

1 **TYRONE TOWNSHIP PLANNING COMMISSION**
2 **REGULAR MEETING MINUTES**
3 **May 20, 2020 6:00 p.m.**
4 **Meeting Held Via Zoom Video Conferencing**
5
6

7 **PRESENT:** Mark Meisel, Dave Wardin, Kurt Schulze, Rich Erickson, Dan Stickel and Perry
8 Green
9

10 **ABSENT:** Bill Wood,
11

12 **OTHERS PRESENT:** Tyrone Township Planner Greg Elliott and Tyrone Township Planning &
13 Zoning Administrator Ross Nicholson
14

15 **CALL TO ORDER (6:03 pm):** The meeting was called to order by Chairman Mark Meisel.
16

17 **PLEDGE OF ALLEGIANCE (6:03 pm):**
18

19 **CALL TO THE PUBLIC (6:04 pm):**
20

21 No public comments or questions were received.
22

23 **APPROVAL OF THE AGENDA (6:04 pm):**
24

25 Dave Wardin made a motion to approve the agenda as presented. Dan Stickel supported the
26 motion. Motion carried by unanimous voice vote.
27

28 **APPROVAL OF THE MINUTES (6:04 pm):**
29

30 No draft minutes were available. The item was deferred.
31

32 **OLD BUSINESS #1 (6:05 pm): Betley Sight Line Determination:**
33

34 Chairman Meisel introduced the topic with a summary of where the Planning Commission had
35 left off in review of the Betley sight line determination request. He indicated that the applicant
36 had provided new information prior to the meeting but, due to the time the information was
37 received, the Planning Commission did not have adequate time to thoroughly review the
38 information. He asked the Planning Commission how they would like to proceed. Dave Wardin
39 suggested that the Planning Commission could review the documents based on the previous
40 information that was submitted or they could potentially table the item to allow the Planning
41 Commission to review the recently submitted documents in detail. Chairman Meisel asked the
42 applicants what they thought in terms of how to proceed with the review of the new documents.
43 Mark Betley stated that not much information has changed. He stated that the latest drawings
44 reflect a change in the orientation of the proposed new dwelling (mirrored/reversed
45 floorplan/structural footprint) to address neighbor concerns pertaining to the existing grade of the
46 property. He added that the proposed placement of the dwelling has not changed and the

47 reversed layout should not impact sight lines. Dave Wardin asked why a topographical survey
48 including the subject parcel and those parcels immediately adjacent as well as elevation
49 renderings which had been requested by the Planning Commission at the February 11, 2020
50 meeting had not been provided. Mark Betley indicated that he was advised by his attorney that
51 he should not pay to have the survey done since it should not be required to make a
52 determination on the request, based on the requirements in the Zoning Ordinance.

53
54 Greg Elliott provided a summary of the Zoning Ordinance standards pertaining to sight lines. He
55 indicated that the basic starting point is to determine adjacent property setbacks and average
56 them to determine the appropriate setback for the proposed dwelling. He continued, adding that
57 if the intent is to build beyond the average of the adjacent setbacks, the Planning Commission
58 needs to determine an appropriate setback where adjacent sight lines would be protected. He
59 stated that the Planning Commission may request as much information as they feel necessary in
60 order to evaluate the potential impact to sight lines. Mark Betley stated that he understands that
61 the average setback of the adjacent dwellings is approximately eighty feet (80'), and he is
62 proposing a setback of approximately one hundred and thirty feet (130'), which significantly
63 exceeds the average setback calculation. Dave Wardin asked where he is coming up with the
64 130' proposed setback. Mark Betley explained that the 130' setback is the distance between the
65 edge of the proposed deck and the established high-water mark of Runyan Lake. Dave Wardin
66 asked how he came up with 80' for the average of adjacent setbacks. He indicated that when the
67 property to the south applied for a front yard setback variance in order to build the dwelling, the
68 setback average was much greater than 80'. Mark Betley explained that he used an average of
69 adjacent structures inclusive of structures beyond the immediately adjacent properties. Dave
70 Wardin explained that in this situation, where there are existing dwellings located on either side
71 of the subject property, only those two properties can be taken into consideration. Greg Elliott
72 read from the Zoning Ordinance regarding setback averaging in relation to sight lines.
73 Discussion between Mark Betley and Greg Elliott followed regarding the applicability of the
74 Zoning Ordinance sight line requirements in relation to the subject property and the location of
75 the proposed dwelling. Mark Betley indicated that it is clear that a cove exists at the water
76 frontage based on the 2013 Zoning Board of Appeals (ZBA) decision for the construction of the
77 immediately adjacent dwelling to the south and, therefore, the Ordinance indicates that the
78 Planning Commission needs to make a determination utilizing means other than setback
79 averaging. Discussion between the Planning Commission and Mark Betley regarding setback
80 averaging occurred. Mark Betley indicated that, in previous discussions with the Zoning
81 Administrator (Ross Nicholson), setback averages were discussed and he had arrived at an
82 average setback of 80'. Ross Nicholson indicated that he did not recall any specific numbers that
83 were discussed pertaining to setback averaging and could not confirm that he had agreed on the
84 80' estimate. Mark Betley indicated that it was discussed at the time that the Township was
85 considering revisions to the Zoning Ordinance pertaining to sight line requirements. Ross
86 Nicholson confirmed that there had been discussions regarding both the existing language in the
87 Zoning Ordinance pertaining to sight lines as well as proposed revisions to the requirements that
88 were being discussed by the Planning Commission. If setback averaging was discussed at that
89 time, it was likely regarding how new sight line regulations could theoretically be applied to the
90 subject property if/when the Planning Commission recommends amended standards for
91 determining sight lines.

