TYRONE TOWNSHIP PLANNING COMMISSION

Approved Regular Meeting Minutes

October 23, 2007

7:30 p. m.

PRESENT: Gary Butler, Bob Byerly, Joe Fumich, Dave Hanoute, Ed Kempisty, Mark Meisel, Laurie Radcliffe

ABSENT:

CALL TO ORDER: 7:00 p. m. by Chairman Hanoute

PLEDGE OF ALLEGIANCE:

CALL TO THE PUBLIC:

1) Marshall Smith said that Zoning Administrator George Van Hecke had suggested that he come before the Planning Commission to request revision of the Zoning Ordinance to permit construction of a two story residence without requiring a minimum square footage on the first floor. He wanted to build a residence in the Township which did not meet the Zoning Ordinance requirements for minimum footage on the first floor although it exceeded the total amount of square footage required.

The Planning Commission recommended that Mr. Smith take his request to the Zoning Board of Appeals. Mr. Hanoute explained that the Township wouldn't be able to review the specific Ordinance standard in the near future so the most expeditious approach would be through the ZBA variance process.

APPROVAL OF THE AGENDA:

MOTION: Moved by Meisel, seconded by Radcliffe, to approve the Agenda as presented. Motion carried by unanimous voice vote.

APPROVAL OF THE MINUTES:

1) October 9, 2007 - Work Session Minutes

> MOTION: Moved by Meisel, seconded by Fumich, to approve the October 9, 2007 Work Session Minutes as corrected. Motion carried by unanimous voice vote.

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Page 2, Line 16: (...width would have to be reserved...)
Page 3. Line 35: (...monitoring would be most effective...)
Page 3, Line 47: (Whether the approved the PUD conditions...)
Page 4, Line 10: (...terms and conditions of the <del>original</del> PUD...)
Page 4, Line 31: (...would better limitation of future uses...)
Page 4, Line 38: (...rezoning to included mixed uses...)
Page 4, Line 43: (...will be required before a creating...)
Page 6, Line 4:
                   (...he and Ms. Radcliffe would work...)
Page 6, Line 23: (...a builder had came into the office to gate get a land use permit...)
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CORRESPONDENCE:

1) Letter from Merino Bernardi regarding development of vacant property bounded by Shiawassee Avenue and Old US 23 in Section 4

Mr. Hanoute explained that the Planning Commission wasn't involved in any stage of development where a project could be discussed, but Mr. Bernardi was welcome to come to the Planning Commission meetings at any time while we discuss development of a revised PUD process.

Township Supervisor Andrew Schmidt said that members of the Board had been meeting with the purchasers of the property in question and they are working with us. The developer was to have a meeting this morning with the County Drain Office. The owners are doing their due diligence, but still haven't told us exactly what they want to do.

Mr. Hanoute asked to have the correspondence placed on file for future consideration.

SUBCOMMITTEE REPORT:

Mr. Hanoute reported that Mike Meloche met with the Subcommittee regarding the former Callaghan property and renewed a request to abandon a Faussett Road access easement proposed for Parcel C (23-300-037) and substitute the use of another easement on the east side of the property for access to Parcels C and D (29-300-038) as shown on Parcel B (29-300-036).

After hearing from John Shelton of the Road Commission, the Subcommittee told Mr. Meloche that the Road Commission endorsed the Township's request for use of the easterly easement by Parcels B, C, and D as the safest means of access and to include the parcel north of Parcel D (30-300-008) which would be landlocked without the use of the easement. The farthest parcel (30-300-008) currently has documentation giving the owner the right to use a 33 foot wide easement crossing the east side of Parcels B and D to connect with Faussett Road.

Mr. Meloche was instructed to come back to the Subcommittee with a new site drawing indicating that the easement would be shared by four parcels; the shared driveway would be upgraded to meet our standards; parcel descriptions would include references to the location and use of the easement, a private road maintenance document would be provided, and the existing unapproved driveways would be removed. Mr. Hanoute explained that we weren't holding Mr. Meloche responsible for the technical problems associated with the easements, only to the extent that he must reference the pre-existing 33 foot access easement to Parshallville Road crossing Parcels B and D for the benefit of the owner of the parcel northeast of Parcel D.

