

TYRONE TOWNSHIP PLANNING COMMISSION
Approved Regular Meeting Minutes

April 25, 2006 7:30 p. m.

PRESENT: Robert Byerly, Sally Eastman, Joe Fumich, Dave Hanoute, Steve Hasbrouck, Mark Meisel, Laurie Radcliffe

ABSENT: None

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

PLEDGE OF ALLEGIANCE:

CALL TO THE PUBLIC:

David Kuzner, Township Clerk, said he wanted to know if there has been another proposal for additional mobile home acreage near the Tyrone Woods Mobile Home Park. Mr. Kuzner was informed that the Township had received a request for information regarding additional development from one of the property owners, but an application had not been received. Another property owner who wanted to rezone some of their property over there met with the subcommittee..

Mr. Kuzner asked if the Planning Commission has given some type of favorable reply. Mr. Hasbrouck explained that the Subcommittee only met for discussion and there was no action.

APPROVAL OF THE AGENDA:

Moved by Eastman, seconded by Fumich, to approve the April 25, 2006 Agenda as corrected. Motion carried by unanimous voice vote.

Page 1, Line 37: (...property at **13138** 131438 White Lake Road...)

APPROVAL OF THE MINUTES:

Moved by Hanoute, seconded by Eastman, to approve the April 11, 2006 Regular Meeting Minutes as corrected. Motion carried by unanimous voice vote.

Page 1, Line 38: (...seconded by Meisel, to **approve correct** the....)

Page 3, Line 32: (...had recently **been be** signed...)

Page 3, Line 41: (...any **references** procedure **references** relative...)

Page 3, Line 53: (...Ms. ~~Eastman~~ **Radcliffe** asked...)

Moved by Hanoute, seconded by Radcliffe, to approve the April 11, 2006 - Public Hearing Minutes as corrected. Motion carried by unanimous voice vote.

Page 2, Line 2: (...and the Townships knows what they can expect...)

Page 3, Line 36: (...there were two different sections of the Zoning Ordinance...)

Page 4, Line 36: (...we didn't have ~~many~~ any rivers...)

Page 6, Line 1: (...from the current Zoning Ordinance. ~~and was carried over~~)

Page 6, Line 34: (...**required** recommended to assist...)

Page 7, Line 12: (...do not **own**. **How** can we can require someone...)

Page 8, Line 34: (Mr. Hanoute **stated** that...)

CORRESPONDENCE:

OLD BUSINESS:

- 1) Recommendation regarding the request of the **Tyrone Township Board** for rezoning of a portion of the Helen Bantle Estate, 9227 Parshallville Road, RE parcel 32-300-031, from RE - Rural Estates to R-2 Single Family Residential with Cluster Option, exactly as stated in the contract and attachments presented to the Tyrone Township Board by Tyrone Park Associates and signed February 2006, under provisions of Section 125.286i of the Michigan Township Zoning Act 184 of 1943 as amended.

Township Planner Greg Milliken explained to the audience that conditional rezoning is a recent amendment to the State Planning Act. The Public Hearing has been held and this meeting concerns the Planning Commission recommendation to the Board. The difference is that this new type of rezoning comes with conditions attached to it by the applicant. The conditions state exactly what will be allowed. Instead of all of the possible uses that can come with the R-2 Cluster Option, it will be limited to this site plan and the conditions attached to it—no more, no less. If the development isn't accomplished within the time period stated within the contract it will revert back to its current zoning. That is what the conditions are and that is what is being agreed to with this rezoning approval.

Following the Planning Commission recommendation the request will be forwarded to the County. They have 30 days to review the rezoning and make comments. After that, the minutes from the Public Hearing, the Planning Commission recommendation and the County recommendation will all be forwarded to the Township Board for the ultimate decision on the matter.

Zoning Ordinance Section 29.04 lists the review criteria for amending the official Zoning Map, which is what this rezoning request will do. The criteria are:

1. Consistency with the goals, policies and future land use map of the Master Plan which was adopted in July 2002. The Planning Commission will consider the consistency of the new request based on markets, demographics, infrastructure, traffic and so on.
2. Compatibility of the site's physical, geological, hydrological and basic natural environmental features with the proposed development.
3. Evidence that the applicant cannot receive a reasonable return on investment through developing the property with at least one of the uses permitted under the current RE - Rural Estates zoning.
4. Compatibility of all potential uses allowed in the proposed zoning district with surrounding uses and zoning. Environmental impacts, density, nature of use, traffic impacts, aesthetics, infrastructure, and potential influence on property values are some of the characteristics to be considered.

