIED.

5. PUBLIC HEARING:

Amendments to Clay Township Zoning Ordinance #126:

Chairperson DeBoyer: Tonight we have a public hearing on amendments to Clay Township Zoning Ordinance No. 126. Some of these amendments have come to our attention from the Zoning Board of Appeals or from those who have come before the Planning Commission. We have seen that there is a problem and it has been recommended to amend the Zoning Ordinance to make it more user friendly. One amendment that is required by law is the open space preservation. The Zoning Enabling Act requires that this be in the Zoning Ordinance. We also have the accessory structures on a single parcel abutting multiple water courses, the ferry landings and accessory parking storage, and the amendment that indicates that we are under the Township Planning Act rather than the Municipal Planning Act. The committee has reviewed these items and brought them to the Planning Commission and it is now time for the public hearing on these issues before recommending these amendments to the Ordinance.

Chairperson DeBoyer opened the public hearing at 7:34 p.m.

Public Comments:

Charles Miller, 5178 Green Drive, Harsens Island, MI

The focus of his comments are limited to the open space preservation amendment. He then read the Planning Commission's definition of open space. He doesn't understand what is meant by "unimproved" and the use of the word "essential". He has reviewed the Zoning and Enabling Act of 2006 and was looking for the word "improvements", and he found one statement with respect to improvements and it related to actions or associations with a project considered necessary by the body or official parameters for zoning approval. He doesn't necessarily see where this definition is going. He found that in the statute itself the definition for open space is a bit complicated and lengthy. The critical component in the definition centers around the fact that the open space will remain perpetually in an undeveloped state. Undeveloped in the statute is defined very specifically and it says, "a natural state, preserving natural resources, natural features, etc." What he is suggesting is that the use of the word "unimproved" be removed from the Ordinance and the word "undeveloped", which is consistent with the Zoning and Enabling Act, be used in its place. He also notes that the Planned Unit Development keeps coming up with respect to open space. We all know that cluster housing is a part of the Special Use. The Zoning and Enabling Act of 2006 doesn't refer to cluster housing at all. The only place where "cluster" is mentioned is under a PUD provision and it's called cluster zoning. He would like to suggest getting away from using cluster housing in the Special Use option provision under RS-1 and turn to using what is already provided for in the Act, which is a full body of requirements and regulations for planning in a development. He feels that simplifying space would certainly streamline the decision-making and would take away a lot of vaguery in the interpretation. He then read language from 3.28.3(C). He also read language from 3.28.5(A), open space preservation requirements. His question is if 50% of the site is to be open space and it's to be set aside, if you have a statement that says at least 10% of the open space can be man-made, then you're telling me, as a developer, that you could have 100% of the 50% that's open space to be developed. You don't cap it. You say at least 10% and it could be 100%. It's circuitous logic and places them in a trap because to the extent that we're trying to protect natural resources, you left a loop hole that you can drive a truck through. He then read, "an open space requirement shall not be met by land uses such as right-of-way, easements, designated for road purposes, areas within lots, retention ponds". He is suggesting that they also add man-made lagoons or yacht basins in that sentence and then go on with golf courses or other commercial uses, and remove the word "recreational". There are other commercial uses he can envision coming into play here that would not be classified as recreational. He realizes that they've also covered some bases with respect to non-commercial activities or preventing commercial activities. He feels it would be a little less interpreted. His concern is that there is some specific language that could be modified and feels they have statutory reasons to do it. He feels in other cases, some minor tweaking of the language would eliminate some of these problems. He feels that you could say a maximum of 10% and that way it would be capped.

