

TYRONE TOWNSHIP PLANNING COMMISSION
Approved Work Session Minutes

June 13, 2006 7:30 p. m.

PRESENT: Joe Fumich, Dave Hanoute, Steve Hasbrouck, Mark Meisel, Laurie Radcliffe

ABSENT: Robert Byerly, Sally Eastman

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

PLEDGE OF ALLEGIANCE:

CALL TO THE PUBLIC: No response

APPROVAL OF THE AGENDA:

 Moved by Hanoute, seconded by Fumich, to approve the Agenda as amended(*). Motion carried by unanimous voice vote.

APPROVAL OF THE MINUTES:

 May 23, 2006 Regular Meeting Minutes - Moved by Hanoute, seconded by Radcliffe, to approve the May 23, 2006 Regular Meeting Minutes as corrected. Motion carried by unanimous voice vote.

 Page 1, Line 12: (...Steve Hasbrouck, Mark Meisel, Laurie Radcliffe)

 Page 5, Line 14: (...there were was junk....)

 Page 7, Line 44: (**Motion carried by unanimous voice vote.**)

 Page 8, Line 14: (...because an applications had not been received...)

 Page 9, Line 19: (...the six items int the new statute...)

 Page 9, Line 35: (...Mr Kuzner and Mr. Schmidt, ~~so the~~ so the Township...)

 Page 10, Line 4: (...and there would ~~there would~~ be other meetings...)

 Page 10, Line 20: (...10:45 by Chariman **Hasbrouck Hanoute**)

 May 23, 2006 Public Hearing Minutes - Moved by Meisel, seconded by Hanoute, to approve the May 23, 2006 Public Hearing Minutes as presented. Motion carried by unanimous voice vote.

CORRESPONDENCE:

SUBCOMMITTEE REPORT:

1) Request of **Gary Edwards** for McGuire Ravine Site Condominium final site plan approval.

 Mr. Edwards presented copies of the revisions made to the Master Deed and Bylaws as requested by the Township Attorney.

During discussion of the request, the Planning Commission noted that:

- The condominium document revisions had been reviewed and approved by Township Attorney Harris;
- A special attachment regarding the open space had been attached to the McGuire Ravine Master Deed and Bylaws;
- Open Space restrictions are usually included as part of the condominium parcel legal description to acknowledge compliance with the Ordinance Open Space requirements;
- The open space was located outside the boundaries of the site condominium property on the parcel retained by Mr. Edwards (G-1);
- An open space exhibit was attached to the Master Deed and Bylaws to show the location and ownership of the open space;
- The Open Space Deed restrictions attached to the Master Deed and Bylaws (Exhibit C) were in the form requested by the Township Attorney;
- The Open Space location, and use restrictions are mentioned on revised Page 13 of the Master Deed (6/12/06);
- The Master Deed Declarations Regarding Open Space will be recorded at the County and the Township;
- The Condominium Association can't do anything to revise the Open Space use or location because they won't own it; and
- An open space maintenance agreement should be attached to the legal description of Parcel G-1 (Remainder Parcel) stating that the open space described shall be permanently maintained by the owner of the parcel to which it is attached. Within the open space, no permanent structures may be built.

Mr. Hanoute asked to have the Attorney contacted to determine if the Open Space provisions should be attached to the legal description of Mr. Edward's remainder parcel as well as to the Master Deed and Bylaws.

MOTION: Moved by Hanoute, seconded by Meisel, to recommend to the Township Board final site Condominium approval of the McGuire Ravine property as shown in the drawings received May 16, 2006, pages 1 through 4, conditioned upon the Attorney's comments relative to the attachments which may or may not be required for the legal description of the open space and the attorney's opinion insuring that the open space is secure by addition of language to the remainder parcel (G-1) legal description. Motion carried by unanimous voice vote.

The meeting was recessed at 8:00 p.m. for a Public Hearing and reconvened at 8:25 p.m.

OLD BUSINESS:

- 1) Request of **Ronald and Heather Johnson** for land division of property at 11950 Parkin Lane, RE parcel 03-400-016 to create 3 parcels. The existing driveway will be converted to a shared driveway to access Parent Parcel A (approximately 2.76 acres net), Parcel B (approximately 1.65 acres net) and Parcel C (approximately 3.1 acres net). The open space required for Parcels B and C has been located on Parcels A and C. Parkin Lane, a private road, currently provides access for 33 parcels.

MOTION: Moved by Hanoute, seconded by Meisel, to table the Johnson's land division request until the applicant provides additional information relative to the open space calculation chart, parcel open space maintenance language, revised front yard setbacks, and a wetland delineation. Motion carried by unanimous voice vote.

Mr. Hasbrouck suggested that the Johnsons provide an additional site drawing showing shared driveway drainage information to address the neighbor's concerns.

Township Planner Greg Milliken referred to the most recent information he had received about private roads and private road ordinances. This land division is located on a road that has exceeded the private road parcel limit (24). There are State Court of Appeals cases that support local road and driveway zoning ordinances that are more restrictive than the statutes.

