

TYRONE TOWNSHIP PLANNING COMMISSION

Approved Regular Meeting Minutes

May 10, 2005 7:30 p. m.

PRESENT: Sally Eastman, Joe Fumich, Dave Hanoute, Richard Hartigan, Steve Hasbrouck, Laurie Radcliffe

ABSENT: S. Randy Laue

CALL TO ORDER: 7:30 p. m by Chairman Hasbrouck

PLEDGE OF ALLEGIANCE:

CALL TO THE PUBLIC: No response

APPROVAL OF THE AGENDA: Approved as presented

APPROVAL OF THE MINUTES: April 26, 2005, approved as corrected:

- Page 2, Line 21: (~~Ms.~~ Mr. Eastman asked Mr. Czekaj...)
- Page 2, Line 54: (...because the request it is not in compliance...)
- Page 3, Line 50: (...there are four conditions **they that** have to meet...)
- Page 4, Line 2: (The drawings provided by Boss...)
- Page 4, Line 12: (...they **had add** agreed to compress...)
- Page 4, Line 43: (...reduction or relocation as **shown sown**...)
- Page 5, Line 22: (...**as is** long as there is a deed...)
- Page 5, Line 22: (...while the **overlay overly** is the list...)
- Page 6, Line 4: (...could be allowed based **on in**...)
- Page 7, Line 1: (Township needs to **need to** plan for service...)
- Page 7, Line 6: (...the public **sewer system seres** system will focus...)

CORRESPONDENCE:

- 1) May 9, 2005 - FAX from Ronald H. Ribak, representing Larry Czekaj of TCF Bank, to Raymond I. Foley, representing Dick Osborn of Coyote Preserve, regarding the Preserve Residential open space variance request.

Received and placed on file

- 2) May 9, 2005 - FAX from Troy Farah and Ed Jabron regarding the Hills of Tyrone, West final site plan.

SUBCOMMITTEE REPORT:

- 1) Reconsideration of the **Hills of Tyrone West** final site plan conditional approval recommendation made by the Planning Commission on December 14, 2004. The Township Board took no action at their meeting of January 18, 2005 and the conditions of the Planning Commission recommendation have not been met. No remediation response has been

received from the MDEQ, no approved drainage plans have been received from the LCDC, and the road and sewage construction plan reviews are pending final site plan approval by the Township Board.

Tesha Humphriss of Tetra Tech has informed the Planning Commission that the Drain Commission will only review final construction drawings for the sewage system and sewage connections after the final site plans have been approved by the Township. Mr. Jabron of Jo-Rah, LLC is requesting final site plan approval for the Hills of Tyrone West, in order to build the roads and install the sewer infrastructure.

The Planning Commission was informed by Mr. Farah, Jo-Rah representative, that:

- Site remediation had been completed and the recommendations were fully complied with;
- The Livingston County Drain Commissioner would not review preliminary plans for storm water management or waste water treatment;
- The MDEQ does not oversee or approve site cleanup;
- The MDEQ receives too many reports for them to review and relies upon authorized consultants to do the work and produce the reports;
- The Livingston County Health department is waiting for final site plan approval before reviewing the arsenic levels from various test wells on the site; and
- Based on arsenic levels and rate of flow, a final determination about the water supply would be made by LCHD.

Township Planner Greg Milliken said he had contacted Tesha Humphriss of Tetra Tech regarding some of the issues. Based on today's contact with MDEQ, Ms. Humphriss informed him that the site was not a 201 site and the MDEQ has not received a copy of the Hills of Tyrone, West environmental report but has confirmed they expected a report from the applicant and will review the report and forward a response to the Township, the Township Engineers, and the applicant. This has been done because Tetra Tech does not want to assume the liability associated with review and approval of a report done by another agency. All of the final agency and consultant reviews depend on final site plan approval.

Some of the original approval conditions dealt with site restoration and Tyrone West has stated that the site has been restored to below residential criteria and their report has been submitted to MDEQ. Ms. Humphriss and Mr. Milliken thought that some of the original conditions could remain or be rephrased to meet the current request. McKenna's recommendation was that no land use permits should be issued until the MDEQ has verified that the site is suitable for residential development. He thought the applicants would request a land use permit very quickly to permit the grading and land balancing required for construction. It would be up to the Township to allow that now, or to hold off until the contamination removal was confirmed.