OLD BUSINESS:

1) Recommendation to the Township Board regarding the revisions to Article 24 - Private Road, Shared Private Driveway, and Access Easement Standards (10/17/07 rev)

In the absence of Greg Milliken, John Jackson of McKenna Associates briefly discussed some of the changes made to the Road Ordinance (24.00) since the last review:

- Page 24-8, Item 2, was revised to permit the Township to modify the Livingston County Road Commission road construction standards as required when applied to unpaved or nonconforming roads;
- Page 24-9, Item B.1, was revised to require filing of the recorded maintenance agreement with the Township Clerk rather than the Planning Commission Secretary;
- Page 24-10, Item H, was revised to allow deviation from the Road Commission road construction standards for shared private driveways or access easements as required; and
- The language regarding shared driveways and adjacent properties (24.03.R and 24.06.R) was revised to mandate shared use by adjacent parcels.

Mr. Meisel said that he had agreed to bring comments from the September 18, 2007 Board meeting to the Planning Commission. Mr. Nagy's and Mr. Kurtz's concerns about the language related to corner lot requirements has been modified to refer to new lots only; references to the county paved road standards have been clarified; the use of cul-de-sacs has been included to address navigation of safety equipment for lengthy private roads; and the sample maintenance agreements were discussed.

On September 26, 2007 he sent a summary of the proposed Planning Commission road ordinance revisions to Mr. Nagy and Mr. Kurtz, asked for their review and offered to be the conduit to the Planning Commission from the Board. Last week he was informed that there were continued concerns relative to the requirement forcing the use of an existing property line shared driveway by an adjacent property owner.

The opinion from Township Attorney Harris said the Township can legally enforce the use as specified in the Ordinance. If someone chooses to put a shared driveway along a property line, a condition of approval can be the requirement to allow adjacent property owners use of the shared driveway for access to their property. The challenge is that a number of Township Board members said they will not endorse or approve the Ordinance as long as that requirement remains.

Mr. Fumich felt that the Board's viewpoint was contrary to what the Planning Commission was trying to accomplish. The number one priority is to come up with a plan for the Township that would insure the safety of the people driving on our roads. The more driveways you have on public access roads, the more potential you have for accidents. The County even revised their specifications to allow shared driveways for up to four parcels in order to reduce the number of road cuts. Controlling the number of outlets onto a public access is the safest way to go.

The meeting was recessed at 7:30 p.m. for "The Rock" Public Hearing and reconvened at 8:05 p.m.

Mr. Meisel reassured the Planning Commission that during his talks with Board Members, he found that the Planning Commission and the Board have a common objective. The Board members understand the issues but would prefer a different mechanism. Their concern is that when the owner of a piece of private property allocates a portion of the private property for a shared driveway, that is the owner's choice. If the adjacent property owner is allowed to access the easement and driveway improvements, the original owner has potentially lost a significant portion of their property.

Allocating space for a shared driveway and then converting a driveway to a private road is vastly different. The Board's bigger concern is the inability to predict the level of road use. If

there is an owner sitting on a corner because they split their property into three separate parcels, there will be a driveway serving two new houses in addition to the house that already has a driveway with road access. There would be traffic from only two homes. If you build a private road over the driveway, there could be traffic from ten or fifteen houses on that private road or there could be at least four if an adjacent property owner uses it for a shared driveway. The problem is the fact that the amount of use becomes unpredictable and there is potential for degradation of the quality of life for the original developer in addition to the fact that these people have been forced to lose their property. That is the concern.

The Board agrees with the Planning Commission objectives. They are just questioning the mechanism to achieve the objectives. Mr Hanoute asked if that meant they objected to existing shared driveways on property lines being accessed by adjacent property owners. Mr. Meisel said that is what they have said. The ordinance says we can't do anything to existing driveways so the issue is the unpredictability of new development.

Mr. Hanoute said that new applicants will be told up front when they put a shared driveway on a property line who would have access to it and what the ramifications would be. Mr. Meisel said that if a property owner builds a private shared driveway, they know who is involved in the shared driveway agreement. What they don't know is how many parcels the adjacent parcel will be developed into...one home or ten homes. The people who use the shared driveway won't know either. They can only guess how their quality of life could be affected when someone develops a 66 foot wide two lane private road in there. That is the issue of concern.