92 The Planning Commission discussed the drawings provided by the applicants. Dan Stickel
93 indicated that he was having difficulty with justifying the proposed location of the dwelling
94 based on the drawings provided and the existing Zoning Ordinance standards, specifically
95 because he could not clearly identify the exact location of existing adjacent structures on the
96 provided drawings. He stated that he does not see how it would be possible for the dwelling, as
97 proposed, to comply with setback averaging requirements. Molly Betley suggested that the
98 Planning Commission look at a specific drawing to aid in the discussion. Mark Betley pointed
99 out the location of existing adjacent structures on the drawings. Dave Anderson (owner of the
100 directly adjacent dwelling to the south of the subject property) pointed out the location of his
101 dwelling in relation to the proposed dwelling on the subject property. Dan Stickel asked if it is
102 fair to say that the structures located on the property to the north of the subject property are
103 closer to the lake than the existing dwelling immediately south of the subject property. Dave
104 Anderson confirmed. Discussion amongst the Planning Commission ensued pertaining to the
105 location of existing structures on immediately adjacent properties.

106
107 Dave Wardin asked Greg Elliott whether the existing detached garage located on the
108 immediately adjacent property to the north of the subject property can be taken into account
109 when determining sight lines and associated setback requirements, or if the standards only
110 consider the location of principle structures/dwellings. Greg Elliott indicated that the standards
111 apply to all existing structures, inclusive of accessory structures. Dave Anderson stated that the
112 existing detached garage on the property immediately north of the subject property does not
113 impact views of the lake. Dan Stickel asked whether the fact that the accessory structure is taken
114 into consideration would change anything. Greg Elliot indicated that the average setback line
115 would still be further off the lake than the location of the proposed dwelling. Mark Betley stated
116 that he is clearly seeking a sight line determination. He explained that the dwelling located to the
117 south of his property was built approximately fifty feet (50') closer to the water than the location
118 of his existing dwelling (on the subject property). He stated that the detached garage on the
119 property immediately north of the subject property was built approximately one hundred feet
120 (100') closer to the water than the existing dwelling located on the subject property. He
121 expressed his frustration with the Zoning Ordinance standards pertaining to sight lines. He asked
122 how it makes sense that the dwelling on the property located to the south of his property was able
123 to build 50' in front of his existing dwelling in 2013, but it is not possible for him to build what
124 he is proposing. David Anderson indicated that his dwelling (located on the property south of
125 the subject property) did not impact the sight lines of the existing dwelling on the subject
126 property. Mark Betley indicated that the location of his proposed dwelling would not impact his
127 sight lines either. David Anderson stated that it would impact his view. He added that the
128 location of the proposed dwelling would more significantly impact the sight lines of the dwelling
129 located to the north of the subject property. Mark Betley indicated that, in earlier discussions
130 with the Planning Commission, most of the Planning Commission agreed that sight lines would
131 not be significantly impacted, based on the initial drawings and renderings that were provided.
132 He continued, stating that it wasn't until the meetings turned into public hearings when
133 neighbors complained and the Planning Commission decided that there would be a significant
134 sight line conflict. Dan Stickel stated that he is hearing that the Planning Commission and
135 Planner had previously made statements, but he does not have any documentation in front of him
136 that confirm that. Mark Betley indicated that he had documentation, including emails, which
137 show that the Planning Commission had little concerns with the proposed placement of the

138 dwelling in relation to sight lines until after it was recommended that he reach out to the
139 neighbors to get their opinions. He stated that he only applied for the temporary dwelling during
140 construction application because he was told that the sight line determination would be moving
141 forward. He stated that everything changed when neighbors were brought into the equation and,
142 since that time, the Planning Commission has repeatedly been asking for additional information
143 and dragging out the process.

144
145 Rich Erickson asked the Planning Commission if it would be of any benefit for the Planning
146 Commission to conduct an on-site visit of the subject property. Chairman Meisel indicated that
147 most of the Planning Commission has already visited the site. He added that fact does not mean
148 that an additional site visit could not occur. He stated that the Planning Commission had agreed
149 that as part of the transition from preliminary sight line review to a formal determination, they
150 would need additional information from the applicants, specifically drawings and renderings, in
151 order to effectively work through all of the variables inclusive of elevations, topography, the
152 location of the foundation, and the vertical height of the structure (inclusive of the roofline). The
153 Planning Commission, Planner, and the applicants discussed the Zoning Ordinance requirements
154 pertaining to sight lines, specifically for instances where it is determined that a cove or peninsula
155 exists.