Mr. Hanoute commented that the request was for final site plan approval, not for land use permits for grading or anything else.

Mr. Hartigan recalled that he made the original motion (December 14, 2004), and said that the motion in the minutes was not the motion he made, but he wasn't present at the meeting where the minutes were approved. It was pretty much his motion, but at the time it was discussed, he thought the Planning Commission recognized the fact that the MDEQ did not provide verification of the site clean up and would not respond to that. He recalled that his motion was that no construction be allowed until the clean up was completed and verified or a report was issued. He did not mean to refer to the MDEQ in the motion and he didn't recall

saying "MDEQ" in his motion. There is no reason we can't give these people final site plan approval. If they did clean it up and they adhere to the other conditions, it's fine.

In response to questions about grading, Mr. Van Hecke said that initially the grading had been concentrated in the clean up area. The road has been extended from Ridgewood Trail to Weathered Wood Trail. A lot of logs have been taken out and the stumps are pushed into piles. An extensive amount of grading had been done and it appeared that more than the initial clean up areas had been graded.

Mr. Hartigan said that had nothing to do with final site plan approval. Mr. Van Hecke thought it was a matter of interpretation. He was told that no land use permits should be issued. If we give them final approval, what verification would we have that the site has been cleaned up. We aren't going to take responsibility for verifying that it has been cleaned up, but we need something that says they did the clean up. He remembered saying that the report would not get approved by the MDEQ, so there was no sense putting that in the motion. Mr. Van Hecke said the point was that it was his understanding that they were not to do any more work until we got something that said the site was cleaned up.

Mr. Farah said he hadn't been on site himself, but he understood from his partner, Mr. Jabron, that initially the only thing that happened was the clearing of trees so equipment could get to the site to do the contamination clean up. There were three areas that had to be cleaned up, so they had to attack it from three different angles on the property. A fair amount of clearing was made then. After that, they made a call into the Township about a month ago because they were going to do additional tree clearing and they were told there is no ordinance regarding tree clearing. They asked to have someone let them know if they couldn't do the clearing and they never heard back from anyone. So they did some additional tree clearing after that, but most of it was done during clean up. As far as he knew, no land balancing and grading had been done.

Mr. Hasbrouck commented that they couldn't continue to mass grade and clear the site until the construction drawings were approved. Otherwise, they would be taking chances on penalties, possibly from the Drain Commissioner. Mr. Farah said they were stopped right now until they could get a land balancing permit from the Township. Mr. Van Hecke agreed that most of the machines had gone from the site, but there were some roads cut into various parts of the property. Mr. Farrah assured Mr. Hasbrouck that they were on hold until they got the rest of their approvals done.

Ms. Eastman asked about the other conditions in the original recommendation and if we had a complete set of condominium documents. Mr. Farah said they didn't want conditions, they wanted an unconditional approval. If the Township approves the plan, Mr. Van Hecke could implement whatever kind of conditions they want internally through the office, like not issuing a land use permit.

Mr. Hanoute and Mr. Hasbrouck said the Planning Commission usually gets the first draft of the condominium documents. Mr. Milliken noted that McKenna, Inc. had reviewed the condominium documents and Mr. Farah thought he had been to a joint meeting with the Attorney about the documents. Mr. Van Hecke commented that the Board would have to approve the plans and issue grading permits so they could prepare the final Document B while Mr. Hasbrouck said the Board needed to issue an approval so the construction drawings could go on for agency review.

Mr. Van Hecke said that now the MDEQ issue was cleared up, and we have something that says the cleanup has been done, the Board could take action. Mr. Farah said that no other community he has worked with has made the environmental issue a condition of anything. As long as they had the report, they relied on it and put it in the file. He has never heard of any requirement for DEQ approval before. You can rely on the report because you have essentially passed any responsibility on to the report and the people who produced the report.

Mr. Hasbrouck recalled that we had discussed that people, other than the Planning Commission, would give the final approval on the cleanup, whether it was the MDEQ or the Health Department. Other people have to review these documents to get that squared away.