Robert Williams, 2007 Stewart Road, Harsens Island, MI

Refers to Article III, General Provisions, the open space preservation proposed section, paragraphs 1 and 2, and reads from same. Stated that in interpretation of the Zoning

Ordinance, it does not refer to open space at all but instead refers to open land. He thinks that including RS-1 in this provision for open space actually is changing the intent of the current Zoning Ordinance. Also, he agrees with Mr. Miller's interpretation that all of the open space could be developed for recreational purposes on any site and not comply with the intent of that section of preserving the Township's natural resources. In response to Article VII, number 13, paragraph 1, the ferry landings and accessory parking storage proposal, it makes reference to the "residents use" and he questioned if it is really the intent that you need to be a resident of the Township or if a "resident" is intended to be any landowner who has a place to live on the island and does visit? He feels that the word "resident" needs to be clarified either by definition that it is someone who has property and a cottage or property and a house on the island, or perhaps the word "resident" needs to be changed to "landowner" or a person visiting their property or residing on the island.

Chris Winters, 6242 Swartout Road, Clay Township

Feels it would be in the public's interest to have a referendum vote on statements that are attempting to be passed. He believed that the Vice-Chairman had mentioned that the Planning Commission would have a vote on the matter and that the vote would be final. According to a reading of the ZBA, that is not the case. He cannot point out specific statements, but would be glad to do that at an upcoming meeting.

He feels it would be in the public's interest to have more time to look at the proposed amendments to Zoning Ordinance No. 126.

Chairperson DeBoyer: Stated that would be the decision of the Planning Commission.

Winters: Again stated he believes that it would benefit the public to have more time to review Zoning Ordinance No. 126 because they are not aware of some of these statements.

Norman Rhodes, 3206 South Channel Drive, Harsens Island

He has concerns regarding the open space preservation. One concern is regarding the sanitary sewer, and he read from paragraph 1. He is confused as to the intention as to whether the sewer system is proposed by the developer or if the Township would be proposing to put in the sewer system. He stated it is also reflected in utilities and read from same. He feels that it should be stated that the sewage facility and public service utilities should be available and already there for the applicant to be in conformance with the open space preservation. In regard to the ferry boat landing, he feels that it is all about private boat launches. He assumes they are referring to the new boat launch for Russell Island. He feels if it is a commercial enterprise, this Ordinance does not apply. If it is private and is going to be the only launch available, he does not feel that is proper either. He read from the section relating to same and feels that the parenthesis in that section are taking it out of the equation. In regard to the usage of parking facilities for island residents and their guests, he doesn't know how far that should be limited. He again questioned whether this would be a commercial enterprise or not?

The public hearing was closed at 7:51 p.m.

Chairperson DeBoyer: Requested Mr. Meagher, as the Township Planner, address the Planning Commission regarding the amendments to Zoning Ordinance No. 126.

Meagher: Stated with regard to placing a cap on the percentage of open space is up to the community. As you read the definition of undeveloped state, it really leaves it wide open. In many communities he works with, they would much rather see a manicured open space in portions of the space whereby there might be pathways, river walks, children's play areas, etc. In some cases it's more of an active living style. In more of a rural lifestyle, you would typically see more of an undisturbed open space. This Ordinance tends to leave it a little bit more to the market to decide. At the same time, since you're going to see a 50% reduction in lot sizes, what we do try to do is mandate that there be some areas for active recreation because you're simply not going to have the yard areas that you would normally have in larger residential subdivisions. You may want to think about it and reduce it to a minimum of 5%, maximum of 10%, or leave it the way it is. With regard to the utilities, the Township obviously isn't going to be paying for extensions to go out to a certain place or anything else. It's just simply saying that if you have certain size lots that are too small to be serviced by septic and so forth, you're going to have to have some type of sewer. In other cases, the State law clearly says that if you have sewer, you cannot have the open space. The wording is somewhat confusing, but he feels that they are meeting the intent of the State Act with the utility provision. In regard to the ferry landing and accessory parking, he believes it was intended for a private provision because it was located in a residential area. There is a permitted use provision within the C-3 district. We would not be changing the current status of the existing ferry. If they came in for changes, it would come in under a permitted use for the modifications they wanted as long as they were within a C-3 district.

Lyle: Questioned if you set 10 acres aside for open space, how do we know if we're going to get 10 acres of weeds or 10 acres of cut grass?

