

LAKE TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
APRIL 22, 2015
Approved Minutes

The meeting was called to order at 7:05 pm. In attendance were Planning Commission members: Nicole Collins, Clay Kelterborn, Jerry Pobanz, and Bob Siver. Todd Gordon was absent. Guest, Zachary Branigan of the Saginaw Basin Land Conservancy and 3 audience members were present.

Motion by Kelterborn to approve the March 25, 2015 minutes, seconded by Collins. All ayes. Motion carried.

Motion by Kelterborn to approve the agenda, seconded by Collins. All ayes. Motion carried.

There was no correspondence.

There were no public comments at this time.

Guest, Zachary Branigan gave the Planning Commission members a Draft Model Buffer Ordinance. The purpose of the buffer zone is to preserve and enhance the environmental, ecological and aesthetic values of streams and creeks. According to the model, a natural vegetation strip consists of 3 zones – Zone 1: Water Side Zone, width 25 ft; Zone 2: Middle Zone, width 50 ft; Zone 3: Outer Zone, width 25 ft. The model contained sections on building setbacks (125 ft. from waters edge), excavation (in accordance with the Huron County Drain Commission for soil erosion/sedimentation control), use of pesticides (prohibited within overlay zone), required minimum distance from watercourse (septic system drain fields), natural vegetation strip (for each parcel/lot from water's edge and a line 100 ft. horizontal and perpendicular to the water's edge).

The model included definitions of flood hazard area, steep slope and watercourse, and addressed the topics of permits, application standards, compliance with storm water management standards and buffer permit (requirement, application requirements, evidence of ownership, issuance of permit, voiding of permit and inspection).

Branigan explained that this ordinance is the Saginaw Basin Land Conservancy's model for riparian buffers and is based on real conditions and the feedback of real people. At his last meeting with the Planning Commission (Oct. 2014), they had some questions regarding county drains, access and driveways disrupting the riparian areas and how this would fit into our ordinance. Branigan feels the most appropriate placement would be at the end of Sect. 12 (a section with general regulatory provisions). New construction and new development would respect the wider boundary around any river or natural water course in the township. The buffer zone has a limitation on grading, excavation and any man made vertical structure inside the boundary. There is guidance on what can be planted within the area. The idea being, a wide, natural vegetative strip that will benefit the quality of the water and the aesthetic and recreational benefits of better water quality. There are

also guidelines on pesticide use in zones 1, 2, & 3. This document applies to water courses and not to county drains. The local model ordinance also does not apply to county drains.

Kelterborn asked Tory Geilhart, Building and Zoning Administrator, about the floodplain issue, stating that it would not allow building within 125 ft. of a tributary. Geilhart responded that the floodplain might supersede what is stipulated in the model ordinance. The flood plain being the more restrictive of the two. Branigan added that if a designated wetland or floodplain goes through the vegetative strip area you need to make sure there is 25 ft. outside the floodplain.

Kelterborn asked if a person wanted to build on a river, can they put a seawall in to prevent erosion. Geilhart said that would be up to the DEQ. Kelterborn asked if the DEQ would be more stringent on a river than on the Great Lakes. Branigan said not necessarily, but regulations would be different, possibly requiring a different permit. Lou Colletta pointed out that along the Pigeon River in Caseville they put in brick retaining walls. Branigan stated that this model ordinance is like any other where non-conformity can apply. Kelterborn asked if the use of a seawall would negate the setback. Branigan said a seawall would not be permitted. The ordinance is trying to achieve a less abrupt relation with the rivers. The ordinance tries to create a natural vegetative buffer to the stream on both sides. A seawall is not of particular help during storm surge or run off. The idea is to slow the water down by the use of native vegetation and soft ground.

Kelterborn said regarding erosion, what if rip wrap and pilings were used. Branigan advised to follow the regulations in the ordinance. It talks about the different types of vegetation to use and if done properly it will prevent erosion just as well.

Kelterborn pointed out that the Pigeon River just did a project with the Conservation District where they identified areas of erosion, especially along bends and turns. In order to mitigate the problem, used rip wrap and pilings. Would the buffer ordinance prevent them from doing this? Branigan said yes, however if the river is a designated county drain than this ordinance is not applicable.

Kelterborn said at a recent County Road Commission meeting they talked about the possibility of designating the Pinnebog River as another county drain. On the Pigeon River there is a mile or two already established as an inter-county drain and other sections that are not. Would this ordinance prohibit the sections of the river that run through our township from being turned into a county drain? Branigan said no, if they are turned into a county drain the ordinance would not apply. This ordinance is very much a conservation measure which allows for wild life passage and the natural cleaning of water. Where as, the county drain commission, are looking at rip wrap and seawalls as a preventative maintenance measure with the ability to put more volume. They are two different approaches to the same problem. Using Washtenaw County as an example, Branigan said their drain code is probably 10 years ahead of the rest of the state. They employ best management practices in almost every circumstance and are trying to get their county drains to function like open river systems. Instead of using rip wrap and seawalls to prevent erosion along the Huron River, they are more concerned with non-point sources, looking to see what practices they can put in place in dry areas where storm surges may affect the river. Their approach to erosion is to slow the water down before it even gets to the river. This ordinance is trying to accomplish the same thing, which is to slow the surge water down before it gets into the river system.