Mr. Hartigan commented that Condominium documents are an ongoing process and the drawings won't be finalized until the project is complete and the "as built" are done. Some of the (previous approval) conditions were really corrections to the drawings. For example, correction of the sewage system drawing so it is site specific to Livingston County.

Mr. Milliken explained that Tetra Tech had received a copy of the construction drawings. Because of the expense involved, they hadn't done a final review yet because the project hadn't received final approval. Mr. Hanoute asked why Tetra Tech questioned the cost of reviewing the drawings, since it was an expense for the applicant not the Township. Mr. Milliken said he thought the construction plans really should have been submitted after the final site plan was approved. If the Planning Commission didn't approve the site plan, or recommended significant changes, then the construction plans would need to be redone. Mr. Hartigan commented that for every submittal to a municipality, the developer has to pay a fee and the Planner and Engineer should review the documents before the plans should come up on the agenda.

In response to questions from Mr. Fumich about the type of MDEQ report that would be issued, Mr. Milliken said he MDEQ would review the findings prepared by the applicant's consultants and say whether or not they are accurate and whether or not they meet the state law. Mr. Fumich asked what if they don't do a review and we approve the site plan and they go ahead. Mr. Milliken said they would have to go back and address the problem areas. Mr. Farah said they would have to deal directly with the DEQ, but that really has nothing to do with this process and it wouldn't impact Tyrone Township's jurisdiction over their site plan approval.

Mr. Fecho noted that the Planning Commission could review condominium documents. They couldn't change them, but they could recommend that they be changed. Exhibit B is part of the condominium document and should be substantially compliant with the approved site plan. If there are changes, they have to come back for a major site plan amendment. As far they know today, if everything goes as planned, Exhibit B will mirror the approved site plan. In essence, Exhibit B becomes the contract between the purchasers and the owners. The letter you will get from the DEQ will say they have reviewed a plan that was performed by so and so and they concur with their recommendations, or it can be even more non-committal than that.

Mr. Hasbrouck commented that the intent of the Planning Commission in the first approval recommendation did accomplish the clean up. The final construction plans are in order, and they need to have their reviews done. Mr. Hanoute asked if any changes had been made to the new construction plans and if the changes had been targeted with 'bubbles.' He thought the plans should have been reviewed by the Engineer and Planner. Mr Hartigan agreed, but noted that they have to get a recommendation for final site plan approvals so they can get to that stage. We gave them a recommendation for final site plan approval, pending things like finishing the construction documents which they have done. Exhibit B hasn't been done. We

can't expect the developer to go through and do all the heavy engineering for the site until he has approval for the project. It's normal that the final construction drawings come after the approval. They'll get them reviewed after final site plan approval. They have been delayed because the Board wouldn't give them approval, and it's costing them money.

Mr. Hartigan continued that after we gave them a recommendation for conditional final site plan approval, and if the Board had given them approval, they would have done the construction drawings. As soon as the site was cleared, they could have gotten a land use permit to begin the grading and they could have gone to the bank for financing. Mr. Hanoute said he didn't think they could get land use permits until they got final site plan approval. Mr. Hasbrouck asked if that was the situation because it was his understanding that we usually got the construction drawings before a land use permit was issued. Mr. Van Hecke explained that once the Board approves the plans, presumably the Exhibit B is pretty well finalized, and he can issue a permit for land balancing and that type of thing. We have another added feature on this project that involves the sewers. Mr. Hartigan commented that they couldn't go to Livingston County for the review until they got final site plan review approval from the Board.

Mr. Hanoute said that if the Zoning Ordinance allowed for the issuance of Land Use Permits upon conditional final site plan approval, he was all for expediting the request and letting that go forward. He asked if that was referenced in the Zoning Ordinance. Mr. Van Hecke said they would be allowed to begin land balancing after the Board approves the plans, and then the County will work on the sewer. No land use permits for residential construction will be done until the road system is put in. Mr. Hanoute asked what policy George was enforcing and where his statements were written down. Mr. Van Hecke said it was a procedural thing that the Board had established and it wasn't in the Zoning Ordinance. It was what had been done with other developments. Mr. Hanoute felt it would be a good idea to have that procedure in writing somewhere so it could be given to applicants.