Meagher: During the special land use review, you would have to determine what their intentions are for that. That would be something that would be stipulated on their Site Plan.

Chairperson DeBoyer: When someone brings a Site Plan to the Commission, we review it and have the option of making requirements on the Site Plan. She feels there has to be some leeway considering different areas of the Township and each need to be looked at on an individual basis.

Meagher: In regard to commercial uses, commercial recreation golf courses, people try to take advantage of maximizing their profit and use of their property. You commonly get the public golf course trying to be used as an open space feature. If you wanted to add additional things to this you certainly have no limitation. The experience of one particular cluster development shouldn't necessarily frame our minds as to whether or not that should be considered in the future. Again, that is something that you, as a community, will have to decide.

Chairperson DeBoyer: We have to look at the whole Township and consider what the possibilities are and deal with all the different areas throughout the Township. If we have a mind set of one particular area and try to focus our Ordinance just to that area, they could be doing a disservice to others in the Township. They have to be cognizant of the entire Township. As the Planner mentioned, regarding the ferry landing, this was written up because

we had been approached by a private entity, and this would not affect anything currently in existence. Once they are in place and there's a change in the Ordinance, they are not required to change their site to conform. Regarding the issue of accessory structures on a single parcel abutting multiple water courses, this came to us mainly from the ZBA. We have a number of areas in the Township such as Anchor Bay Drive, Colony Drive, South Channel Drive, and Green Drive that people are on the water with a canal behind them and additional property beyond that canal. Our current Ordinance does not allow them to have an accessory building on the back property. The ZBA had several people coming to them for variances on this issue, so we felt we needed to look at this issue. They feel it would be beneficial to the citizens that have property in that particular situation. The other concern was that requiring citizens to bring their requests to the Planning Commission, which would require a Site Plan, would make it very costly to them. Therefore, we put guidelines in that would not give authority to just one individual or one review committee, but there would have to be a unanimous decision and minimal cost to our citizens.

Krueger: Stated he still gets confused about this "undeveloped state" comment. Questioned in order to satisfy the guidelines of open space preservation, if someone comes in and digs a lagoon and says that is an undeveloped state, does that fit the definition of undeveloped state? Or if they fill the land 3 or 4 feet and move it around with bulldozers and take trees out and plant things, is that considered an undeveloped state? In his way of thinking, they can't do anything to the property.

Meagher: That is an excellent question because that is what you need to define in the Ordinance. It is up to the Planning Commission as to how strict you want to be with that. When he looks at the way it is currently written, it leaves it largely to the market. You have to draw the line as far as the Ordinance. You have to decide exactly how you want to be with it and also whether you want to put a percentage maximum or minimum cap on it.

Lines: Stated he feels if you put a lagoon on open land, that would be developing it. As soon as you start digging a lagoon, you're developing the undeveloped property into something else.

Meagher: It is really a choice that you have to make.

Krueger: Stated that they are doing this because the State law requires it, but there's no real guideline in the State law that will specifically tell us how they want us to address the issue. It is really open for our interpretation.

Meagher: Stated that, unfortunately, these cannot be treated as special land uses. So, it does take away a little bit of your judgment of the issue. The bottom line is you're going to be setting the policy. If there are things that you don't want considered undeveloped, you need to specify it in the text.

Schweikart: Questioned whether the undeveloped state could be area specific?

Meagher: Rather than being site specific or area specific, you could have some criteria as to when it might apply, but the criteria would have to be used across the board no matter what area you are in. When you have a zoning district and you have a use, the rights of that particular use need to be given to all property owners within that district. If we have

conditions that say regardless of where you are, if you meet these conditions you can do this, he you're not taking away their right, it's just the nature of the property that would prohibit it. There would have to be a rational basis for it.