Kelterborn asked if the draft applies to the rivers and the county drains. Branigan answered that the draft applies only to the rivers. Pobanz said that it may give the county something to think about in terms of making the drains wider in order to slow the water down. Branigan said that we have created this problem of storm surge water because of building in areas and not allowing for water retention.

Kelterborn said that the Pigeon River is a designated county drain, so the ordinance could only apply to the Pinnebog River as far as Lake Township is concerned. Geilhart said the Musselman Drain is also a water course that runs through Lake Twp. Kelterborn said it is a county drain as well. Geilhart said it is the cleanest drain he has seen after a heavy rain because of the vegetation that surrounds it.

Geilhart said he would like to see an ordinance like this adopted but in a predominately agricultural area where plastic tubing is going in for field drainage, is it feasible. He asked, at what point, could a township, apply an ordinance like this. If we were to adopt an ordinance like this one, and someone didn't comply, would they be considered to be non-conforming. Branigan said that this is a very long term project with a cumulative effect over time. It would be more of a set back non-conformity and as land changes hands over time then the ordinance would apply. Geilhart said that the set back from a county drain is 72 ft. from the center of the drain. Kelterborn said that each county drain has a different right of way depending on the grade slope.

Kelterborn asked if the Right to Farm falls into this as far as the drain code and agricultural zoning. He wondered if the Right to Farm is going to preempt any type of township conservation ordinance. Branigan said Right to Farm applies more toward permission and use, where this ordinance is looking at quality of water and resources. Best management practices are available to farmers and there are resources available for them. The Conservation District has the ability to bring a lot of money to the county for installing best management practices such as no till crops and vegetative buffers around water sources. Kelterborn asked if that is part of the EPA package of money for the water shed. Branigan said it was. It is from the Great Lakes Restoration of Michigan, a federally administered program. He recommends engaging the Conservation District to determine the status of the grant and the ability to connect people who are interested in knowing more about the program.

Kelterborn sees the ordinance as applying to development. Branigan said also to re-development or the need to bring the property into conformity. Applying for a variance is also an option as with any zoning ordinance.

Pobanz said that considering the lay of the township, we have very little land in the way of rivers edge. Perhaps we could put together a resolution that says we encourage eco friendly use of land along a water source, but he doesn't believe you can mandate to farmers how far they can come to a water source. He would hope that other townships would be willing to do the same. Kelterborn said that the Drain Office mandates how close they are able to farm near a drain. He said that we could have buffer zones in the areas that are not designated as county drains, but if the sediment and erosion is getting in from further upstream because best management practices are not being implemented, than it may not be all that helpful. Branigan suggested inviting the County Drain Commission in to talk about this idea and to let them know what the objective is. He said he would be

willing to help in getting everyone connected. Although there is very little that is applicable in Lake Twp, you can reach out to the Drain Commission and tell them you would like to put something in place for those few areas that may be affected. You can take a leadership position in the county by showing that the rivers are one of your best natural features and need to be protected. This is a quality of life issue that affects everyone, residents, seasonal visitors, recreational activities and the agricultural community. Everyone should realize the value of the river systems and high quality river systems are an asset to the county.

Pobanz asked if Washtenaw County has something already in place. Branigan answered that their Drain Commissioner is very advanced and they have spent a lot of money on their drain commission standards. They are very progressive.

He further explained, that it is very difficult for a civil engineer to quantify run off through a natural vegetative strip. A county drain is not necessarily the best way to deal with run off, but it is the best way to calculate it. The drain is designed as a pipeline, appropriate to the volume they expect. Best management practices say, if you were to have a natural vegetative strip in both sides of the drain, when it rains the water would be slowly metered out and the drain will have neutral water in it. You then would have no need for such a large drain if you had taken the natural approach. Natural systems can be used to slow down the progression of water. The Washtenaw County Drain Commission gives incentives to implement these practices and they have identified many aspects, such as native plants, water absorption, and soil quality (etc.). If you have a healthy water shed system, the water will rise during a storm surge but not to the extent it does now. This is just one small step in water shed management.