5. The capacity of the Township's infrastructure and services to accommodate the proposed development without compromising health safety and welfare. Are the roads, utilities, and public safety sufficient to accommodate what is being proposed.
6. The apparent demand for the use being proposed in this area in relation to the amount of land currently zoned and available for this type of use.
7. The request may not have been submitted within a year. That requirement does not apply to this request.
8. Other factors deemed appropriate by the Planning Commission and Township Board.

Attorney Joe Galvin said he attended the meeting with Jason Wagoner on behalf of the Limited Partnership (Tyrone Associates). They support their rezoning agreement entered into with the Township and the Township's application for rezoning. The request is limited to the specific plan attached to the agreement and to each of the criteria contained in the agreement. Only site built homes will be allowed and no manufactured homes will be allowed on this 35 acre parcel (Bantle parcel).

There will be no more than 125 lots, even though the R-2 district could have permitted more. No lot may be smaller than 5500 square feet and no home smaller than 1,000 square feet. A minimum of 15 percent of the land will be maintained as open space. The baseball field, approximately 40,000 square feet, will be constructed on site on or before 50 homes are constructed. Every detail of this project has been thought through. Since we meet the criteria in the agreement and we meet the criteria in the ordinance, we respectfully request that you recommend favorably to the Township Board, the approval of rezoning this property in accordance with this rezoning agreement.

Mr. Hanoute asked if Mr. Galvin had legal rights to access Parshallville Road from the new development. Mr. Galvin replied that they had the legal right to access Parshallville Road based on the ownership of property abutting it. They have not yet obtained permits from the Road Commission to do that.

Mr. Hanoute asked Mr. Galvin if he owned property that abutted Parshallville Road. Mr. Galvin said a portion of their property (Cider Mill Crossing) abutted Parshallville Road. Mr. Hanoute then asked if there was not something in the consent agreement that disallowed access from Cider Mill Crossing to Parshallville Road. Mr. Galvin said the consent agreement contained a site plan which did not show access. He does not believe that it specifically barred the access, but the plan did not show it and there is no access today from Cider Mill to Parshallville Road.

Mr. Hanoute commented that it was his understanding that the rezoning site plan (Feb. 20 2006) showed two access points from Parshallville Road that were disallowed by the consent agreement. Mr. Galvin explained that there were two agreements. The consent agreement related to this property (points to Cider Mill). Cider Mill is not at issue tonight. Mr. Hanoute observed that the Cider Mill property ties into the other property (Bantle parcel) by road. Traffic from both developments could go though that road onto Parshallville Road.

Mr. Galvin agreed the traffic could and said they are seeking a new access point for the Bantle parcel. The consent agreement you are referring to is applicable to the manufactured housing

community, but he is talking about the rezoning agreement which is applicable to the 35 acres. Mr. Hanoute thought his question about access to Parshallville Road was still unanswered.

Will there or will there not be vehicular traffic from the existing park through the new addition onto Parshallville Road. Mr. Galvin replied that the direct answer to the question is, "Yes." Potentially there will be access back and forth and there could be access from the park (Cider Mill) to Parshallville Road from both. Mr. Hanoute wondered if that might not circumvent the intent of the consent agreement which disallowed traffic from the existing park onto Parshallville Road. Mr. Galvin said he did not believe so.

Mr. Hanoute asked Mr. Galvin if he could demonstrate that a reasonable return on the investment could not be achieved with the current zoning classification status. Mr. Galvin believed they could demonstrate that by looking at the physical layout. Without this point of access (points to the Parshallville Road access) the Bantle property would be landlocked. By creating access rights we can help that.

