

PLANNING COMMISSION
Minutes for Regular Meeting of
October 7, 2009

PRESENT Chairperson Carol Kooistra, Tom Thompson, Jan Deur,
William Josephson, Brian Lernowich and Steve Nagengast.

ALSO PRESENT Zoning Administrator Sandel and 7 interested parties.

NOT PRESENT Sue Hertel.

CALL TO ORDER Chairperson Kooistra called the October 7, 2009 meeting to order at 7:02 p.m. and led those in attendance in the Pledge of Allegiance.

AGENDA **Motion by Steve Nagengast, second from William Josephson, ADOPTED, to accept the October 7, 2009 meeting agenda as written.**

6 AYES
1 ABSENT

MINUTES **Motion by Jan Deur, second from Brian Lernowich, ADOPTED, to accept the September 2, 2009 regular meeting minutes as written.**

6 AYES
1 ABSENT

PUBLIC COMMENT

1. Dave Heylmun, 3135 White Lake Drive, owns parcels totaling fourteen (14) acres that are contiguous and would like to put in an apple orchard, however, the property is located in a zoning district that does not allow this by either a use by right or use by special land use. These parcels are bordered by parcels zoned with the Agricultural Overlay. His intent would be to start the apple orchard and in the future to be able to have a roadside stand to sell them. Chairperson Kooistra suggested he meet with Zoning Administrator Sandel, and then submit a proposed plan for pre-preliminary site plan review.

NEW BUSINESS

1. ARTICLE R 58 FIRE CODE – Review SECTION R 58.02 ADOPTION OF FIRE CODE.

DISCUSSION

Because some of the Fruitland Township Private Street Design and Construction Standards are not consistent with the 2003 International Fire Code and Appendices of which the Township adopted in 2005, Supervisor St. Amour asked Chairperson Kooistra to discuss this with the Planning Commission and to make recommendation for resolution to the Township Board. Chairperson Kooistra started the discussion by referencing an Opinion Memo provided in 2006 by Attorney Eklund. It stated that the township has the authority to adopt the standards it chooses. To support his conclusion, he refers to the following: The code commentary makes reference to Section D 103.3 regarding turning radius and Section D 103.4 regarding dead ends and states as follows: “This table, which is based on the depth of a dead end, sets minimum widths and recommends, which types of turnarounds should be used. The diagram in Figure D 103.1 shows the configurations of these turnarounds Each jurisdiction is free to adopt or modify these requirements as it sees fit” (emphasis added) In this case, Fruitland is the jurisdiction for resolution which adopts the code

for resolution and may modify the requirements in the codes. For a second opinion on the interpretation of the code, he spoke to Norm Grant at the Plan Review Division, Bureau of Construction Codes and Fire Safety in Lansing. Mr. Grant agreed with his conclusion that the township may adopt whatever standard it chooses, but must enforce its chosen standard consistently throughout the township.

White Lake Fire Authority Fire Marshal Ben Novak responded by stating that yes it can be changed but because we are members of an authority the other members would have to agree to and make the same change(s). He believes that Mr. Grant with the Plan Review Division, Bureau of Construction Codes and Fire Safety in Lansing did not know when Attorney Eklund asked the question that Fruitland Township is part of a fire authority.

Todd Boerman, Wilcox Engineering, stated he believes the Fruitland Township Private Street Design and Construction Standards are sufficient for both the travel and turning of fire trucks.

Motion by Jan Deur, second from William Josephson, *ADOPTED*, that the Planning Commission recommend to the Township Board of Trustees to revisit the re-adoption of the 2003 International Fire Code, including appendices, but with potential revisions as may be required to be consistent with Article XVIII and Article XVIIIa of the Fruitland Township Zoning Ordinance and also the Fruitland Township Private Street Design Construction Standards. We further recommend that other governmental units involved in the White Lake Fire Authority be consulted in this matter, if necessary.

**6 AYES
1 ABSENT**

OLD BUSINESS

1. Private Street Application from Gerald Henning, Sealand, Inc., 1116 Fitzgerald St., Nunica, MI 49448, for final construction of a existing recorded Private Street named Sheltering Way providing ingress/egress to Marcus Dunes Condo units located in Section 24 off Scenic Drive according to Article XVIII Private Street Serving Two (2) to Thirty (30) Lots.

Motion by William Josephson, second from Brian Lernowich, *ADOPTED*, to approve plans as presented tonight for final construction of an existing Private Street named Sheltering Way providing ingress/egress to Marcus Dunes Condominium units.

ROLL CALL: Tom Thompson **AYE**, Jan Deur **NAY**,
Brian Lernowich **AYE**, Steve Nagengast **NAY**,
William Josephson **AYE**, Carol Kooistra **AYE**

DISCUSSION

Zoning Administrator Sandel gave review of comment letters from the following:

- Muskegon County Road Commission – A construction note indicating clearing all trees and brush within the Scenic Drive right of way adjacent to the Marcus Dunes development needs to be added to the plan as the clearing will be a condition of any permit issued by the Road Commission for the improvements indicated. A permit to construct any improvements to this roadway within the Scenic Drive right of way will be required from the Road Commission Engineering Department.