156
157 The Planning Commission brought up the drawing submitted for the 2013 ZBA application for a
158 front-yard setback variance in order to build the dwelling located on the property immediately
159 south of the subject property. Neil Webb (acting as an agent for the applicants) asked if there
160 was any way for him to access the drawing from the ZBA application so he may use the
161 topographical data in preparing revised drawings for the sight line determination request. He
162 stated that he has performed extensive research on the subject property and has not seen anything
163 pertaining to an approximate average setback line, as depicted in the drawing submitted for the
164 2013 ZBA application. He stated that it would have been helpful to understand that the Planning
165 Commission would be looking for an approximate average setback line early on. Dave Wardin
166 indicated that information on setback averaging can be found in the Zoning Ordinance, Section
167 20.02.X, and under the Zoning Ordinance definition of sight lines in Figure 2.6. He stated that
168 the average setback line is depicted in the illustration (Figure 2.6). Neil Webb question if that
169 illustration showed an approximate setback line for all properties located on the lake. Dave
170 Wardin stated that it is not that specific, it is a general illustration intended to be used for
171 reference. Neil Webb stated that, based on his planning experience, setback language is usually
172 provided to the engineer. He added that it is not typical that they would need to come up with
173 their own setbacks based on an illustration or setback averaging. Mark Betley stated that the
174 Planning Commission basically keeps asking for additional information which goes above and
175 beyond what should be necessary to make a sight line determination without specifying a reason.
176 Dan Stickel stated that, if his memory serves him, they are having the same discussion that they
177 had back in February. Mark Betley stated that the Zoning Administrator (Ross Nicholson) had to
178 ask the Planning Commission for exactly what information they were looking for because there
179 was no specific criteria [in terms of required documents for making a sight line determination] in
180 the Zoning Ordinance. He stated that Ross Nicholson had indicated that he had not previously
181 seen as much information requested of an applicant for a sight line determination request during
182 his time as an employee of the Township. Neil Webb stated that the Zoning Ordinance standards
183 would be easy to follow if all properties around the lake were the same, however, due to the

184 significantly staggered setbacks of most properties on the lake, Figure 2.6 is very difficult to
185 apply. Dave Anderson stated that the decision from his 2013 ZBA variance indicates that if his
186 dwelling was located any further towards the lake than where it was approved, it would impede
187 adjacent setbacks and, therefore, would not be acceptable. Mark Betley stated that, according to
188 the meeting minutes from the aforementioned 2013 ZBA meeting, Mark Meisel identified that a
189 cove does exist at the location of the property. He stated that he doesn't believe there to be any
190 question that a cove does exist. Chairman Meisel indicated that he does not recall that being
191 said. Mark Betley pointed out the specific location in the meeting minutes where Mark Meisel
192 had stated a cove exists. Mark Betley stated that there was previously a cottage located on the
193 adjacent property to the south of the subject property which was removed following the approval
194 of the front yard setback variance to build the existing dwelling. Dave Anderson stated that the
195 cottage did not impede sight lines and was demolished. Joe Perrera asked how long it took for
196 the ZBA to make a determination on sight lines during the meeting. Dave Anderson indicated
197 that it took approximately thirty (30) minutes. Chairman Meisel stated that he would like to add
198 some context for clarification purposes. He stated that the sight line determination in the case of
199 the 2013 variance request was largely made by the ZBA to establish a site line that would
200 comply with adjacent structures. He stated that the application was submitted to the ZBA
201 specifically for a front yard setback variance and the sight line determination was just part of the
202 process. He stated that, while this request is similar, it is a slightly different scenario. Mark
203 Betley stated that he is not requesting any setback variances and the proposal exceeds the
204 minimum rear yard setback for the zoning district. Joe Perrera asked if the committee has the
205 information they need to make an informed decision based on the ordinances. Dave Wardin and
206 Dan Stickel indicated that they believe additional information is necessary. Joe Perrera
207 recommended that the Planning Commission table the application until Mr. Betley provides all
208 information the Planning Commission feels is necessary in order to make an informed decision.
209 Chairman Meisel thanked Joe Perrera for his comments. He indicated he respects his opinion,
210 but the decision to take any action on the application must be made by the Planning Commission.
211 Mark Betley stated that he believes the Planning Commission has received enough information
212 to make an informed decision. He stated that he takes issue with the Planning Commission
213 repeatedly asking for additional information and continuously tabling the application. He stated
214 that a conditional approval, or some kind of indication that approval will be considered, should
215 be provided before he spends additional time and money on a new survey or additional
216 documents. Dan Stickel stated that, based his understanding of the Zoning Ordinance standards,
217 there is a requirement to meet the average setback of the adjacent structures. He continued,
218 indicating that, in his opinion, he would like to see drawings that clearly depict the location of
219 existing adjacent structures, specifically the rear yard setbacks of all existing structures in
220 relation to the setback of the proposed dwelling on the subject property, before he could consider
221 making a decision. Mark Betley stated that all of that information is included in the documents
222 they provided. He stated that the drawing shows that the setback of the propose structure would
223 be approximately 130'. Dan Stickel asked for clarification. Molly Betley interjected. She stated
224 that at the February 11, 2020 Planning Commission meeting, they came in for a sight line
225 determination. She continued, stating that the Planning Commission should have made some
226 kind of determination at that meeting. Greg Elliott stated that the application was included on
227 the agenda for discussion of the application, and did not guarantee that a decision could be made
228 at that time. Molly Betley asked for clarification, specifically regarding the purpose of the
229 meeting. She asked if the purpose of the February 11th meeting was to further discuss