Mr. Hanoute said if that was a concern, the owner shouldn't locate the driveway on the property line. They know if they do locate it there, the driveway has the potential to become a private road with more than four users. That is why we require public hearings for private roads and shared driveways on property lines. The Zoning Ordinance states that the easement can't become a private road without a hearing, but they know it can become one in the future.

Mr. Meisel said that someone might agree to that, but agree without understanding the impact. Others might consider it a taking of land. This is a mechanism to try to coerce developers to locate the driveway in areas we prefer. We can fully disclose it to them that the driveway in the future may be improved to a private road and all the ramifications thereof. The applicant will make a free and conscious choice, knowing that the future may be unpredictable or they can move the driveway off the property line.

Mr. Hanoute said that if we allowed that, we should establish some minimum distance that the driveway has to be moved away from the property line. The adjacent property owner has just as much right to an access point at the public road as the person installing the shared driveway. If you are going to move it off the property line, it should be at least half the distance required for minimum distance between driveways as required by the Road Commission. If there is a requirement for 250 feet between driveways, then it should be moved off the property line at least 125 feet center to center. Then the person nextdoor can also have a shared driveway 125 feet from their property line. That would meet the access management standards and give adjacent property owners options for shared driveways.

Mr. Fumich noted that might result in two road accesses instead of one. Mr. Hanoute agreed, but said at least the accesses would meet the County minimum clear visions standards. Property owners should know from the beginning that if they put the easement on the property

line, others may have access. If they don't want to do that and live with the ramifications, then they should have an option to use if they move the driveway off the property line.

Mr. Byerly said his driveway was located on his property line. If the guy next to him said he wanted to put another house in and use his private driveway, he would be told, "No." Mr. Hanoute said he would say, "No" too. The Township allows single use private driveways and shared use private driveways. Single use private driveways are not shared and do not have to be shared.

Ms. Radcliffe said that an example of the problem was the property we were looking at on Faussett Road with a proposal to allow 4 driveways within 100 feet of each other on a public road at a dangerous location. There are two access easements located on each side of a property tree line that are grandfathered in. The one on the east side of the tree line is a single use private driveway and the owner doesn't want to share it. The easement on the west side of the tree line led to a remote parcel and another easement was laid over it. The builder who split the property into three parcels didn't record the easement as a shared driveway easement and allowed the homeowners to put driveways wherever they wanted to on the west side of the tree line.

As another example of the problem, Mr.Meisel said there could be an existing parcel currently with 20 feet of shared driveway that has to become a private road, so the property owner loses 66 feet in the width of the property. The adjacent parcel is grossly advantaged because they lose nothing. They may have to improve the driveway, but they may be eligible for another parcel split because they didn't have to set aside a road easement. It becomes a concern about unpredictability and the intent of the shared driveway. If we allow adjacent use of a shared driveway as a mechanism to persuade people to abide by better design standards, and they choose not to, then you have to provide a mechanism to encourage them.

Mr. Butler asked if the rub was the increased traffic from the conversion of a driveway to a road. Mr. Meisel said that was one of the problems because the increase in traffic was unpredictable. The other rub is the perceived taking of property---that a 25 foot driveway might chew up 66 feet of property for a road. Mr. Hanoute reminded Mr. Meisel that both shared driveways and private roads have to set off a 66 foot wide easement for ingress/egress and public utilities. The easement requirements did not change with a change in use. The change would be in the width of the improved surface.

Mr. Fumich suggested that if you located the driveway surface right on the property line, the adjacent property owner using the easement could be required to set off 33 feet on his side of the line if he wants to share the driveway. That gets back to the Faussett Road property where there is a 66 foot wide easement, but only 33 feet of it is recorded. Mr. Meisel suggested that the individuals responsible for converting a driveway to a road should locate half the road on their parcel.

Mr. Hanoute said the real rub seemed to be giving away something and getting nothing for it-that land was being given away for nothing. We could build a stipulation into the ordinance
which would require repayment to those people for the right to use their land. Mr. Kempisty
commented that many times the owner may have plans to use the rest of the easement in the
future for a fourth mailbox. If an adjacent property owner goes ahead of him and uses the
easement, that would be taking his property rights in the mind of the shared driveway owner.