Mr. Fecho noted that the Zoning Ordinance has guidelines in it which distinguish between major and minor site plan elements. Major changes would have to go through another site plan approval process, while minor changes can be approved by the Zoning Administrator. That takes away the need for conditional site plan approval because the final plans are subject to administrative review if there are required changes.

MOTION: Moved by Hartigan, seconded by Eastman, that the Planning Commission recommended to the Township Board final approval of the Hills of Tyrone, West site plans as shown on the submitted drawings revised November 11, 2004, Sheets 1 through 19, and referencing our previous motion of December 14, 2004 recommending approval. The conditions of soil contamination have been resolved and the report is on file. The applicant should continue with the ongoing condominium process which will include submittal of final construction drawings and documents for review by the Township's Engineer, Planner, and Attorney, as well as obtaining construction drawing reviews and permits from the governing agencies having jurisdiction. Motion carried unanimously by voice vote.

Mr. Hartigan explained that his motion was based on the plans previously approved by the Planning Commission (in December) and submitted to the Board. We couldn't make a recommendation about the plans submitted on April 19, 2005 because they hadn't been reviewed by the Planner and Engineer. Mr. Farah asked if this meant the approval was basically unconditional and the Board could approve it and everything else would follow administratively through Mr. Van Hecke.

Mr. Hasbrouck explained that the construction plans would have to be sent out to the reviewing agencies once the board give an approval. The Township Engineer, the Drain Commissioner, and any other agencies, would have to review it. Mr. Farah asked if that meant changes could be reviewed by Mr. Van Hecke rather than the Planning Commission or the Board. Mr. Fecho said that could happen as long as Mr. Van Hecke considered it was a minor change. If it is a major change, Mr. Farah would have to get back to the starting point. Right now, the major consideration for the Township is shown on Page 2, and he recommended inclusion of "bubbles" on that page to indicate changes from the November plan. Mr. Hasbrouck reminded him that he would have to deal with the Board on other issues like the Special Assessment District for the sewer, which wasn't shown on the site plan.

Mr. Hartigan said that if it was necessary, he would go to the Board meeting to explain the Condominium processes. Mr Hanoute commented that if all of the policies that were being referred to in adopting the plans were written down, then all we would have to do would be to refer to them in the motion.

Mr. Hasbrouck personally felt that construction shouldn't start until the plans were approved. Before, we gave them approval to do the clean up and that's where it is now. It's done. They have submitted a report, so we are going to issue another recommendation to the Board so they can continue with more approvals.

In response to a question from Mr. Hanoute, Mr. Farrah said that Young's Environmental had pulled a soil erosion permit form Livingston County, but Jo-Rah had not.

OLD BUSINESS:

- 1) Review of the Master Plan Public Services and Urban Services District text (Pages 62 through 63). Documents on file with the Township were provided as background information.

Mr. Fecho said that Tetra Tech had prepared a possible expansion plan for the sewer district, submitted a report to the Township and closed the project out. He did not believe that the Township Board had ever adopted Tetra Tech's recommendation.

The Planning Commission reviewed the boundaries of the various service districts proposed over the years and the sewer assessments as they currently exist. After discussing various options, the Planning Commission decided to include a map of the existing service area as part of the Master Plan without major revisions to the Urban Services text. During review of the Public Utilities e-mail text forwarded by Mr. Fecho on April 19, 2005, the Planning Commission:

- Requested adoption of the current assessment district map by the Township Board;
- Stressed the importance of the US-23 corridor in creating a new service district;
- Agreed to retain Paragraph 1, Page 63, of the Master Plan as a general reference to an Urban Services District;
- Noted that assessments have been levied on all of the cross hatched areas shown in the assessment district map;
- Was informed that an officially adopted master Sewer Development Map is not required for the Master Plan update;
- Recommended that the Board adopt a Sewer Map based on the current assessment district in order to have something for review by developers;
- Considered a service district map which shows what is "in the ground" together with the area included in the initial sizing and design of the existing system;

