

**MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION
REGULAR MEETING HELD OCTOBER 8, 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: Earl Lines; Whitey Simon; Anthony Antkowiak; Thomas Krueger; Edward Keller, II; George Lyle, Kathy Schweikart; Edward Sharrow; Chairperson Dorothy DeBoyer

Also Present: Patrick Meagher, Township Planner

Chairperson DeBoyer welcomed Earl Lines back.

3. AMENDMENTS TO AGENDA:

None.

4. APPROVAL OF MINUTES OF AUGUST 13, 2008:

Motion by Simon, supported by Lyle to approve the Minutes of September 10, 2008 as submitted.

AYES: All NAYS: None

MOTION CARRIED.

5. SITE PLAN CONSIDERATION:

Clay Township Park – 4768 Pointe Tremble Road

Chairperson DeBoyer: At Monday night's Township Board, the Chairman of the DDA addressed the Township Board. The Township Board was not happy that the park has progressed to the point it is at without the Board being informed or involved. There will now be meetings and things brought before the Township Board before anything further can be approved for the park. She feels the catalyst for this was the bike paths being put in without the job being put out for bids and simply awarded to a company for \$60,000.00. Also, the whole layout for the park was never seen or approved by the Township Board. The park belongs to the Township and the DDA has offered to finance projects for the park, but the Township Board makes the final decision. There is really nothing for the Planning Commission to approve on this issue at this time. We don't know if this will come back to us in the same form or if the Township Board will recommend changes. She further suggested that the Planning Commissioners hold onto the current Site Plan that has been presented in case no changes are made.

6. PLANNING CONSULTANT’S REPORT:

Chairperson DeBoyer: Also on the agenda at the Township Board meeting on Monday night was the issue of approval of the Planning Commission’s amendment to the Zoning Ordinance for the Open Space Preservation Act. There was much discussion spearheaded by the Township Supervisor. The Township Supervisor had a problem with the language in the last sentence of the very first paragraph of the amendment which states, “in no circumstance shall multiple family residential development, attached units of any type, be permitted in a residential open space development”. Also, the letter from Attorney McNamee was presented to the Board in which he stated, “there is no specific case decision on that point or interpreting a similar provision which may be the result of the MZEA being a relatively new statute. However, I believe there is an existing law that would suggest that a local unit of government cannot prohibit a development that is permitted by State action if the applicant meets all of the criteria required by the State.” Unfortunately, Mr. McNamee did not tell us what that law might be or where to find it. A discussion also occurred regarding the setbacks found on the third page of that amendment under (e) which states, “the development shall include a minimum of a 110 foot roadway setback measured from the road center line along any exterior regional major or secondary road with a right-of-way of 120 feet or less. For those roads with a right-of-way greater than 120 feet, the roadway buffer shall be increased one-half foot for each one foot over 120 feet”. In doing the math, if you have a 120 foot road and you measure 110 feet from the center line, 60 feet of that is roadway, 50 feet is the setback. We’re talking about a residential development that requires a buffer. In addition, a development would have interior roads and the homes would face the interior roads, not a major road. You certainly would want a buffer between a major road and a housing development. Based upon these discussions, the Township Board voted to send the amendment to Ordinance No. 126 to the Planning Commission with a recommendation to remove the prohibition of multiple housing in open space zoning and to consider the setbacks as disclosed in that ordinance. She has discussed this with the Planner and requested his comments on same.

Meagher: He provided copies of an excerpt from the Michigan Zoning and Enabling Act to the Planning Commissioners. He spoke with Mr. McNamee on Monday morning and they discussed the letter that Mr. McNamee was preparing for the Township Board. Mr. McNamee explained to him that he didn’t feel it was a legal provision. Mr. Meagher stated that he deferred to Mr. McNamee’s expertise as the Township Attorney. In reading Mr. McNamee’s letter, he feels Mr. McNamee might have misunderstood part of the Ordinance or the application of the Ordinance to the law. He will contact Mr. McNamee and discuss same with him. He has reviewed Mr. McNamee’s letter and then went through the law itself to ascertain how this pertains. In Mr. McNamee’s letter, at the bottom of the first page, it references the open space preservation provisions and talks about a concern that they may be prohibited if, in fact, they seek a residential development that would be applicable under the RM district. But, based on the law under Section 1(a), it’s very clear that you’re not allowed to have this type of development in a multi-family district. It is only allowed in a district that has a density equivalent to two or fewer dwelling units per acre, or three or fewer dwelling units per acre if there’s water and sewer. What we did in Section 3.28(1) of the Ordinance is called out those districts in which it would be compatible with these particular provisions and even talked about