Mr. Meisel said his intent was that a 66 foot wide easement should be established when the shared driveway is laid off, but anyone who wants to use it in the future would have to set off 33 feet on the other side, increasing the total easement to 99 feet. Mr. Hanoute said the Ordinance used to allow a 33 foot wide easement for shared driveways, but we had been advised by Livingston County and the Township Engineers to not allow a 33 foot wide easement in case the easement could be converted to a road at some point in the future.

Mr. Jackson commented that setting off a 66 foot wide easement could reduce the width of the parcel being developed so there would only be road frontage for one parcel instead of two. Mr. Hanoute explained that most of the parcels in the Township which would require shared driveway access weren't wide enough to allow for two parcels side by side to begin with. We needed to allow shared driveways because the parcels have to be split from front to back and stacked up behind the primary road frontage. One option might be to require location of the driveway surface at the property line if there was the potential for an adjacent owner to use the driveway.

Mr. Meisel told the Planning Commission that he would be happy to go back and talk to the Board members. Mr. Hanoute replied that the Road Ordinance was one of the Township's most important items of business and we needed to get it finished. He preferred a joint meeting with the Board and Planning Commission rather than one person going back and forth all the time to try and settle it. He wanted the Board to hear the Planning Commission opinions and he wanted to hear theirs. Mr. Byerly agreed that a joint meeting would be a good idea.

Mr. Schmidt agreed to establish a date and time for a joint meeting and would inform Mr. Hanoute as soon as possible.

2) Review of revised Ordinance Article 11 - PUD (10/17/07 rev)

Mr. Hanoute recalled that there was discussion about using the Special Use process for PUDs, but he was informed that one of the developers interested in working within the Township is opposed to requiring Special Land Use Permits for PUDs. One of their reasons was the difficulty in getting Special Use financing. Mr. Meisel said as he recalled, the main issue was how to rezone the property so developers could build in phases with different elements or uses without having to go to the ZBA. They weren't concerned about Special Land Use Permits. Their biggest concern was how to do the rezoning for transitional developments and how to rezone a single parcel into two or three zoning designations.

Mr. Hanoute said one of the problems for the Township would be how to establish districts where PUDs could be used. Some of the Zoning Classifications shown on the Future Land Use Map don't match the Zoning Districts referenced in the Zoning Ordinance. Mr. Meisel said as he recalled it, the Board was concerned about how to rezone for development in phases, how to avoid going to the ZBA, and how to avoid multiple rezonings.

Mr. Jackson said that one approach would be to rezone the subject property for various uses, and then establish a PUD to regulate each of the use districts based on a percentage of the underlying zoning use. If you just rezoned to PUD, the use wouldn't have to be tied to the underlying zoning if you didn't want. The new Planned Unit Development Article proposes rezoning to specific uses first, with the PUD applied as a Special Land Use Overlay.

Rezoning is a frequent concern of most developers. One of the Township's concerns should be project development under single ownership or documentation that the properly will be developed and managed as a single entity. For instance, a 100 acre parcel which has been Master Planned for 20 acres of commercial, 40 acres of service and 40 acres of residential (all of it currently zoned as low density residential) could be rezoned to 20 acres of commercial zoning, 40 acres of service zoning, and 60 acres of a residential zoning based on the housing density shown in the PUD request. The next step would be applying the PUD as a special land use overlay for the 100 acres which would allow the developer to distribute the uses without reference to zoning district boundaries.

Another way would be to not require rezoning districts at all. The entire 100 acre parcel would be rezoned as a PUD. In that case, the PUD ordinance would have to contain specific language as to how the uses would be mixed based on the uses shown in the Master Plan or the Zoning Ordinance. Mr, Hanoute asked if the PUD usually referenced underlying zoning if something didn't occur as planned. Mr. Jackson said the PUD was designed to be flexible so that it could require reversion to underlying zoning or allow a mix of uses tied to criteria established in the PUD documents.

Revised Article 11 (7/02/07 and 4/30/07) establishes the PUD as a special use overlay for specific zoning districts. He suggested limiting PUD developments to the R-1, R-2 and RM-1 residential districts and the B-1, B-2, OS, M-1, M-2 and PIRO non residential use districts as existing zoning uses or uses established by rezoning.