230 preliminary discussions that occurred via email prior to the meeting. Greg Elliott stated that
231 decisions are made during meetings. Molly Betley asked Greg Elliot to confirm that the purpose
232 of including the application on the 02/11/2020 Planning Commission agenda was to further
233 discuss discussions that originated via email. Greg Elliott stated that the Planning
234 Commissioners are provided information packets prior to the meeting, allowing them sufficient
235 time to review the materials in the packet, which would be discussed during a regular meeting.
236 They would then make a decision, or not make a decision, based on the information provided in
237 the packet. Molly Betley asked, based on all of the information that they had provided since and
238 prior to the February 11th meeting, what the Planning Commission has done to study and
239 evaluate the proposal. Dave Wardin stated that the Planning Commission has not done much
240 [specifically pertaining to the sight line determination request] since the February meeting.
241 Molly Betley asked Dave Wardin what information the Planning Commission specifically asked
242 for during the February meeting. Dave Wardin stated that the Planning Commission requested a
243 boundary survey and a full topographical survey locating the existing and proposed structures
244 and grades on the subject property as well as both properties immediately adjacent. He added
245 that they are basically requesting a drawing similar to the one that was included in the 2013 ZBA
246 application for the property located to the south of the subject property. Molly Betley asked if
247 the drawing from the 2013 ZBA application was specifically required by the Township or if it
248 was provided voluntarily. Dave Wardin stated that he was not on the ZBA at that time and could
249 not answer the question. Dave Anderson stated that the drawing was required as part of the
250 complete ZBA application.

251
252 Mark Betley summarized the sight line determination request history. He indicated that he was
253 repeatedly given the impression that the Planning Commission had sufficient information to
254 evaluate and make a determination on the proposed rear yard setback in relation to sight lines
255 until the neighbors became involved in the process. Molly Betley stated that it her understanding
256 that public comments should be made during specified times at a regular meeting. She
257 continued, stating that her husband is trying to explain that the February meeting was not a
258 public hearing, but it was treated as one regardless. She explained that she would be able to
259 elaborate further if she had a recording of the meeting or meeting minutes. She stated that a
260 video recording and meeting minutes have not been provided despite their request to obtain the
261 information. Chairman Meisel indicated that she is implying that the meeting was conducted
262 inconsistent with the prescribed format. He explained that there is a call to the public at the
263 beginning of meetings for items not on the agenda and there is a policy which allows for
264 reasonable public participation for agenda items at the time that such agenda items are being
265 discussed. Molly Betley asked if it is appropriate for people who do not own property within the
266 Township to make public comments during a regular meeting. Chairman Meisel replied yes and
267 explained that it is a public meeting and any person is permitted, by statute, to make comments,
268 as long as they are permitted within the approved meeting format.

269
270 Perry Green apologized for interrupting the discussion. He suggested that the Planning
271 Commission table the application since there is not adequate time to discuss meeting procedures
272 and because additional information has been requested of the applicant which has not been
273 received. Mark and Molly Betley indicated that they are seeking a determination one way or the
274 other. Rich Erickson asked Mark Betley if there is any reason that he could not move the
275 location of the proposed dwelling approximately twenty feet (20') further from the lake than

276 currently proposed. Mark Betley stated that the proposed dwelling was designed and situated on
277 the property based on the existing grade and topography. He stated that the intent is to build the
278 dwelling into the hill to both preserve existing adjacent views and for safety. He stated that the
279 hill on the property is a steep grade and presents a potential hazard to his family. He stated that
280 the proposed location would also allow him to utilize the existing dwelling on the property as
281 temporary housing during construction. He stated that he also would not like to build closer to
282 the road due to the safety aspect. He stated that the adjacent neighbors made a decision on where
283 they wanted to build and they had the option to build closer to the lake. Molly Betley added that
284 the primary intent of building the dwelling, as proposed, is to build a safe home that will stand
285 the test of time, not to obstruct adjacent views. She stated that they have been very diligent and
286 dedicated to ensuring that the design of the dwelling would not significantly impact existing
287 adjacent views, which is why they decided to build into the hill. She continued, stating that
288 positioning of the proposed dwelling was determined based on the grades so that existing
289 adjacent development built at the top of the hill could retain a reasonable view of the lake over
290 the dwelling. She stated that they would like the Planning Commission to make a determination.