- Muskegon County Drain Commission – All drainage easements will be needed on the final plans.
- Muskegon Conservation District – During a phone conversation with Jeff Auch Zoning Administrator Sandel advised that the final construction of Sheltering Way will be paved. Mr. Auch stated he did not have any further comments than what was included in his letter dated August 5, 2009.

Todd Boerman from Wilcox Professional Services, LLC, gave brief overview of his comment letter dated October 1, 2009 as follows:

- Acknowledgement that it is understood that because the Township approved the private street in 1990, the existing easement and the existing private street maybe regarded by the Planning Commission as already approved and not subject to ordinances adopted by Fruitland Township after 1990.
- Acknowledgement that it is understood that the MDEQ has severely limited the impact development may have in the critical dune area and therefore limits the developer's ability to construct a private street according to Fruitland Township Design and Constructions Standards. Constructing with minimal impact is certainly a valuable consideration.
- Vertical curves for the private street have been revised to meet the 15 mile-per-hour design standard, however, the vertical curves and slopes up to 10% are along the horizontal curves, compounding the limitations of sight distance and maneuverability in these areas.
- Suggests speed bumps to encourage the 15 mile-per-hour speed limit.
- Recommends the entire right of way be cleared.
- Sight distance concerns with proposed retaining wall.
- Believes due to additional limitations of the site the pavement should be widened to the entire 24' roadbed.
- Limited sign distance concerns for pedestrian traffic, alternative path to accommodate pedestrian traffic.
- Storm water collection is not necessary.
- The revised plan still does not meet Fruitland Township Design and Construction Standards that are in place for the protection of public safety. However, due to the history of subdivision approval and environmental limitations, the Planning Commission may wish to accept the variances and approve the plan. He hasn't been provided the specific limitations presented to the developer by the MDEQ, it is unlikely that the street design can be significantly improved while meeting MDEQ requirements. By implementing the clearing, speed bumps, added street width, modified retaining wall, and the pedestrian pathway as described, pedestrian and motorist safety will be improved.

Ben Novak White Lake Fire Authority Fire Marshal, gave brief overview of his comment letter dated October 1, 2009 which states he is unable to approve the proposed course of action for this project because "the project shall be in compliance with the 2003 International Fire Code" and it is not.

Matt Zimmerman, Attorney from Varnum, answered that the following have been done for the different agencies as follows:

- New plans have been submitted to Muskegon County Road Commission – copy given to recording secretary Garvey for file.
- New plans have been submitted to Muskegon Drain Commission – copy given to recording secretary Garvey for file.
- Issues 1 – 2 stated by Wilcox Professional Services, LLC do not require response.
- Issue 3 by Wilcox Professional Services, LLC, would agree to post 15 mile-per-hour signs along the private street.
- Issue 4 by Wilcox Professional Services, LLC, would agree to speed bumps to encourage the 15 mile-per-hour speed limit.

- Issue 5 by Wilcox Professional Services, LLC, will not agree to remove specimen tree from 33-foot right-of-way, this tree is too great to remove.
- Issue 6 by Wilcox Professional Services, LLC, MDEQ will not accept any less for the retaining wall, the decision states it must be built according to the plans that show 8' retaining wall.
- Issue 7 by Wilcox Professional Services, LLC, unable to widen the pavement, must build according to the plans the decision was made on.
- Issue 8 by Wilcox Professional Services, LLC, alternative path for pedestrian traffic is not possible.
- Issue 9 by Wilcox Professional Services, LLC, does not require response; it is overview of all points addressed in letter.

Matt advises the street met the fire code requirements that were in effect at the time of approval and the only reason it wasn't built completely is because of the MDEQ.

According to Zoning Administrator Sandel this condominium was approved by the state in 1990 and recorded in 1991. He believes this is an existing condominium with an approved street.

Wade VandenBosch – Westshore Consulting agrees that safety is of the essence; however, he believes the existing width of Sheltering Way is wide enough for fire trucks and that the 80' for a cul-de-sac is also wide enough.

Commissioner Deur wanted further time to review the DEQ final order, and to investigate the matter of which fire code standards are applicable to the private street. Commissioner Nagengast wanted clarification on which fire codes were used. Zoning Administrator Sandel explains that Commissioners must make a decision according to Article XVIII, Section 18.04(B) which states: *The Planning Commission shall act on the private street construction application within 30 days of the hearing.* The applicant had already agreed at the September 2, 2009, meeting to extend the 30 day time limit to October 7, 2009. Commissioner Josephson states he does not have issues with pedestrian traffic or with 80' cul-de-sac. Chairperson Kooistra asked Mr. Henning if he would be willing to wait until the next meeting for a decision. Mr. Henning responded no.

2. Zoning Ordinance Review Committee – Review and discuss proposed language for amendments.

Adjourn until the November meeting.

3. Master Plan Review.

Meeting October 12, 2009 at 1:00 p.m. with Planner Tim Johnson.

ADJOURNMENT

**Motion by Brian Lernowich, second from Tom Thompson, ADOPTED,
to adjourn the October 7, 2009 regular meeting at 9:25 p.m.**

**6 AYES
1 ABSENT**

Respectfully Submitted,

Sally Garvey, Recording Secretary