Kelterborn thought that the Planning Commission could do some modeling like what was done in Washtenaw County. He said if you look at Huron County as if it were a funnel, Lake Twp. is at the bottom of the funnel and thousands of acres are channeling downstream through Lake Twp. A suggestion would be that the Drain Commission might consider widening the right of way. Branigan said that for farmers, if acreage is taken away it would have an economical impact. He pointed out that Lake Twp. is in the Saginaw Basin Water Shed and there is a lot of money coming due to the new Farm Bill that was signed last year, which includes a Resource Conservation Partnership Program. The Nature Concern (a global non profit, with a Michigan office) has acquired a 10 million dollar grant to spend over the next few years on such things as implementation of best management practices, particularly in certain water sheds. All is geared toward the improvement of water quality in the Saginaw Bay and the dollar amounts are such that they will have an impact.

Pobanz asked if the money that is coming will be available to the land owners to improve their land in order to slow the water flow down. Branigan said yes. The ultimate goal is to improve the water quality in the Saginaw Bay. The programs have been in place but the funding has not been available. This grant money will fund the programs so implementation can begin, through large regional partnerships. The Saginaw Bay Water Shed is in the funding program and is a prime target for this money. This was built into the Farm Bill as part of the Great Lakes Water Shed. We are at the epicenter of huge dollar amounts being spent, as stated in the Farm Bill, to improve water quality. Branigan informed the Planning Commission that he is finishing his obligation against the grant, but he will leave all the information and contacts with them.

The Planning Commission continued with the election of officers for the term beginning April 2015 thru March 2016. Kelterborn nominated Jerry Pobanz for Chairperson. Collins seconded the nomination. Nomination was accepted by Pobanz. All ayes. Motion carried. Kelterborn nominated Bob Siver for Vice Chairperson. Pobanz seconded the nomination. Nomination was accepted by Siver. All ayes. Motion carried. Pobanz nominated Nicole Collins for Secretary. Kelterborn seconded the nomination. Collins asked if her duties would include recording the minutes, as she finds it difficult to participate fully in the meeting while recording minutes. Kelterborn explained that the Recording Secretary, as stated in the by laws would have that task. Nomination was accepted by Collins. All ayes. Motion carried.

The April 2015 – March 2016 meeting schedule was agreed to by Collins. No motion required.

The Planning Commission reviewed the final draft of the April 2015 – March 2016 amended by laws. Motion by Kelterborn to accept the by laws as finalized, seconded by Collins. All ayes. Motion carried.

The Planning Commission received the reworking of the nonconformity wording from Tory Geilhart, Building and Zoning Administrator. Geilhart added to Section 1310. Extensions of Nonconforming Buildings and Structures the following paragraph:

B. Any non-conforming building or structure may be enlarged or altered within the existing footprint, provided the non-conforming setback of said building or structure is not less than one half (1/2) of the distance required by this ordinance.

Kelterborn finds that Geilhart is on track with the language. Geilhart said that there is a trend to alter within the existing footprint and can't because our ordinance has changed. At one time they were conforming, now they are non-conforming because their setbacks have decreased. Geilhart does not feel that the ordinance was intended to stop them (the owner) from going up within the existing footprint (i.e. second story). The ordinance says you are enlarging a non-conformity, which in most cases is the dimensional distance from the sideline, but by going up you are not increasing that particular non-conformity. Geilhart said that he has not seen a variance request for going up in the existing footprint, on a non-conforming dimensional setback that was denied. There have been many variance requests come through and he feels the need to look at the ordinance and make the necessary adjustments. Geilhart pointed out that paragraph A allows for a 15 ft. extension of a non-conforming structure without the need for a variance. If this is allowable, he sees no problem with allowing someone to go up. The revised ordinance in essence says that as long as you stay within the existing footprint, and adhere to the ridge height as set by the ordinance, we will let you go up without a variance. Lou Colletta focused on the word "enlarge" and his opinion is that going up increases a non-conformity. Kelterborn asked if the ambiguity of the word still creates confusion. Geilhart sees it as, enlarging would not be within the existing footprint, and it would be going out. Kelterborn pointed out that paragraph A has a limitation of 15 linear feet and asked if paragraph B should also include a limit. Geilhart said our limit is 35 ft. He asked the Planning Commission if there were particulars in paragraph A & B that were working against each other. Pobanz said he didn't think so. Collins finds the language to be concise. Kelterborn suggests a legal review, but he has no problem with the revision.

The discussion turned to non-conforming multiple dwellings on a lot and Kelterborn asked Zackary Branigan, a former planner, to provide some input. Kelterborn asked if someone has a separate site and they site condo it, does this ordinance revision apply. Geilhart said there is a section in the ordinance devoted specifically to multiple dwellings on a lot. This revision applies to a single dwelling on a single site. Kelterborn asked about a site condo where they each receive a separate tax bill, though they don't have their own parcel, only their own site. Geilhart said the township recognizes it as one parcel and it would fall under non-conforming multiple structures. Kelterborn asked if they are platted through the Condo Act are they recognized as one structure on one site or does the Planning Commission need to draft language that addresses this type of situation, because it is a different type of development from a co-op. Geilhart suggested the township may want to get a legal opinion on it.