Simon: Stated that when the Township passed a fee recovery Ordinance, they talk about residents and non-residents. In our area, residents don't necessarily just own property. We have summer residents, winter residents, and part-time visitors that come who have property. If those ferry landings are only for residents, he feels it would be valid to look at landowners who not only pay taxes, but also pay insurance on their property.

Meagher: You could change residents to mean whether they are seasonal or full-time. You may want to add residents, landowners, and visitors.

Chairperson DeBoyer: Then you would also have to include persons who are leasing.

Simon: He feels the definition of "residents" is narrower than what we have and the Commission needs to deal with it.

Meagher: He will work on some additional language to broaden the definition to include people with some type of affinity.

Vice-Chairman Antkowiak: Questioned whether the intent of this was to look at only the landowners? He felt that they were looking at the people that use Russell Island that have nowhere to park or board the ferry after they can no longer use Algonac and questioned whether they were all residents, landowners, guests, renters? That is what we want to deal with and not just landowners.

Simon: Stated that right now the Ordinance excludes the general public and questioned who would be the general public?

Vice-Chairman Antkowiak: They would be those who have nothing to do with Russell Island.

Chairperson DeBoyer: Stated that you have to remember that this is privately owned.

Simon: He has also been looking at 125.3506, Open Space Preservation, and it states that "it will remain perpetually in an undeveloped state". He believes that "undeveloped" is well-defined and that they definitely have to include what is permitted under the minimum percent usage, otherwise a minimum of 10% would allow someone to develop all 50% and satisfy the Ordinance.

Chairperson DeBoyer: Suggested that all Commissioners review the documentation that Mr. Meagher provided regarding "undeveloped state". You have to look at all the options. She feels that the Commission is caught in one situation and instead should be looking at this as a whole.

Simon: Feels that they are looking at one situation, but they have to be careful of what they state as the definition.

Meagher: We are dealing with a definition given to us by the State, “a natural state preserving natural resources, natural features, scenic or wooded conditions, agricultural use, open space, or a similar use or condition”. You’ve opened it up by using the word “open space”, and have further opened it up by adding “similar use or conditions”, and opened it up even further by saying “land in an undeveloped state may include recreational trails, picnic areas, children’s play areas, greenways, or linear parks”. All of a sudden you’ve gone from an undeveloped state to a linear park. Our challenge is to come up with an Ordinance that you’re comfortable with that can be applied throughout the community and that will fit your needs.

A discussion amongst Commissioners occurred regarding usage of the word “foot” versus “feet”.

Vice-Chairman Antkowiak: Questioned whether they can recommend to the Township Board adoption of Ordinance issues that they have resolved and continue to work on the unresolved issues without having an additional public hearing?

Chairperson DeBoyer: We could separate them and submit those that have been approved to move forward.

Motion by Antkowiak, supported by Simon to move forward with General Provisions, Article III and Article XXVI, Planning Commission amendments to Clay Township Ordinance No. 126.

AYES: All NAYS: None

MOTION CARRIED.

Motion by Simon, supported by Antkowiak to refer the issues of ferry landing and open space preservation amendments to the Clay Township Zoning Ordinance No. 126 back to the Amendment Committee for further review.

AYES: All NAYS: None

MOTION CARRIED.

6. PLANNING CONSULTANT’S REPORT:

None.

7. Z.B.A. REPRESENTATIVE’S REPORT:

None.

8. CHAIRPERSON’S REPORT:

Chairperson DeBoyer: Almost all of the Planning Commissioners are scheduled to attend a seminar on May 28, 2008, so there will be no Planning Commission meeting on May 28, 2008.

9. PLANNING COMMISSION MEMBERS COMMENTS:

Chairperson DeBoyer: She spoke with the Superintendent of Schools last week and he voiced his concerns over the declining enrollment in our area. She feels this is something that the Planning Commissioners need to consider when dealing with the Master Plan and Zoning Ordinance. The Superintendent relayed that 82% of the homes in Clay Township do not have school children. At this moment, we unfortunately have a dying community. It is not growing or stagnant, it is declining. This is why we are seeing businesses closing. If you don't have people, you can't support a business.