Mr. Hanoute asked if they could gain access to Parshallville Road for this scenario (the contract zoning), why they couldn't do it for some other type of development. Mr. Galvin replied that as it stands, the demonstration they must make with respect to the property is that it rests on the Township Ordinance. Mr. Hanoute said he hasn't seen any numbers that would demonstrate their need for more parcels. He asked Mr. Galvin if he could provide them. Mr. Galvin believed they would not be able to achieve a reasonable return on investment, but what it comes down to is that they meet all of the rezoning criteria and they have an agreement and they merit a favorable recommendation to the Township Board.

Mr. Fumich referred to Item 14 in the Contract Rezoning Agreement (February 2006) which stated that, "In the event the Township is named as a defendant in litigation challenging the validity of this Conditional Rezoning Agreement or any provision in it, Tyrone Park agrees to defend the litigation and hold the Township harmless for the costs of defending it." Mr. Galvin said it means what it says if someone challenges the agreement. Mr. Fumich asked if that would be Cider Mill.

Mr. Galvin said he had no idea who would challenge it. That was not something that Tyrone Associates had originally suggested. They had discussions with the Township and that is a provision which was requested which they agreed to in the event that somebody challenged it. Mr. Fumich asked if that meant anybody, and Mr. Galvin replied that is what it said.

The Meeting was recessed at 8:00 p.m. for a Public Hearing and reconvened at 8:07 p.m.

Mr. Hanoute asked about Mr. Galvin's references to "green space" and "open space." Mr. Galvin said he did not differentiate between the two terms. Mr. Hanoute then asked if Mr. Galvin was referring to open space as defined in the Township's Zoning Ordinance. Mr. Galvin answered that he was not using the Ordinance definition and did not have it in mind. He was referring to generic open space or green space. That meant something you were not building on. Mr. Hanoute wanted to know if that included things like road rights-of-way and Mr. Galvin said that rights-of-way had not been included in open space.

In case the Township turned down the request for approval of the agreement, Mr. Hanoute wanted to know if the Township would be in breach of the agreement since it has already been

signed prior to the Public Hearing and the Planning Commission recommendation. Mr. Galvin said that in his mind it would. Referring to Page 2, of the February 2006 Contract Zoning Agreement, Items 1 and 2, Mr Hanoute asked for an explanation of the words "in the event" in reference to rezoning the property. Mr. Galvin explained that the statute requires rezoning to occur. Mr. Hanoute wondered how the Township could be in breach of the contract if the Zoning doesn't occur.

Mr. Galvin said there were two ways. This is the rezoning application of the Township Board, evidencing the intention of the Township based on discussions and the negotiations we had with the Township, all of which leads him to believe that the Township would be breaching their own agreement. There is another provision in the contract which says they will pursue this in good faith. Mr. Hanoute asked if the rezoning application and contract was the Township's request for rezoning and Mr. Galvin said it was. Mr. Hanoute said he understood from the Public Hearing that this was Tyrone Park's request for rezoning and the Township does not own the property. Mr. Galvin said that under the powers granted by the state enabling act, the Township has the power to request the rezoning of any property within the Township. If it is rezoning of a specific parcel, the owners have to receive notice, but that power is well recognized. This is the application of the Township and we are supporting it.

Mr. Milliken said he concurred with Mr. Galvin's comments regarding the Township's rezoning powers. He has worked with other communities where that has been done. Mr. Hanoute asked if the standard rezoning criteria still applied. Mr. Milliken said that it did.

Mr. Fumich thought that if the Township was in breach of the contract, we would be defended by Item 14 (Page 4). Mr. Galvin said there is a level of circularity, but he didn't think that would be the result. The result would be determined on the principles of good faith which is contained in the agreement.

Mr. Fumich commented that it seemed to him that the Manufactured Housing Project is not making any money. If you think stick built homes are the way to go why not build them in the manufactured housing area that you have already. Why go there now and put us over the barrel because the Township needs money for sewer taps. You don't have enough homes in there (Cider Mill) now to pay for the sewer taps. Mr. Galvin said that as a matter of fact, a portion of the existing manufactured housing community will be put in stick built homes.

Mr. Galvin replied that he really wanted to talk about this piece (the Bantle parcel). This entire agreement was negotiated in good faith with a Committee of the Township, representatives of the Planning Commission, Mr. Wagner, and other representatives of the Partnership.