the fact that they would only be applicable if you had sewer or didn't have sewer. He will contact Mr. McNamee to try and clear this up. He has highlighted some of the pertinent sections of the Zoning Enabling Act dealing with open space preservation. In the first paragraph, it simply says that you have to have the same number of dwelling units on a smaller portion of land than specified in the zoning ordinance. It doesn't permit or prohibit multiple family dwellings. But if you go down further under Section 506(3), it clearly says, "the development land under subsection (1) is subject to other applicable ordinances, laws and rules..." He feels the key here is to stop at that comma because it says "is subject to other applicable ordinances and laws". Within these zoning districts, we only allow single family uses. Therefore, he doesn't feel they're being prohibitive, but simply allowing the same rights across the board no matter what type of development is done. By doing it anyway else, we would be allowing a use that's typically not allowed in that district. He doesn't know if he's oversimplifying it, but will speak with Mr. McNamee. He then questioned whether the Planning Commissioners wanted to refer this back to Mr. McNamee or simply wanted Mr. Meagher to talk to Mr. McNamee and find out where he wants to go and perhaps construct a new letter for the Board, or if the Planning Commissioners want to change this and re-send it to the Board?

Chairperson DeBoyer: She also wanted to point out that it states, "subject to subsections (4) and 402, a qualified local unit of government shall provide in its zoning ordinance that land zoned for residential development may be developed at the option of the landowner..." We are not going to tell any landowners that they must do this. The landowners are in the position of coming to us and saying this is what I would like to do. If someone wants to develop, there are other options in our Ordinance that they could develop under.

Meagher: In the second to last paragraph of Mr. McNamee's letter, he simply states "in the final analysis, the prohibition against the use of open space provisions involving a multi-family use in a local ordinance may be subject to legal challenge if all other criteria of the MZEA are met". It may be and any ordinance is subject to challenge. He wants to make sure that there is not a misunderstanding as to how the Ordinance is supposed to be applied. Sometimes attorneys are more tuned towards the law than towards the ordinance. He feels that if he would have had the chance to sit down and talk with Mr. McNamee, they might have been able to work through this.

Krueger: Questioned if whether they decided to change the ordinance, would they have to have another public hearing, etc.?

Meagher: Stated that if the Planning Commission were to make the change, they would have to have a public hearing, etc. If the Township Board were to change same, he doesn't think they would have to have a public hearing.

Lines: Questioned whether Mr. Meagher feels it would it be better for him, now that he has all the information, to go back and discuss same with Mr. McNamee to try and resolve this, or should the Planning Commission make changes?

Meagher: Stated that without speaking with Mr. McNamee, he wouldn't recommend any changes. He suggests tabling any type of action on the Ordinance to allow him to confer with Mr. McNamee.

Motion by Lines, supported by Lyle to table the issue until Mr. Meagher has an opportunity to meet with Township Attorney McNamee.

Simon: Requested adding that Mr. McNamee provide the Planning Commissioners with the law that provides the prohibitions.

Meagher: He believes Mr. McNamee is pointing out that is that he is concerned about pre-empting this particular law and that we're going beyond the enabling legislation of this particular law.

Antkowiak: Questioned whether it would be possible for the Planning Commission to know that particular law?

Meagher: Believes Mr. McNamee is referencing Section 506 of Act 110.

Chairperson DeBoyer: Stated that she would like verification.

Meagher: He will get in contact with Mr. McNamee and try and obtain all the information regarding this issue.

Chairperson DeBoyer restated the Motion by Simon, supported by Lyle to table this item until Mr. Meagher has an opportunity to write a letter and confer with Mr. McNamee and get back to the Planning Commission.

AYES: All NAYS: None

MOTION CARRIED.