- Considered inclusion of Lake Shannon in the new service district if it was part of the original design criteria;
- Was informed that the Township has purchased approximately 3 million gallons of sewage treatment with 1.5 million gallons committed and a future treatment capacity of approximately 6 million gallons;
- Considered the establishment of an area of influence based on the assessment district and capability of the service to manage growth;
- Agreed to focus the service district on the corridor west of US-23;
- Asked for development of a sewer map overlay with the areas of influence based on the future land use plan showing intense development areas (multiple housing, commercial, industrial) and lake areas;
- Decided to meet with the Township Engineer to discuss proposed sewer expansion plans;
- Requested a joint meeting with the Township Board to discuss plans and expenses;
- Noted that the US 23 Corridor plan was intended to be served by sewers when it was adopted; and
- Required that any expanded service district overlay be correlated with the future land use map and Lake Shannon.

Mr. Fecho said that once an expanded future Sewer Services District Map was finalized, it should be forwarded to the Board for approval together with the current assessment district map prior to a Public Hearing.

- 3) Review of the May 5, 2005 revisions to the Master Plan Future Land Use Text (pages 78 through 88) and discussion of the PIRO District ordinance language provided by Mr. Fecho

Mr. Fecho informed the Planning Commission that he had made the changes requested earlier for the Future Land Use text and felt that it was ready for a Public Hearing. Mr. Hasbrouck thought there should be a joint meeting prior to the Board review of the Master Plan and volunteered to contact the Clerk.

Mr. Fecho said he would look into the methods for forwarding plans to local units of government after they had been approved. He also reminded the Planning Commission that the Township Board would have to approve the Master Plan before it could be forwarded to other units of government for review and comment. He estimated that it would be July before the Planning Commission would be ready for Board review. Adjoining units of government had 90 days to respond and then the hearing could be scheduled. The Board would have veto power over items in the plan up to the date of the Public Hearing. After the hearing, changes could be made by the Planning Commission as a result of the hearing.

NEW BUSINESS:

- 1)* Action List additions

Mr. Hanoute said he was shocked to find that the Township had no means of controlling clear cutting and tree removal. Mr. Hasbrouck thought there was something in the site plan approval requirements that would cover tree removal and we could impose conditions on dedicated open space. Individuals could clear cut or cut timber on their property if they wanted.

Mr. Hanoute thought there should be more ways to control clear cutting or tree removal beside the open space requirement and recalled that we had discussed a woodland ordinance. The

other Planning Commission members agreed but thought it hadn't been completed because of inventory requirements. The landscape ordinance (Article 21A) and tree preservation ordinance (Section 21.26) don't deal with tree removal.

Mr. Hanoute commented that tree inventories could be based on a sample area of 50 square feet projected over a given number of acres to determine the percentage of trees which could be cleared. Mr. Hartigan said that the trees also could be grouped in specified areas, with replacement required in other areas where developers would be working.

Mr. Hanoute asked to have the matter of tree preservation added to the Action List

Mr. Fecho noted that Action List Item 21 (Correlation of zoning districts) might have some bearing on the Master Plan if changes to the Zoning Map or the Land Use Map would be required. It would be appropriate to review particularly if there are some planned areas that are incorrect. He also referred to Item 8 (Density requirements) which would have an effect on the Land Use Map and the text in terms of density allowed in the High Density, and Medium Density land use districts as well as the Zoning Ordinance.

He also thought that Item 5 (Land division and Subdivision control) should be high priority items as well. He explained that there would be some significant changes in the State's Land Division Act, effective July 1, 2005 that primarily deal with time limits for review of requests.

Mr. Van Hecke wondered how realistic it would be to deal with Subdivision Control (Item 5). Most development is done through condominium, rather than subdivision planning. Mr. Fecho noted that site condominium requirements related back to subdivision control requirements and some of those come from the State Act. Site Condos and even PUDs follow the subdivision control ordinance unless the local government specifically varies the requirements. He noted that the Medium Density Single Family Detached Residential (Master Plan, page 80) was 1 to 1.5 acres per dwelling unit while High Density Single Family Detached Residential was less than .5 acres per unit and Attached High Density was .125 acres per dwelling unit. The Master Plan density should be consistent with the Zoning Ordinance density.