291
292 Dave Wardin stated that the applicants had asked where in the Zoning Ordinance there are
293 standards that require them to submit the information requested by the Planning Commission.
294 He continued, stating that the requirements can be found in Section 21.25- Residential Design
295 Standards. He stated that the plot plan requirements in that section are required as part of the
296 application for a temporary dwelling during construction. Mark Betley stated that the temporary
297 dwelling aspect is not being discussed at this time. He stated that they are requesting a site line
298 determination. Dave Wardin stated that they could do one or the other, however, both items are
299 included on the agenda and can be considered. Mark Betley stated that the sight line
300 determination is Item #1 on the agenda and would like that aspect to be addressed. He
301 continued, stating that he submitted the temporary dwelling during construction only after he was
302 led to believe that the Planning Commission would make a determination on the sight lines.
303 Molly Betley stated that she believes it would be best to start with Item #1 and then proceed with
304 the temporary dwelling during construction application afterwards. Discussion between the
305 Planning Commission and the applicants ensued regarding sight line determination procedures.
306 Mark Betley described the existing pattern of development in the immediate area of the subject
307 parcel.

308
309 Chairman Meisel respectfully requested that public participation cease and that the Planning
310 Commission take action on the agenda item. Perry Green asked if it would be appropriate to
311 make a motion for denial due to insufficient information, or if it would be more appropriate to
312 table to agenda item. Dave Wardin asked Greg Elliott if a sight line determination made by the
313 Planning Commission is a recommendation to the Township Board or to the Zoning
314 Administrator. Greg Elliott stated that it could be either. He stated that in those cases, where a
315 cove or peninsula exists and the structure on adjacent properties differ by more than forty feet
316 (40'), the Planning Commission shall make a determination on an appropriate setback so that the
317 views of adjacent dwellings are protected. Dave Wardin stated that he does not believe the
318 Planning Commission has enough information to determine whether or not the aforementioned
319 exception applies to the subject property.

320

321 Dave Wardin made a motion to deny the sight line determination for the Betley property because
322 the Planning Commission does not have enough information to determine the applicability of the
323 cove/peninsula exception in Section 20.02.X of the Zoning Ordinance, there is not enough
324 survey information for the existing structures on immediately adjacent properties as requested at
325 the 02/11/2020 Planning Commission meeting, and because there is not enough information to
326 confirm the proposed dwelling would comply with the residential design standards set forth in
327 Section 21.25.d and 21.25.e of the Zoning Ordinance. Perry Green supported the motion.
328 Chairman Meisel read back from his notes to confirm he had recorded the motion accurately.
329 Dave Wardin confirmed that what he read was accurate with the exception of the exclusion of his
330 statement regarding the applicability of Section 20.02.X regarding the cove/peninsula exception.
331 Chairman Meisel asked if there was any further discussion. He stated, from an administrative
332 point of view, he would like to make some suggestions. He stated that he recognizes the intent,
333 but suggested that the language should be changed. He stated that the motion would not
334 technically be a denial since they are not approving or denying anything based on lack of
335 information. He suggested changing the language to state that the Planning Commission was
336 unable to make a determination based on the information provided. He stated that the 2013 ZBA
337 application could arguably be utilized as a means to establish that a cove exists at the subject
338 property. He continued, stating that the Planning Commission does not need to rely on that
339 statement if they feel that the statement that a cove exists was made in error and/or if they choose
340 to evaluate themselves. Dave Wardin stated that he is agreeable to amending the motion to
341 change the language from denial of the determination request to indicate that the Planning
342 Commission was unable to make a determination due to lack of information. He stated that the
343 information provided for the sight line determination request did not include enough information
344 to determine whether a cove exists and he is not comfortable with blindly agreeing with the ZBA
345 determination from 2013 since he was not present at that meeting. Kurt Schulze asked where the
346 responsibility lies in determining whether or not a cove or peninsula exists. Chairman Meisel
347 indicated that it is the responsibility of the Planning Commission. Kurt Schulze asked the
348 Planning Commission if they believe there to be enough information to make a determination on
349 whether or not a cove or peninsula exists. Dave Wardin indicated that he did not believe there to
350 be adequate information to make that determination. Kurt Schulze asked what additional
351 information the Planning Commission would need in order to determine whether or not a cove or
352 peninsula exists. Dave Wardin indicated that they will need drawings which show all existing
353 structures on immediately adjacent properties in relation to all existing and proposed structures
354 on the subject property. A question was raised [name not captured] as to why that information is
355 relevant in determining whether or not a cove or peninsula exists. Dave Wardin stated that
356 Footnote 20.02.X in the Zoning Ordinance states that a cove or peninsula must exist and the
357 setbacks of structures on adjacent lots vary by more than 40' before the Planning Commission
358 can make a determination on a rear yard setback to reasonably protect adjacent sight lines. Rich
359 Erickson stated that he does not believe, based on the information provided, that the proposed
360 placement of the dwelling on the subject property would significantly impact adjacent views,
361 however, he believes additional information is necessary in order to confirm the accuracy of the
362 information that has been provided thus far. He stated that he does not believe it is reasonable
363 for everyone who lives on a lake to expect that they are entitled to maintain their existing views
364 in perpetuity, but it should be confirmed that any impact to sight lines is accurately evaluated to
365 confirm there would not be a significant impact. Chairman Meisel asked if there was any further
366 discussion. He stated that there is a motion and a second for the amended motion (Motion by

367 Dave Wardin, Supported by Perry Green). All present voted in favor of the motion except for
368 Chairman Meisel who abstained from the vote at the request of the applicants. Motion carried.