The Planning Commission also considered:

- Location principles related to road frontage, drainage, wetlands, infrastructure and utilities:
- Preparation of graphics showing where uses would occur in the project and how they would align with uses outside of the project;
- Provision of language to correlate the Future Land Use Map use districts (PIRO, PCS, etc.), the Master Plan definitions (Low Density Housing, Intense Industrial Use, etc.) and the Zoning Ordinance use districts (RE, B-1, OS, etc.)
- Correlating PUD development plans with Master Plan policies;
- Correlating the zoning districts included in the Master Plan references as low intensity, medium intensity, and high intensity uses to the Zoning Districts;
- The current review status of the Master Plan Amendments;
- Addition of language to the Master Plan text to reference zoning districts where PUDs may occur;
- Inclusion of references to PUD Subdistricts (Residential, PCS, PIRO) in the appropriate Zoning Ordinance texts;
- Establishing a minimum percentage of the underlying zoning to be included as part of the PUD;
- Classification of PUDs based on the Future Land Use Map Zoning District descriptions;
- Inclusion of residential development if the PUD is located next to a residential district,
- Specifying the point in the PUD process when rezoning must occur;
- The use of open space as a buffer when nonresidential uses are located next to residential development; and.
- Making Preliminary PUD approval simultaneous with rezoning approval;

The following text revisions were requested:

- Page 11-1: Clarification of the Intent Section language (11.01)

- Page 11-1, Paragraph 3: Revision to, "All decisions made pursuant to this ordinance shall give due consideration to the maintenance of resonale conditions for concernting the following conditions"
- Page 11-2, B, Line 3: Revision to, "...a single person or entity having responsibility for the development of the project and the planned unit development regulations.
- Page 11-2, C, Line 1 Minimum Area: Revision to, "The minimum area required to qualify for a Planned Unit Development..."
- Page 11-3, D, Line 1: Revision to, "...the proposed location of a any Planned Unit Development..."
- Page 11-3, D: Clarification of 1, 3, and 5;
- Page 11-3, D.2, Line 2: Revision to, ...bogs, swamps, and wood lots will be preserved
- Page 11-3, D: Add as Item 6 specific reference to arterial or collector roads as a sight location principle;
- Page 11-3, E Uses: Revision to, "The following uses are permitted in the PUDs;
- Page 11-3, E.1: Include references to senior housing;
- Page 11-4.g: Remove the second sentence in reference to this article, and review all requirements for possibility of an "adult content or use" loop hole;
- Page 11-4, 3, Line 4: Revision to, "...If desired by the applicants
- Page 11-5, 3, Line10: Add a definition of "developed area" and describe how the residential area will be tabulated;
- Page 11-5, F. Line 2: Revision to, "...in determining the number of **dwelling units** lots permitted in **a the** PUD, the applicant **shall** will submit a parallel plan) and reference the specific Section of the Ordinance where parallel plan is defined
- Page 11-5, F. Paragraph 2, Line 1: Revision to "...and determine the number of lots or units...)
- Page 11-6, G: Clarify whether the bonuses are cumulative or total, and consider elimination of bonuses or addition of larger bonuses in some cases at the discretion of the Township
- Page 11-7, 2. Line 1: Revision to, "The Planning Commission and Township Board shall determine..."
- Page 11-7, 2.a: Increase the side yard setback to not less than 20 feet to allow for the passage of emergency equipment;
- Page 11-7, 2.e: Clarify the reference standards for this section

Mr. Hanoute scheduled further discussion of the PUD Draft for the November 13, 2007 Planning Commission Meeting

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ZONING ADMINISTRATOR'S REPORT:

OTHER BUSINESS FROM MEMBERS:

ZONING BOARD OF APPEALS REPORT:

BOARD ACTION:

NEW BUSINESS:

FUTURE AGENDA ITEMS:

NEXT MEETINGS:

November 13, 2007 - Work Session and Joint Meeting

November 20, 2007 - Subcommittee Meeting

November 27, 2007 - Regular Meeting

ADJOURNMENT: 9:35 p.m.

Laurle Radcliffe, Secretary

Tyrone Township Planning Commission

Barbara Burtch, Recording Secretary
Tyrone Township Planning Commission