

**ROSS TOWNSHIP
PLANNING COMMISSION MEETING
JULY 27, 2005**

1. The meeting was called to order at 7:03 PM by Chairman Allen Harmon with the Pledge of Allegiance.

2. ROLL CALL OF MEMBERS:

PRESENT:	Allen Harmon	Ray Wolfram	Owen Murray
	Bob Cox		
ABSENT:	Anne Couture	Garry Lane	Jim Lauderdale

Also present were Rebecca Harvey, PC Planning Consultant, Craig Rolfe, Township Attorney and Teresa Buck, Associated Government Services.

3. AGENDA:

Motion was made by Commissioner Murray, seconded by Commissioner Wolfram to accept the agenda as amended. Motion passed unanimously.

Add "Ordinance Violations" to Commissioner Comments time.

4. MINUTES OF JUNE 26, 2005:

Motion was made by Commissioner Cox, seconded by Commissioner Murray to accept the minutes of June 26, 2005 as amended. Motion passed unanimously.

Under "Minutes of May 25, 2005 change "Couture" to "Lauderdale and change "Murray" to "Cox"; Item #7, seconded paragraph, next to last line change "violations" to "conflicts".

5. PUBLIC COMMENTS – NON-AGENDA ITEMS:

Mr. Kim Glidea, 8151 Bay Arbor Dr., owner and developer of the Bay Arbor of Gull Lake open space development, came to discuss the issue of outlots in the zoning ordinance. He stated the current language states that outlots "shall" be provided, and asked about the possibility of changing "shall" to "may". Chairman Harmon stated that the PC was still discussing this language change, and if they did change it, the Township Office would notify Mr. Gildea, which may take three or four months.

6. NEW BUSINESS: RIGHT TO FARM ACT:

Attorney Rolfe was present to discuss the Right to Farm Act and his April 6, 2005 memorandum on this Act. He said our ordinance has provisions that conflict with the Right to Farm Act or GAAMPS. He said that GAMMPS, under the Right to Farm Act, can be, and typically are, revised annually by the Michigan Commission of Agriculture.

He said that the GAAMPS that they issue have no binding legal authority on any livestock producer, farmer or anyone else subject to the subject matter of these GAAMPS, yet the Agriculture Commission issues GAAMPS with which our ordinance conflicts, and we have this preemption problem. It is the only circumstance that he is aware of in the law where Twp. Ordinance authority is affected by and preempted by virtue of conflicting with guidelines allocated by an Agency that has no legally binding authority anyway, and are purely voluntary to comply with. Rolfe stated that the new framework has been in affect for about 5 years and the statue indicates that the township may not enact, enforce or maintain ordinance provisions that conflict with these GAAMPS.

One issue involved is what happens to the capital provisions, the concentrated animal feeding operations provisions. Basically, the manner in which the township addresses that level of livestock production has to be gutted from the ordinance. As far as citing standards, the state issued GAAMPS for livestock production facilities significantly addresses citing issues for livestock facilities of that size, setbacks and so forth.

The second area of potential change involves the other end of the spectrum – what we do with low level keeping and raising of livestock involving less than 50 animals. Rolfe said we need to make sure the text decidedly says “lower than 50 animals” in the ordinance. We need to make sure we are keeping the regulations to that low level and not applying them to the higher number of livestock.

Rolfe also talked about the defensive zoning approach, in which our zoning language is in pretty good shape. In this zoning approach we do not provide for agriculture uses in residential zoning districts. Rolfe said his recommended changes fall into these categories.

Rolfe said there was one area he wanted to rethink. On page 7 of his memorandum, bullet #3, regarding revising Section 8.24 and inserting “B-25 – Conditions and Limitations”, on the minimum 5 acre requirement. He ran across a very recent published public court of appeals decision, regarding whether a township can enforce a minimum acreage requirement for the keeping of livestock. Because Attorney Rolfe is not comfortable with the 8.25 recommendations, he wants to go back and study this court case again, reevaluating his proposed changes.

Attorney Rolfe said that a “Rural Residential” zoning district eliminates any agricultural uses and is a good way to protect the land – it acts as a buffer between zones.

Attorney Rolfe asked if there was an assumed Commission consensus that the PC still wanted to regulate Horse Boarding and Riding Stables as a Special Exception Use in the RA zone and also an assumed Commission consensus that the township would like to regulate, as much as we can, the keeping of livestock in the R-A zoning district. There was Commission agreement on this. Rolfe will proceed with the necessary changes, and when it is complete he will have a conversation with Commissioner Harmon to decide if it should be discussed by the PC or go straight to Public Hearing.