Mr. Fumich said that fact is the space is there and you can build stick homes there (Cider Mill) Why add another 35 acres and put them there at 10 foot wide distances when you have all the space you need in the manufactured housing park. He was told that members of the Planning Commission were involved in this, but he hadn't seen a single thing until he saw the drawing that came up with all these spots that looked like army buildings. He never had a chance to ask if there was a better way to do it and if we needed 125 more homes in there.

Ms. Eastman commented that with the agreement already signed, our recommendation tonight is neither here nor there, since the Board is most likely going to approve what they have already signed. Mr. Milliken agreed and noted that the Board is the applicant, the Board

signed the agreement, and the Board will make final decision. The Board has gone to all this work and this is the agreement they have negotiated.

Ms. Eastman recalled that she had heard Mr. Galvin say several times that we could have more density on this 35 acres if we used the open space option to increase density. No matter how she looks at the Zoning Ordinance, she doesn't see how you can get less than 10,890 feet per lot. She doesn't see anywhere you would be allowed to have these very minimal setbacks. She doesn't see how this density is in keeping with our Master Plan or our Zoning. Mr Galvin said you are going from a density which is more intense in the manufactured housing community, and taking a transitional use (compared) to the densities which are greater and very variable in other lands. This is an acceptable planning principle which is contained in the Master Plan.

Ms. Eastman said there may be different opinions on what is an acceptable cluster development density. Mr. Galvin asked that the request be reviewed in context. The Board has a proposal on the table based on negotiations which you were aware of. Ms. Eastman said that was debatable. Mr. Galvin said this will provide housing we believe will be saleable in this Township at this time with the safeguard of stick built housing. Under those circumstances, you should recommend favorably.

Ms. Eastman asked if we would have site plan input as to road width and construction, environmental impacts, landscaping, and all the other things we normally review with a site plan of this magnitude. Mr. Galvin explained that there wouldn't be the flexibility that you would have with a non-contract zoning. Some of what you would normally have is already covered in the agreement and the plan. That is one of the differences with contract zoning. Ms. Eastman asked if that means if something is covered in the agreement and it is different than our zoning, then the agreement holds. Mr. Galvin said it did.

Mr. Hasbrouck commented that he had been involved with the early discussion. A long time ago he had recommended starting the transition inside of Cider Mill Crossing as the best situation and then moving into the 35 acres with the lot size for the R-2 district. If the cluster option would work best, that would be fine. His problem is with all the exceptions to the Zoning Ordinance. He doesn't think it is in the best interest of the Township to allow these kinds of concessions to be made to the Zoning Ordinance.

Mr. Hanoute concurred and said that was why he didn't like the plan. In the first discussion, the density factor was brought up by three of us, Mr. Hasbrouck, Mr. Hartigan, and myself. We disagreed then with the severe density and he thought there had been a general agreement at the time with Tyrone Park that the transition would be made within the park and the larger lots would be placed bordering the RE zoning. Granted some larger parcels have been created there, but they are about one-third of the area they should be. That is unacceptable and why he does not support the plan.

MOTION: Moved by Hanoute, seconded by Eastman, to recommend to the Township Board denial of the conditional rezoning for a portion of the Bantle property in Section 32, RE parcel 32-300-031, from RE Rural Estates to R-2 Single Family Residential with cluster option as shown in the contract dated February 2006, based on the unreasonable density, lack of demand for this type of development, and inconsistency with Township's Master Plan. Ayes: Meisel, Fumich, Eastman, Hasbrouck, Hanoute, Radcliffe. Nays: Byerly. Motion carried.

During the discussion of the motion, Mr. Meisel said he wanted to add his comments. His conflict with the plan was the minimum lot size. It is half or less than what is applicable to the zoning district. The minimum lot width is 70 percent and the yard setbacks are half or two-thirds of what is allowed. What this complies with, from the Zoning perspective, is MHP. This is an MHP development. It may not be constructed to MHP standards but is MHP density. If there were a rezoning to occur and anybody was going to agree to it, it should be MHP. The request does not fit the Township zoning. It just doesn't fit by 10 percent or 20 percent, it doesn't fit by 100 percent. Things are half the size they are supposed to be at the minimum R-2 standard.