Meagher: Advised the Planning Commission that the Master Plan Committee did have an opportunity to sit down with all the department heads regarding and had a very general meeting where they shared some things that they wanted the Department Heads to start thinking about as to how the particular functions of their departments and problems that they're dealing with may affect long term growth of the community. They were provided with a list of issues and asked for their input as to what they feel we need to be aware of in formulating the Master Plan.

Chairperson DeBoyer: Stated that they will meet with the department heads one more time to obtain any additional input from them. She also felt the meeting gave a good perspective of our community as a whole.

7. Z.B.A. REPRESENTATIVE'S REPORT:

Antkowiak: The ZBA has formally made an interpretation about sidewalks when there are no easements for such. He feels that the Planning Commission should be doing

something within the Ordinance to support this and clarify it. He is suggesting that this issue be added to one of the many amendments that they are dealing with. They have also had a discussion regarding chain link fences in front of homes. He found it very enlightening to be able to come up with the logic that Mr. Kras did when, in fact, the easiest thing to say is that a chain link fence is not a decorative fence. Decorative fences are the only things allowed in the front of homes. Therefore, chain link fences are not allowed. He questioned what they need to do to help Mr. Kras understand this? He also questioned whether the Planning Commission needed to look at whether the ZBA was making an interpretation on that?

Meagher: Stated that if we're looking at changing the sidewalk section, they could also add a simple sentence that specifically states that chain link fences are not allowed in front yards to take away from any interpretation.

A discussion then occurred amongst Planning Commission members regarding chain link fences in different areas of the Township.

Chairperson DeBoyer: Stated that this is obviously something that we need to have clarification on.

Meagher: Stated that he would review same and prepare new language for review.

Antkowiak: The other issue before the ZBA is a request for a variance to cover 63% of the Applicant's property. The ZBA postponed the issue to obtain more information. The Applicant has 60 days to come back to the ZBA.

A discussion then occurred amongst the Planning Commission members.

Simon: Questioned how much of an existing fence could be torn down and still fall under the grandfather clause?

Chairperson DeBoyer: Believes that a non-conforming house is addressed in the Ordinance. As to existing signs, you can repair and repaint, but you cannot do anything else.

8. CHAIRPERSON'S REPORT:

She received notice of the Fall workshop sponsored by Metro Planning that will be held on October 30, 2008 at 6:30 p.m. in Port Huron. The subject has not been specified.

9. PLANNING COMMISSION MEMBERS' COMMENTS:

Krueger: Stated that at the Township Board meeting, there were a couple of residents there that talked about sidewalks. We do not have a lot of sidewalks in our community. These residents were from the Field/Nook Road areas. They voiced concern over safety hazards of being forced off the road while walking. He questioned whether the issue of sidewalks could possibly be addressed in the Master Plan or by amendment to the

Ordinance? He feels this is an issue that should be looked into to make sure there are provisions for providing some type of future sidewalk plan in our community.

A discussion then occurred amongst Planning Commission members regarding the issue of sidewalks.

Lines: Regarding Mr. Kras's update at the last Planning Commission in regards to the Buscemi property, he had contacted the Road Commission and they did not have a problem with the truck that is parked on that property. He questioned whether the truck would not be a violation of the Township's sign ordinance? It is his opinion that the truck is a self-propelled portable sign. As far as the dumpster issue, the Township has four of its own dumpsters that are not properly enclosed. He questioned whether or not the issue of whether or not these dumpsters are taken care of would fall under the responsibility of Mr. Kras?

Chairperson DeBoyer: Stated that the issue of the number of dumpsters that are owned, maintained, or rented by the Township that are not enclosed should be presented to the Township Board. Also, she has discussed this matter with Mr. Kras.

Lines: In regard to the Grande Pointe Development, since the DEQ has turned them down, is their litigation with us still continuing?

Chairperson DeBoyer: The DEQ has turned them down with recommendations for modifications. There has not been any Court decision on this yet.

10. PUBLIC COMMENTS:

None.

11. ADJOURNMENT:

Motion by Antkowiak, supported by Lines to adjourn the meeting at 8:15 p.m.

AYES: All NAYS: None.

MOTION CARRIED.

Respectfully Submitted,

Christine Holcomb
Recording Secretary