7. NEW BUSINESS: CONCEPTUAL PLAN FOR CRANE’S POND OPEN SPACE DEVELOPMENT:

Jon Scott, Crane’s Pond developer and Tim Woodhams, Woodhams Associates, Kalamazoo, engineer for the project, were here to present the conceptual plan for the Crane’s Pond Open Space Development. Commissioner Harmon asked Attorney Rolfe if there was a conflict of interest with Jon Scott being the developer and the fact that he is also a township trustee. Attorney Rolfe said that the township board has no authority over approving this proposal. Jon said he would try to be as quiet as possible and only answer questions if needed. He would hire third parties to present the proposal and speak for him. Rolfe said that as long as it is handled this way there should not be any ethical problems involved.

Rolfe said he realized the parallel plat becomes irrelevant after the determination of density has been met, but that permissible lot density is itself dependent on the

applicable subdivision control ordinance. The Township Board recently adopted a new Subdivision Control Ordinance, effective August 17, 2005. Ms. Buck said this parallel plat was reviewed under the existing ordinance. If the plan is not approved until after August 17, 2005, it will have to be reviewed using the new ordinance and meet those required provisions. Rolfe said the changes in the new ordinance are basically procedural and organizational.

Tim Woodhams presented the parallel plan to the Commissioners, directing his answers in response to the items presented in AGS's review, dated July 18, 2005.

A.1/A.3: The ownership is composed of Gull Lake View Golf Club and Stonehedge LLC. Stonehedge LLC is composed of some of the same owners as Gull Lake View Golf Club and is more or less an intertwined business between the two entities.

A.2: Woodhams and Assoc. are the engineers, and the surveying is being done through his office and Allen Enderle is the developer's attorney.

2.2A9 – Mr. Woodhams said they created the lot configurations to match the layout used at the Hillcrest development with alternating blocks, so every block would have a road area of 1000 feet. Commissioner Harmon said that from looking at the drawing that some of the lots were in excess of 200 ft. so the blocks were longer than the 1000 ft. requirement. Woodhams said the 1000 ft. number in the ordinance is an arbitrary number. He also said that not every lot conforms exactly to 200 ft. frontage. Rolfe said that what the Hillcrest development has done is not applicable to this project. He also said the ordinance is very clear that these are not arbitrary numbers and they must be adhered to.

2.2A10: The proposed cul-de-sacs are greater than the allowable 660 ft. Woodhams said there is no other feasible way to develop the property due to the property boundaries. Commissioner Harmon said these figures must be met to prove density. Rolfe said this must be an approvable plan, and right now it is not. Commissioner Harmon said the applicant will need a revised parallel plat.

2.1A: Woodhams said the contours have been shown on the revised drawing he brought to the meeting tonight. The developers are required to label these contour lines on their drawing.

2.1E: Woodhams said that he knows Crane's Pond has a floodplain, but that the DEQ has not determined this yet, but it is currently in the works. Woodhams said there is a conflict with the State mandates and the Ross Township zoning ordinance. He said the State requires him to plat to the lake's edge. Ms. Buck said the township's ordinance says they are not to include that portion of the property that may be subject to water or not buildable, and not to use it in calculating how many units there can be on the property. Commissioner Harmon said they would set this issue aside and have AGS review it. Woodhams said he was assuming, from what he has seen out there, that they are probably in pretty good shape. He also said that if they were required to get the DEQ determination of the floodplain, it could take six months before they would know what the DEQ has determined and this length of time would severely hamper their building schedule.

2.2: A letter from the Kalamazoo Road Commission dated July 27, 2005, states the road locations are acceptable with some minor modifications.

2.2A1: Commissioner Harmon stated that this is not an issue.

2.2A3: Woodhams said the proposed southerly road meets this requirement. Ms. Buck asked if Woodhams can provide a statement or document to prove this, and who the owners are to the south. Ms Harvey said they could provide a parcel layout to show the adjacent property owners.

2.2C3: Woodhams said that if FEMA has previously done a study, they can get their results, but this particular pond doesn't even have a name according to the State. The State will only determine the floodplain elevation for subdivisions, and not for any other type of project. He said they could hire an extensive study to be done by a private company, which the developer would have to pay for, which would basically mean that the developer would have to hire Woodhams as an engineer to do a watershed study to determine the floodplain.