Lines: Feels that you have to look at the economic situation as of today, and doesn't feel that it will continue. He feels the prognosis after August, November, and January will increase immensely.

Chairperson DeBoyer: Stated that, however, this is not something that has just happened in Clay Township. The schools specifically in Clay Township have been declining for a period of time. We really need to be thinking about what is good for our community and make it a vibrant community.

Krueger: He feels it goes beyond all this. It is very difficult to make a living in Clay Township or the surrounding area. In order for this area to grow and for families to stay here, there has to be some economic viability for the workers and there isn't. The problem with business coming here is that our infrastructure isn't the type to attract large businesses. He feels it will be a difficult challenge for the Planning Commission to try and dove tail the economics and the inhabitants of our Township now and in the future into some kind of Master Plan land use.

Chairperson DeBoyer: Stated that we have to be realistic and have to think about not just what we want but what we are preparing for the people in the future.

10. PUBLIC COMMENTS:

Chris Winters, 6242 Swartout Road, Clay Township

Stated this is a very unique community that is blessed in many ways that fortunately does not have industry as common in other areas. You have something different that they don't have. The area has a geographical and historical uniqueness. It's a feature that has been born here that no one else has that you could make available to the public. He feels that you need to adapt the uniqueness of the community as a means to economic vitality.

Charles Miller, 5178 Green Drive, Harsens Island

Questioned the legislative intent of the definition of open space as far as "developed" and "undeveloped"? He finds it interesting that they say you can have bike paths, narrow trails, but you can't have a golf course. To him, the implication is that there is some sort of scale with respect to the kinds of things that are called "developed" versus "undeveloped" and where the line is drawn between the two. He feels if you delve into the legislative intent, you may get some insight and guidance. They recently had a meeting with Pam Wall and Judd Gilbert on Harsens Island. He was curious about Ms. Wall's efforts to solicit commercial activities in St.

Clair County and questioned her as to what activities Clay Township had been involved in with her relative to any kind of initiatives for bringing business into this area? She stated there hadn't been any involvement. She said the problem is that there is no parcel of 200 acres for industrial or commercial-type industry. His question is what plan does Clay Township have to try and get out and fish for these opportunities? What is the DDA doing other than buying parking lots?

Chairperson DeBoyer: Stated that you have to remember that almost 50% of Clay Township is owned by the State of Michigan. Also, a great percentage of Clay Township is wetlands. Marine City, St. Clair, and Marysville have direct routes to the expressway whereas Clay Township and Algonac do not. People are not supporting local businesses. Fifty years ago this was a tourist area. It is no longer a tourist area. Whether you like to hear it or not, we cannot survive without a tax base. We have to look at all those things and be realistic about it.

Meagher: Everyone has wonderful ideas. He hopes that everyone has this type of energy and puts a lot of thought into these ideas as we go through these visioning sessions because this is what we want to discuss. We will talk about the pros and cons, potentials, and negatives.

Chairperson DeBoyer: Being on the County Planning Commission, she attended a visioning session with the St. Clair County Commissioners and Planning Commissioners. She stated that she did not intend this as a negative comment, but she personally felt that Ms. Wall's visions were for the Port Huron area and not for Algonac and Clay Township. Sometimes we get involved and caught up in things and forget where we came from. This is unfortunate because the southern end of St. Clair County often gets forgotten.

Meagher: That is why we are doing an individual Master Plan. The County has their Master Plan, as well. This community needs to make decisions based on its own needs.

Sharrow: Feels we will have to draw attention from the County to Clay Township.

Chairperson DeBoyer: We need to think about our community and what will keep our community viable as we start into our visioning sessions.

11. ADJOURNMENT:

Motion by Lines, supported by Simon to adjourn the meeting at 8:57 p.m.

AYES: All NAYS: None

MOTION CARRIED.

Respectfully Submitted,

Christine Holcomb
Recording Secretary