In response to a question from Mr. Fumich about Conditional Zoning (Item 24), Mr. Fecho said that it should be kept on the list while information is still being developed regarding the new statute. Mr. Hasbrouck said that no decision had been made to change the Ordinance but it might be something beneficial for the Township use.

Mr. Hanoute asked when we would correlate the language between our Zoning Ordinance and the Master Plan. Mr. Fecho said that was why he asked about the density on page 80, because it should be the same as the Zoning Ordinance. Mr. Hanoute said as developer he would want to know what kind of Zoning he would have to seek to build a strip shopping center. Mr. Fecho said that would be the second commercial (B-2). Mr. Hanoute said the Zoning Text didn't correlate with the Planned Commercial Land Use language. There is no correlation between the Zoning Ordinance and the Future Land Use Map. Those are Items 1 and 2 on the Action List and they had never been addressed.

Mr. Fecho said they were working on language for the Planned Industrial District. Mr. Hanoute replied that was only one use group. Mr. Hasbrouck asked Mr. Hanoute to keep reminding him of that, but he thought the plan was to work on the Master Plan PIRO to get it finished and then move on to the next section.

ZONING BOARD OF APPEALS REPORT:

Mr. Hartigan said that there was still trouble dealing with nonconforming structures and nonconforming lots, but two things came out in a ZBA discussion last night. One was a limitation on Accessory structures in the RE and FR district that concerned a nonconforming lot which didn't meet the area or width requirements for the zoning district and there was nothing they could do because the ordinance didn't address the size of accessory structures in the RE or FR districts on smaller lots. That might need to go on the list for future consideration.

Another issue for consideration while working on the Master Plan is the number of small lots in the Parshallville vicinity and we don't really address that. That corner of the township is Master Planned as RE (60,000 square foot lots) and there are a lot of smaller lots down there. Maybe while we are looking at the Master Plan we should take a quick look at that area.

Mr. Van Hecke asked for an interpretation of Ordinance Section 26.03 which talked about enlarging a nonconforming structure. He asked what that meant. If you stay in line with a structure 8 feet from the property line is that enlarging the nonconformity. Mr. Hartigan said that the interpretation the ZBA uses is whether the nonconformity is being increased rather than is the building being made larger. Their opinion is that if a structure is 10 feet off the property line when it should be 20 and you add on to it so it is still only 10 feet from the property line, you are not increasing the nonconformity. That is the current logic, but he isn't sure he agrees with it. If you take an 800 square foot garage and add 300 square feet to it, even though the relationship to the property line wasn't changed, you have increased the nonconformity because you have increased the size.

Mr. Hanoute said he made the same argument when he sat on the ZBA board before and he was always outvoted. Look at a property line situation where you are 5 feet off the property line and are supposed to be 10. They will double the size of the house while saying they are not increasing the nonconformity at the same time they create a 5 foot wide tunnel between two houses.

Mr. Hartigan commented that the ZBA had asked for discussion and input from the Planning Commission. One thing that has become apparent from the discussion last night is that they will start mandating that all of the conditions required in Article 28 for a variance are met and the motions and the action will reflect that.

Ms. Eastman said that she had to appear before the ZBA one time to keep their lot line distances the way they were because there was nothing else they could have done. They could have kept their building as a falling down cabin or gotten a variance because of the lot lines.

Mr. Hartigan commented that there another situation where one of the lots developed for recreational use had a recreational cottage on it and then it had a stream going down the middle of it. That qualified as a hardship and unreasonable burden that prevented the lot from being used for its logical purpose. That is what they have to prove. There is a hardship that prevents it from being used for its logical purpose. Mr. Hanoute observed that precedents have been established over the years with the ZBA and they might need to change.

ZONING ADMINIISTRATOR'S REPORT:

OTHER BUSINESS FROM MEMBERS:

NEXT MEETINGS:

May 17, 2005 - Sub Committee Meeting

May 24, 2005 - Work Session

June 14, 2005 - Regular Meeting

ADJOURNMENT: 8:45 p. m.



Laurie Radcliffe, Secretary
Tyrone Township Planning Commission



Barbara Burtch, Recording Secretary
Tyrone Township Planning Commission