369
370 *The item was closed at 7:05 pm.*

371
372 **OLD BUSINESS #2 (7:06 pm): Betley Temporary Structure Application:**

373
374 Chairman Meisel brought up the application and associated documents on the screen. He asked
375 the Planning Commission if there were any questions or comments pertaining to the application.
376 Kurt Schulze asked if the Planning Commission has determined if there will be adequate space
377 for construction vehicles and equipment to access the location where the new dwelling is
378 proposed between the existing dwelling on the subject property and the adjacent properties.
379 Dave Wardin stated that the applicant has not provided enough information to determine whether
380 or not there would be adequate space. Kurt Schulze asked if they are looking for the space that is
381 available between the existing dwelling and the retaining wall located on the property
382 immediately south of the subject property. Dave Wardin confirmed. Dave Anderson stated that
383 it would not be the distance between the retaining wall, but to the shared property boundary.
384 Dan Stickel stated that he believes, based on the drawings provided, that there is approximately
385 ten feet (10') between the existing dwelling on the subject property and the southern property
386 boundary. Mark Betley indicated that the distance is actually approximately twenty feet (20').
387 Dan Stickel stated that the drawing indicates otherwise. Mark Betley pointed out that the
388 drawing he was looking at is a previous version and a new drawing has since been submitted.
389 Chairman Meisel asked when the updated drawing was submitted. Molly Betley indicated that it
390 was included in the information sent to the Planning Commission earlier that day.

391
392 Mark Betley stated that the access driveway located on the property boundary between the
393 subject parcel and the property immediately to the south has been shared between the two
394 properties. He indicated that, if Dave Anderson does not want to share the driveway anymore, it
395 is a non-issue to him since there is adequate space on his property which could be utilized for
396 construction vehicle access around the existing dwelling. Dave Anderson indicated that he
397 offered to enter into a signed agreement to continue shared use of the access driveway. Mark
398 Betley indicated that he is not willing to sign a legal agreement pertaining to shared access. Dan
399 Stickel stated that he does not believe this to be the appropriate forum for such discussions.
400 Chairman Meisel stated that it is extremely typical for a legal agreement to be recorded for use of
401 a shared access driveway during construction. Mark Betley stated that he does not need to use
402 the shared access because there is adequate space on his property where there would be no
403 encroachment onto the adjacent property to the south. Dan Stickel suggested that the discussion
404 should focus on the temporary dwelling application. Mark Betley indicated that he is unsure
405 how the Planning Commission intends to arrive at any decision on the temporary dwelling during
406 construction application if they have not yet approved the appropriate rear yard setback of the
407 proposed dwelling as it pertains to the sight line requirements in the Zoning Ordinance. Molly
408 Betley stated that they would be willing to withdraw the temporary dwelling application at this
409 time. Chairman Meisel suggested that it would likely be in the applicant's best interest if the
410 application were tabled as opposed to withdrawn, so that if/when a sight line determination is
411 made, the Planning Commission can remove the item from the table instead of requiring a

412 completely new application. Mark Betley stated that he would be agreeable with a motion to
413 table as opposed to withdrawing the application.

414
415 Dan Stickel made a motion to table the Betley temporary dwelling during construction
416 application pending additional information related to the construction of a new home on the
417 subject property. Dave Wardin supported the motion. All voted in favor of the motion except
418 Chairman Meisel who abstained from the vote at the request of the applicant.