Mr. Hanoute asked if the case would apply to the Johnson request. Mr. Milliken said he wouldn't recommend acting on it until the Planning Commission heard from Mr. Harris. It is a legal issue with ramifications not only for this case, but many private roads in the Township. Mr. Hasbrouck was hopeful that we could meet with Mr. Harris and discuss some of the pending shared driveway and private road requests we have.

Mr. Hanoute asked why Mr. Johnson's request wasn't forwarded to the ZBA for a variance to increase the number of parcels served by a private road (Parkin Lane) before coming to the Planning Commission for review. Mr. Hasbrouck reminded him that our Attorney informed the Planning Commission that applicants for variances shouldn't go before the ZBA until the full Planning Commission reviewed the request. Mr. Hanoute said he thought we had agreed to table requests until we could hear back from the ZBA. Mr. Hasbrouck replied that Mr. Harris had asked the Planning Commission to give a conditional approval or turn a request down before it could go to the ZBA.

Mr. Hasbrouck thought we might want to keep the request tabled until we hear back from Mr. Harris. Mr. Milliken said the important thing was to follow the variance procedure and the tabling could continue until we hear from Mr. Harris. Mr. Hasbrouck noted that another one of the Attorney's earlier comments was to not send appeals to the ZBA until we were sure about the number of variances that might be needed. In this case, they might need a wetland setback variance too.

- 2) Discussion of the Michigan Zoning Enabling Act revisions related to Ordinance Article 28, Zoning Board of Appeals, as recommended in the McKenna Memo of May 16, 2006 on Pages 10 - 13, continued from the May 23, 2006 meeting.

Page 2 - Proposed Section 1.13 is an addition to the statute, but there is nothing about how the report is to be presented. The Planning Commission asked for a written report **to be discussed presented** at a joint meeting.

Page 5 - Table 21.1 includes changes required by the state act for group day care homes and foster family group homes. In addition, the Congregate Care Facility and the Adult Day Care Facility references were included to bring the text language into compliance with statute language. The Planning Commission asked to have the group day care homes allowed as a **Special Land Use** in the RM-1 zoning district.

Page 11 - Section 28.00 allows members of the Township Board to serve as members of the ZBA. Currently, the Township Zoning Ordinance does not. The Planning Commission commented that:

- Appointing a Board member would provide a link between the Board and the ZBA;
- Different Board members should be appointed to the Planning Commission and the ZBA;
- It is important to maintain diversity of opinion on the Boards;
- Board members could provide continuity between the Planning Commission, the ZBA and the Board;
- The Township should avoid a perception of Board bias or influence on ZBA opinions;
- A Board appointment to the ZBA would create additional attendance burdens for Board members; and
- Continuing separation of the Board and ZBA would help maintain the separate legal functions of each group.

The Planning Commission decided not to make changes in the ZBA appointment requirements regarding Board members. Mr. Meisel, Planning Commission ZBA representative, commented that the new statute language made the procedure for selecting alternates easier to understand.

Page 11 - Section 28.C, Line 4 will be revised to read, "for non-performance of duty or **malfeasance** in office."

Page 12 - 28.04.A provided new language taken directly from the statute which allows the ZBA to set the length of time allowed to file an appeal by a general rule. Mr. Milliken recommended adopting some type of fixed date or time period as part of the ZBA by-laws. Mr. Meisel said he would bring it before the ZBA for comment at their next meeting.

Page 12 - 28.05.A also deals with the procedure if an applicant appeals a permit that has been issued. The Planning Commission asked Mr. Milliken to reconsider the language about issuance of permits in the last sentence.

Page 13 - 28.05.D references approval of use variances if they are currently allowed by the Ordinance. Mr. Milliken explained that use variances are being phased out by the new statute. In some ways, a use variance is similar to conditional zoning. To put a commercial use into a residential zoning district, applicants could ask for a variance to allow a use not permitted in the district in place of a request for conditional commercial zoning.

The new act allows Township's to maintain use variances if they already exist in the Ordinance, but does not allow new use variance language to be added. If the Township's use variance language is retained, it will require a 2/3 majority vote for approval. Use variances allow flexibility for development of parcels that are inappropriate for the existing zoning district. While a use variance may not undermine the Master Plan, it can undermine the planning process.

Although conditional rezoning also establishes exceptions to the zoning map or planning process, it may provide more control over development and land use as part of the rezoning approval process. In conditional rezoning, the people who develop and approve the Master

Plan and or Zoning Ordinance are the ones approving the use. In the case of the ZBA, the people granting the variance haven't been involved in Master Plan or Zoning Ordinance development.

The enabling act allows the ZBA to grant use variances, but not the Planning Commission or the Township Zoning Ordinance. Use variances are currently allowed by the Township Zoning Ordinance. The only change that has to be made is the voting percentage language. Based on other changes in the enabling act, there is a movement by the state to get rid of use variances. Although both give zoning flexibility, he felt that conditional zoning would give more control. The Township's recent adoption of ZBA use variance approval language probably stemmed from a lawsuit going through the courts that was later denied on appeal.