SUBCOMMITTEE REPORT:

- 1) Request of **William D. and Eileen M. Palmer** for land division of property at 13138 White Lake Road, RE parcel 12-300-032, to create 2 parcels. Proposed Parcel B, approximately 2.6 acres net, will be accessed by a new private driveway. Proposed Parcel A, approximately 5.7 acres net, contains the existing buildings. Mr. Palmer provided a new drawing (3/2/06 rev.) showing the corrected side yard setback for Parcel B.

Motion moved by Hanoute, seconded by Eastman, to recommend to the Township Board approval of the William and Eileen Palmer land division request for property at 13138 White Lake Road, RE parcel 12-300-032, as shown in the site drawing revised 3/29/06 with the condition that the driveway location for Parcel B as approved by the Livingston County Road Commission is shown on the drawing. Motion carried by unanimous voice vote.

Mr. Fumich reminded the Palmers that the new parcel should be included in the White Lake Road assessment district.

- 2) Request of **Stephen F. and Pamela D Hett** for land division of property at 12643 Holtforth Road, FR parcel 25-400-008, to create three parcels. All parcels will be accessed from a shared driveway. Parent Parcel A contains the existing historic house and outbuildings. The original driveway for parcel A has been relocated at the request of the Road Commission and Mr. Hett now plans to access the building envelope on Parcel B from Parcel A.

Mr. Hanoute noted that many of the existing buildings do not meet the front yard setback requirements and the residence can not meet the setback requirements from the shared driveway. A public hearing will be required for the shared driveway easement because it follows the property line. Between the time of Subcommittee review and this meeting, a new drawing was provided (4/19/06 rev.). The open space was relocated and the Parcel B dimensions were changed. Parcel B is no longer in compliance with the building line setback width. The width of the parcel should be increased with adjustments made to the open space area and the calculation chart to reflect the change.

The major problem is the shared driveway access which doesn't have sufficient setback from the existing structure. Denying the request would force the applicant to start over. He felt that the recent opinion from the Attorney would allow the request to be tabled until such time as the applicant provides a corrected drawing, we conduct a public hearing, and the necessary variances are obtained. Mr. Hasbrouck suggested redesigning the front yard driveway curve to improve the front yard setback.

MOTION: Moved by Hanoute, seconded by Meisel, to establish a shared driveway public hearing date for May 23, 2006 at 8:00 p.m. and to table the Hett land division request pending receipt of a corrected drawing, a public hearing, and any variances that may be required. Motion carried unanimously by voice vote.

Mr. Hett asked if he should request the variance prior to the public hearing. Mr. Hanoute thought he should and explained that he would have to request a variance based on a specific number. If we require a 50 foot setback and you have 3 feet, then you would request a 47 foot variance. That can be clarified with the Zoning Administrator. In respect to hardships, Mr Hanoute noted that the Road Commission had limited the driveway access point, required that both driveways be combined into one access location, and the buildings were pre-existing historical structures with nonconforming front yards.

Mr. Milliken didn't feel that there would any difficulty in this case by applying for a variance before there was a public hearing or some sort of approval recommendation. The letter from Attorney Harris was based on conditional site plan approval. This is a land division, and you could make that a distinction if you wanted to maintain the intent of the letter.

Mr. Meisel said the issue that provoked the letter was a site plan review at Subcommittee. The Attorney's real opinion was that requests need to be reviewed by the Planning Commission as a whole.

- 3) Request of **Charles** and **Deborah Green** for land division of property at 13087 White Lake Road, RE parcel 12-300-031, to create Parcels 1 and 2. Two separate parcels were combined in March 1994 to create parcel 12-300-031 and the owner would now like to separate them. As proposed, the parcels do not meet the R-2 Zoning District requirements.

Mr. Hanoute noted that this is a re-split proposal of a parcel combined in 1994. After the Subcommittee meeting he had recalculated the gross area of proposed Parcel 2 at 190,901 feet as opposed to the 187,823 feet shown on Mr. Green's drawing. The net area, less the 33 foot wide road right-of -way, is actually 186,00 square feet, but Mr. Green shows 121,005 feet so the open space is underestimated.