419
420 *The item was closed at 7:14 pm.*

421
422 **OLD BUSINESS #3 (7:14 pm): Swimming Pool Covers:**

423
424 Chairman Meisel summarized the topic and brought up a document containing notes and draft
425 language pertaining to the Zoning Ordinance requirements for pool enclosures. He asked the
426 Planning Commission for their thoughts on how to proceed with discussion. He read from the
427 notes. The Planning Commission briefly discussed the wording of the latest draft language.
428 Chairman Meisel read from the latest proposed enclosure requirements. He indicated that the
429 proposed language would require a fenced enclosure with self-latching gate (as is currently
430 required by the Zoning Ordinance), but with the potential for allowing exceptions for ASTM-
431 compliant pool covers (also complying with the standards prescribed by the State of Michigan
432 and the Livingston County Building Department) used in lieu of fencing through a special land
433 use permit. He stated that, as part of a special land use, continuing compliance inspections
434 would need to be performed by the Zoning Administrator. He read through the proposed special
435 land use requirements which would include proof of purchase, documentation on manufacturer
436 name and model, documentation on the rated/anticipated life expectancy, etc... Kurt Schulze
437 asked if that's something that the Township really wants to take on that responsibility. Chairman
438 Meisel asked what an alternative option could be. Kurt Schulze indicated that it could be the
439 property owner's responsibility to ensure that an ASTM-compliant safety cover is in operable
440 and safe condition. He continued, stating that if the Township requires that the Zoning
441 Administrator inspect every pool cover as a special land use at variable time intervals, it could
442 potentially open the Township up to unnecessary liability. Dan Stickel indicated that he agreed
443 with Kurt Schulze's opinion. Chairman Meisel recommended taking a step back to reevaluate
444 the proposed standards. He indicated that several residents have requested that the Township
445 consider permitting ASTM-compliant safety covers in lieu of a fenced enclosure with self-
446 latching gate. He stated that fenced enclosures typically have a very long life expectancy,
447 whereas the ASTM-compliant safety covers may have a life expectancy of a just a few years. He
448 added that such safety covers are also vulnerable to natural elements, such as rain, snow, falling
449 trees, etc.. He asked the Planning Commission if they felt that the Township, from a liability
450 point of view, should consider approving something such as ASTM-compliant safety covers,
451 which are known to be temporary in nature, with no requirements to maintain or provide
452 evidence to the Township to confirm they are fully operable and in safe condition. Kurt Schulze
453 asked if the Township currently goes out to properties with pools having fenced enclosures to
454 confirm that the gates are being kept closed and the fences are in a safe condition. He continued,
455 stating that he does not feel that it would be reasonable for the Township to take on such a
456 responsibility and liability. He added that he has saved people from drowning in pools in the
457 past and is not in any way downplaying the importance of safety devices/enclosures for

458 swimming pools. He stated that, from his perspective, if the State and County recognize ASTM-
459 compliant pool covers as a viable alternative to fenced enclosures with self-latching gates, and
460 they do not have any provisions for local municipalities to require ongoing safety inspections,
461 the Township should not consider the special land use permit approach. Perry Green stated that
462 he agrees with Kurt Schulze's opinion.

463
464 Chairman Meisel stated that he likes the discussion and is debating the legitimacy of the
465 comments, but he would like to add a few additional comments. He stated that the State of
466 Michigan creates regulations, rules, and laws, which are then sent to local municipalities to be
467 incorporated into their ordinances. He stated that the local municipalities are, for the most part,
468 responsible for enforcement of those regulations through regulatory and zoning ordinances. He
469 stated that the Township could choose to either enforce nothing, enforce something, or enforce to
470 a certain degree.

471
472 Perry Green shared his screen with the Planning Commission as he walked across his own pool
473 cover to demonstrate the weight capacity of the cover (He successfully walked across). He
474 stated that there was some sagging in the cover, which led to some pooling of water on the
475 surface, resulting in his Bob Ross socks becoming saturated. (Note – Perry Green stated his
476 cover is a seasonal cover, not an ASTM compliant safety cover.)

477
478 Chairman Meisel indicated that the discussion comes down to what the Planning Commission
479 believes the ultimate goals and objectives to be. He stated that gates and doors can be left
480 open/unlocked, but even so, the majority of the pool perimeter would still be protected by a
481 fence. He stated that leaving a gate or door unlocked/unlatched/open would be considered as
482 negligence. He provided a hypothetical scenario where a pool cover is used without a fenced
483 enclosure, in which a toddler could wander across a side yard to a neighboring property and enter
484 a pool without even realizing they have entered a pool. He continued, stating that the Township
485 Board and Planning Commission need to decide if it is important and to what degree of
486 importance it is to protect the health, safety, and welfare of the residents. He stated that the
487 special land use permit approach would be a little bit of extra work, but they should decide
488 whether it would be worth it for additional assurance that everyone will be protected. The
489 Planning Commission briefly discussed potential regulation options.

490
491 Dan Stickel summarized the discussion on potential regulation options. He asked, in terms of
492 liability, if there are any known cases in which a person left a pool [without a fenced enclosure]
493 open, or a pool cover has expired, or a gate is left unlatched, etc., where an accident had
494 occurred, in which a local municipality was held liable. Chairman Meisel suggested that it
495 would be a good idea to ask that question to the Township Attorney and/or Planner. Dan Stickel
496 stated that, if no such cases exist, and it is the opinion of the Township Attorney that there is no
497 potential liability for not requiring inspections of pool covers, it would be his opinion that the
498 Township should not utilize a special land use permit approach to regulating pool covers. He
499 added that if it is in the opinion of the Attorney that language should be incorporated into the
500 pool enclosure requirements which would place liability on property owners if they fail to
501 maintain a pool cover in safe and operable condition, he would be agreeable to that. Greg Elliott
502 stated that the requirement exists in the Michigan Building Code. Dan Stickel asked Greg Elliott
503 if the Zoning Ordinance did not include any specific requirements for a pool enclosure, safety