Geilhart offer a hypothetical scenario, that if he were to purchase 10 acres and wanted to subdivide it through the Condo Act, would the township allow it. Kelterborn said it would go through the state. Geilhart asked what authority the township has. Is our zoning adequate if it allows someone to put many small buildings on a lot through the Condo Act? Kelterborn said that is his concern and why he brought it to the table. He asked Branigan to speak on condo site planning.

Branigan explained that condo site planning was put in place when developers wanted a way to get past the Platting Act, because of expense and the fact that access roads would become public. The site Condo Act allows developers to proceed with a similar development which is entirely private. Unless a municipality takes over the infrastructure, the roads are also private. In this case the township is not responsible for maintaining the roads. There could also be issues with waste water management. The process goes through a site plan review, but the individual lots would have to meet the requirements as if it were a plat.

Kelterborn said that the township lot requirement is 100 ft. frontage, 120 ft. deep and 12,000 sq. ft. There is a master deed recorded with 8 houses on different sites. Do we view this as 8 homes on one lot or 8 single homes on 8 lots? They were originally rental cottages and the owner wanted to sell the cottages as individual homes, but the sites do not comply with our minimum lot requirements. Valerie McCallum said they went through site condo procedures through the township ZBA or Planning Commission. Geilhart asked if there is one property I.D. number. Kelterborn said there are eight. Branigan said they must have done a split at the county. However if they have multiple I.D. numbers but do not meet the minimum lot size requirement, then the split should not have been allowed. In essence, they created unbuildable lots. Since they are all under the townships minimum lot requirements, they are all non-conforming. Kelterborn said there is a provision in our zoning ordinance that addresses multiple buildings on one lot. Would that cover this situation? Branigan said if they have separate I.D. numbers, then no. You can't have multiple I.D. numbers on one lot, there has to be property lines. If there are separate property I.D.'s then there has to be divisions that were made. Unless, they just assigned separate numbers. Collins said it was possible if the owners wanted separate property tax bills. Branigan said in that case, they would not be able to get clear title to the property. Kelterborn said it is a common address with different sites (site A, site B, etc.). Branigan said that if this is truly "condo-ized", then from a zoning aspect, can you have 10 units on a parcel that size? Kelterborn said no. Branigan said then it is non-conforming from a zoning aspect. Even though it's zoned as condo, each unit still needs to meet the minimum

requirement for lot size density. And with the minimum of 12,000 sq. ft. the entire parcel would only allow one unit. The fact that something was done incorrectly in the past does not mean it needs to continue being incorrect in the future. If the owners come for a site plan it is better to have them non-conforming and go to the ZBA for a variance.

The purpose of non-conformity in your ordinance is to reduce non-conformity and not allow it to increase. You can rezone to a classification that reduces non-conformity. However, if everything around that parcel is still originally zoned, then you may be accused of spot zoning. You can't choose which parcels are which; it has to be part of your overall vision for the area.

Kelterborn explained the revision of the non-conformity ordinance which would allow a non-conforming structure, on a non-conforming lot to add a second story on the existing footprint. Branigan said he has seen this handled in various ways. Some zoning will not allow it if the second story will mirror the first story non-conformity. Some zoning will allow a partial second story where the walls are in conformity with the zoning. Then there are those that say as long as the footprint isn't touched, you are not increasing the non-conformity.

Kelterborn explained that Lake Township was originally platted as a cottage community with small lots. Now there are some who want to enlarge their 600 sq. ft. home to 1,500 or 2,000 sq. ft. with garage and deck. This is creating a density problem. Branigan said you can make those small lots conforming by changing the zoning district and using a tool called floor area ratio, which allows a certain amount of density per width or lot size. It is the amount of floor area relative to the size of your lot. Example: If I have a floor area ratio of 1 to 1 and allowable lot coverage of 50%, then the result will be a two story structure with open lot area on both sides. This is the kind of regulation you want to put in place. Pobanz said there are many long and narrow lots, where the owners want to add a second story to a non-conforming structure, but they are under lot coverage. Branigan said that if a second story is added to a structure that does not meet the setback, you have allowed a more non-conforming structure. It is up to the owner of the property to do due diligence in knowing the zoning of the community.

May agenda items:

- * Master Plan review

Future agenda items:

- * Mining ordinance/fracking

Motion by Collins to adjourn, seconded by Kelterborn. All ayes. Motion carried.

Meeting adjourned at 9:46 pm.

The next Planning Commission will be on May 27, 2015 at 7:00 pm.

Minutes prepared by: Maryanne Williams, Deputy Clerk