Mr. Hasbrouck asked Mr. Hanoute to check Parcel 1, because Mr. Green thought he might need a variance for that one. He explained that Mr. Green was one of the people sent forward to the ZBA for a variance before the request was reviewed by the Planning Commission and he is backtracking at this point. We didn't want to delay him further so we brought the request in to this meeting to make a determination about the variance.

Mr. Green explained that the original dimensions of proposed Parcel 2 would not meet the 4 to 1 ratio. So he made it wider to achieve the ratio. That is what makes Parcel 1 non-conforming in terms of minimum lot width. He feels that the minimum lot width would be the lesser of the evils.

Mr. Hanoute felt that the length to width ratio was the lesser evil. Right now, the ratio is 4.09. Mr. Green could put a jog in the property line, perhaps 10 feet, and still make the ratio. In any case, he thought the variance for the ratio would be better than a variance for the width.

Mr. Green said that to move the Parcel 2 front yard setback far enough back to meet the width requirement would create an environmental concern. He has a water flow problem across the back of the property and he is limited on what he has for a build site on the lot.

Mr. Hasbrouck noted that Mr. Green had provided several concepts and before he could go to the next step, he had to iron those out. At this point, we could table the request or he could come back to the Subcommittee or go the ZBA. Mr. Green decided he wanted to come back to the Subcommittee. He said he wanted to work with straight lines. There were a lot of trees on the north side of the property he wanted to protect. Mr. Hanoute asked him to make sure he came back to the Subcommittee with all of the design parameters that needed to be considered.

MOTION: Moved by Hanoute, seconded by Fumich, to table the request pending the Greens return to the Subcommittee with their final choice and a drawing resolving some of the issues. Motion carried unanimously by voice vote.

NEW BUSINESS:

- 1) Recommendation regarding the request of **Kimberlee Frank**, representing the Land Trust of 6379 Hartland Road, for state statute land division of property at 6379 Hartland Road, FR parcel 33-200-021, for creation of three parcels accessed by a shared driveway with frontage on Hartland Road. Proposed Parent Parcel "A" will contain approximately 2.46 acres of buildable area, proposed Parcel "B" will contain approximately 2.00 acres of buildable area, and proposed Parcel "C" will contain approximately 2.00 acres of buildable area.

MOTION: Moved by Hanoute, seconded by Fumich, to recommend to the Township Board approval of the Frank's land division request for property at 6379 Hartland Road, to create three parcels accessed by a shared driveway as shown in the site drawing dated 3/31/06, conditional upon their showing the shared driveway located generally in the center of the access easement and also the stub driveways to the parcels accessed from the shared driveway as it meets the conditions of the Zoning Ordinance. Motion carried unanimously by voice vote.

ZONING ADMINISTRATOR'S REPORT:

Mr. Milliken said the Ordinance revisions had been assembled for forwarding to the County and the Attorney. In assembling the Private Road ordinance two of the sections were missing. The text going out has all of the sections and when it comes back with comments you can review the other sections at that time. If you want to make changes, we can decide at that point whether to have another hearing or not.

There is a new Zoning Enabling Act that combines all the City, County, Township and Village Zoning Acts. McKenna has prepared a memo summarizing the impacts. The primary impact is on noticing requirements, but any references in the Ordinance to the Township Zoning Act will have to be changed to the Michigan Zoning Act. Changes will have to be made to Article 29 of the Ordinance and you might want to include it in your next round of reviews. Even if you don't get the Ordinance changed, after July 1 you should start following the procedures outlined in the state act.

ZONING BOARD OF APPEALS REPORT:

Mr. Meisel reported that there would be no ZBA meeting for May.

OTHER BUSINESS FROM MEMBERS:

Mr. Meisel asked when he could expect to get the packets so he could get enough time to prepare. He asked for copies of Subcommittee meetings as well.

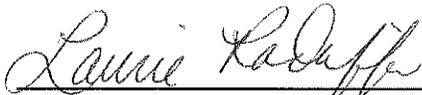
NEXT MEETINGS:

May 9, 2006 - Work Session

May 16, 2006 - Sub Committee

May 23, 2007 - Regular Meeting and Public Hearing

ADJOURNMENT: 9:40 p.m.



Laurie Radcliffe, Secretary
Tyrone Township Planning Commission



Barbara Burtch, Recording Secretary
Tyrone Township Planning Commission