504 cover, or other means, whether or not a property owner installing a pool would be required to
505 install a fence. Greg Elliott stated that they would be required to use either a fenced enclosure
506 with a self-latching gate or an ASTM-compliant safety cover, consistent with the [Michigan]
507 State Building Code. Chairman Meisel stated that the Livingston County Building Department
508 would be responsible for enforcing the State Building Code. Dan Stickel asked if the Livingston
509 County Building Department performs inspections to ensure compliance with the State Building
510 Code. Chairman Meisel indicated that they do perform the initial inspection, but they do not
511 perform ongoing compliance inspections, such as for pool covers. He stated that the
512 responsibility to confirm ongoing compliance lies with the local municipality. Greg Elliott stated
513 that the building inspectors will go out after a permit has been pulled for a pool to confirm the
514 fenced enclosure and/or safety cover is up to code. He added that following final approval from
515 the Building Department, they do not perform any follow-up inspections to confirm that a fence
516 or cover is maintained. Dan Stickel asked if a property owner were to have a pool approved with
517 a self-latching gate by the Building Department and they subsequently removed the fence (for
518 whatever reason) would the homeowner have sole liability if an accident were to occur. Greg
519 Elliott stated that a liability arises when someone has a responsibility and fails to fulfill said
520 responsibility. He stated that if a building inspector signs off on a final inspection and there are
521 subsequent modifications to whatever is being approved, the inspector would not have liability
522 unless a complaint/report was received regarding such modifications and not addressed. Greg
523 Elliott stated that fenced enclosure requirements have existed in the Building Code and local
524 ordinances for years. He continued, stating that while he is uncertain as to the definite origin of
525 such requirements, he suspects that they originated in local ordinances and were later
526 incorporated into the Building Code. He stated that what has changed recently is the fact that the
527 State Building Code now recognizes certain pool covers as an acceptable alternative to fenced
528 enclosures. He stated that if local ordinances do not address enclosure requirements for pools,
529 the requirements would default to the Building Code, which will now require either an approved
530 pool cover or an approved fenced enclosure with self-latching gate. Dan Stickel stated that if the
531 Township is definitely responsible for ensuring the constant maintenance of all pool covers used
532 in lieu of perimeter fencing, he would be opposed to allowing them due to the administrative
533 responsibilities that would be associated with enforcement. Chairman Meisel stated that what
534 the Township should ultimately do in regard to the topic will depend on the opinion of the
535 Township Attorney(s). Dan Stickel agreed. Kurt Schulze suggested that he should get opinions
536 from the Board of Trustees prior to getting a legal opinion to determine whether or not they are
537 interested in the administrative aspect of the proposed regulations. Chairman Meisel respectfully
538 suggested that the opinion of the Board, at this point in the discussion would be premature. He
539 stated that it would be beneficial to have a legal opinion prior to asking the Board for opinions so
540 they are fully informed in regards to the liability aspect. The Planning Commission briefly
541 discussed.

542
543 Dave Wardin suggested eliminating all pool enclosure requirements from the Zoning ordinance.
544 He stated that the Township is not responsible for the inspection of pools, it is the responsibility
545 of the Livingston County Building Department. He stated that, if an engineered septic system
546 fails, it is up to the County to not only ensure compliance, but also to respond to complaints from
547 neighbors, etc... He stated that he does not believe the Township should be involved. Dan
548 Stickel cited a personal example where he had to have an arsenic filter installed per the County
549 requirements, but they are never going to perform any follow-up inspections to confirm the filter

550 is still present and operable. He stated that if he were to remove his filter, the County would not
551 know. Dave Wardin stated that they may not know initially, but they would be informed at some
552 point in the future if the property were to sell. Dan Stickle stated that he agreed with Dave
553 Wardin's statement. He stated, for clarification, that the example he provided was only intended
554 to express the fact that the Township Ordinances do not address well water purity requirements,
555 and for good reason. Chairman Meisel summarized the history of the discussion regarding
556 revisions to the Zoning Ordinance to address the use of pool cover that comply with the State
557 Building Code. He stated that the current discussion is whether the Township should consider
558 allowing the use of pool covers in lieu of fenced enclosures because of potential liability and the
559 fact that we do not want to perform additional administrative responsibilities or should the
560 Township consider allowing them without any requirements for continuing compliance
561 inspections. Discussion continued regarding potential liability and enforceability of standards
562 for pool enclosures. Dave Wardin indicated that he has several questions that should be directed
563 to Livingston County. He asked what would happen if the Township eliminated all pool
564 enclosure requirements and someone called to complain, would the County be responsible for
565 responding to the complaint? He also asked what would happen if someone who owned a pool
566 (existing) with a fenced enclosure wanted to eliminate the fence to replace with a pool cover.
567 Discussion amongst the Planning Commission followed.

568
569 Dan Stickle recommended that Kurt Schulze ask to Township Board for their opinions on the
570 potential options for regulation or non-regulation of pool covers and enclosure requirements in
571 general. He continued, adding that the Township Attorney(s) should be asked for advice on what
572 the lowest liability approach to regulation would be. Chairman Meisel confirmed.

573
574 Kurt Schulze made a motion to table the agenda item pending a decision by the Township Board
575 on how they would like to proceed. Perry Green supported the motion. Motion carried by
576 unanimous voice vote.

577
578 *The item was closed at 7:59 pm.*

579
580 *The meeting was adjourned at 8:00 pm.*