Mr. Van Hecke commented that the Planning Commission could approve special uses for residential districts and uses of the same nature and class for non residential districts (21.41) which gives the Planning Commission some flexibility in the way we determine property use.

Mr Hanoute asked to have use variances taken out of the ZBA section of the Ordinance (28.00). If we have conditional zoning, use variances undermine the planning process. It requires more people to review a conditional zoning decision than a use variance. Mr. Milliken reminded the Planning Commission that conditional zoning can't be negotiated, but can be denied for specifically stated reasons. Mr. Van Hecke noted that use variances don't create a rezoning and don't carry over if the use ceases.

Mr. Meisel wanted more time to consider whether use variances might be preferable to conditional zoning in some cases. Mr. Hasbrouck said that the Board could approve conditional zoning whether we like it or not, so we need to set some standards. Mr. Meisel wanted to know how you would differentiate between use variances and conditional zoning if we had both. Mr. Milliken recommended removing the use variances from the Ordinance so there would be no question about the differences between them.

Mr. Hasbrouck thought we should ask the attorney for comments, since we are having trouble separating them. Mr. Meisel said it was his understanding that conditional zoning requires strict adherence to zoning ordinance standards once it is approved while use variances would allow you to deal with uses not listed in the ordinance. Mr. Hanoute thought the whole object of conditional zoning was to change the standards. Mr. Hasbrouck replied that conditional zoning is tied to a site plan rather than an owner or the use. If it isn't built as agreed upon, the property reverts back to original zoning. The difficulty is whether the ZBA can establish different standards for use variances than the zoning standards followed by the Planning Commission and Board for conditional zoning approvals.

- 3) Discussion of the Michigan Zoning Enabling Act revisions related to Ordinance Article 29, Amendments, as recommended in the McKenna Memo of May 16, 2006 on Pages 13 - 15, continued from the May 23, 2006 meeting

Page 13 - 29.02.A.1 The Planning Commission asked to specify that public hearing notices should be published **no less than 15 days prior to the hearing.**

4) Comments regarding additions to Ordinance Article 29 related to Conditional Zoning

Mr. Milliken provided the Planning Commission with a copy of the MTA model ordinance which he felt was more streamlined than the McKenna recommendation. He asked the Planning Commission members to review the text. Rather than a comprehensive review, he wanted members to locate items they wanted to include or reject for a basic list of what should be included in the ordinance before beginning to tailor the text. He wanted to hear the Planning Commission comments about the parts of both ordinance drafts that they liked or didn't like, so he could determine what to include in a final draft.

Mr. Hasbrouck asked to schedule discussion of the conditional zoning ordinance for the next meeting. Mr. Milliken said we could address the Zoning Enabling Act changes for Section 29 at the same time. Mr. Hasbrouck wanted to get enough of the text ready for a public hearing. We could discuss some of the other issues like use variances at the hearing.

NEW BUSINESS:

OTHER BUSINESS FROM MEMBERS:

1) August Meeting Date

A primary election will be held at the Township Hall on August 8, 2006 (the date of the first Planning Commission meeting in August).

Mr. Hasbrouck asked the Secretary to check the schedule prepared by the Clerk to determine the date of the August meeting.

ZONING ADMINISTRATOR'S REPORT:

1) Expanded use of the Church of God Camp, located at 6317 Old US 23, FR parcel 32-200-007, from a Special Land Use for churches and schools (22.05.D) to a commercial conference center

Mr. Van Hecke said the Church of God was selling their facility. The purchasers came to the office and informed him that they planned to continue to use it in the same way, but the flier they prepared seems to be moving it from a church campground to a commercial operation. The uses proposed in the advertisement don't fit with the uses allowed by the Special Use permit.

Ms. Radcliffe suggested that the Fenton Fire Department should inspect the facility because of the magnitude of the project.

Mr. Hasbrouck didn't think we would really need to have the Church of God come before the Planning Commission until they have some type of plan for the use of the property. Mr. Van Hecke said he would ask them to tell him specifically what they wanted to do in writing. Ms. Radcliffe wanted to know if the special use was binding on the property after it was sold so the new owners would have to use it as a church camp.

2) Illegal sign

Mr. Meisel asked about the status of the small engine repair building that has an illegal sign and has become a used car lot. Mr. Van Hecke said the renters had been sent a violation notice, and he was going after the owner as well.

ZONING BOARD OF APPEALS REPORT:

Mr. Meisel said that the ZBA would review the Hett driveway setback request and the Stenz request for replacement of a re-model with a new build on Monday, June 19, 2006.

BOARD ACTION:

OTHER BUSINESS FROM MEMBERS:

NEXT MEETINGS:

June 20, 2006 - Subcommittee Meeting

June 27, 2006 - Regular Meeting

August 10, 2006 - Work Session*

ADJOURNMENT: 10:00 p.m.



Laurie Radcliffe, Secretary
Tyrone Township Planning Commission



Barbara Burtch, Recording Secretary
Tyrone Township Planning Commission