Ms. Harvey suggested she and Attorney Rolfe talk together regarding this issue. Rolfe said he will give guidance to the zoning administrator, and she can then direct the applicant to make the revisions necessary. He also stated the new subdivision control ordinance will be the controlling review for the next submission.

Commissioner Harmon then directed the applicant to make the revisions necessary: 1) determine the flood plain areas located within or abutting the proposed preliminary plat. These areas must be identified with contour line(s) on the Site Plan drawing. (Subdivision Control Ordinance, Section 2.1E). 2) Compliance with the 1000 ft. maximum for a residential block (SCO, Sec. 2.1A9). 3) Compliance with the 660 ft. maximum length of dead end street/cul-de-sac length or satisfy conditions set forth in Sec. 2.1A10.

Mr. Scott asked why their streets were not approvable if they were patterned after the Hillcrest development which was approved?

Ms. Harvey said the applicants for Hillcrest worked very hard with her, meeting several times, to make sure all the numbers were met. Rolfe said that the Hillcrest development doesn't apply to this proposal. Scott said he believed there have been other plats approved in this township that have cul-de-sacs longer than 660 ft. He asked why his development is being held to different standards than other developments? Commissioner Harmon said that once the PC and the developer can get past the determination of density, the Commission would be very happy to have a conversation about what might need to be done to allow the development to go forward, even if there is a hardship, possibly without holding to a strict interpretation of the ordinance.

Commissioner Murray said he was not prepared to give the applicant what he wants tonight. He thinks they should meet with Ms. Harvey and Attorney Rolfe before the next month's meeting.

Mr. Scott said he could plat the property and get 102 units. He feels the PC is discouraging him from doing an open space development, which means he would lose four lots.

Commissioner Cox said he felt they were getting close to a conflict of interest tonight. He said he didn't recall the 1000 ft. block issue coming up when reviewed by AGS, if it did, it was a mistake or was not a problem. He also stated that even if a mistake was made previously, and something was approved that should not have been, you cannot justify approving the same thing for this development. The ZBA won't allow this to happen and neither can the PC.

Attorney Rolfe said this proposal should not have been here tonight, it isn't a compliant parallel plat plan.

8, 9, 10 & 11.

OLD BUSINESS: SLIDING SCALE ZONING & LOT SIZE STANDARDS, 50% OPEN SPACE DRAFT & AG-PRESERVATION DISTRICT:

Ms. Harvey emailed new language to the commissioners on these issues, but Attorney Rolfe and the Township Office did not get a copy. Ms. Harvey presented each of them with a copy and Attorney Rolfe will look it over and review for the next meeting.

Commissioner Harmon said this would be brought back for the next meeting, when hopefully they would have all the Commissioners in attendance.

12. REPORTS:

ZBA: No meeting in July.

TOWNSHIP BOARD: Commissioner Murray went over the Township Board meeting minutes.

4-TOWNSHIP WATER RESOURCES COUNCIL: No report

WORKSHOPS: None

13. COMMISSION COMMENTS:

Bob Cox spoke about ordinance violations. He said he reported an ordinance violation seven or eight months ago to the Supervisor. After making multiple inquiries of the Supervisor in the course of the year since he first presented it, he was never informed that the issue was going to the ZBA. He said that since they do not get copies of the ZBA minutes, he wanted to know how the other Commissioners felt and wondered if the agendas could be e-mailed to each of them.

He said that in this case, he wasn't at the ZBA meeting to present what the slope of the property was. He found it offensive as a PC member because as a board, they put a lot of work into the ordinances, but when there was an issue presented to the ZBA that he was interested in, he wasn't notified. It seems to him that it would be an official courtesy that if one of them report something to the township they then would be notified as it progresses so they could follow up on it.

Commissioner Murray asked the time differential as to the time it was presented to the Supervisor vs. the time it went before the ZBA. Commissioner Cox said it was August of last year, almost a year ago, that he first spoke to the Supervisor about the issue. Commissioner Murray asked if Commissioner Cox followed up on the complaint.

Commissioner Cox said he followed up three times during the course of the year, asking the Supervisor what was the status of the complaint. He said he was always told the issue was pending. The Supervisor never said anything about the fact that it was coming up to the Board of Appeals, and Commissioner Cox knew he asked several times about that very thing. Commissioner Cox said the Supervisor told him that their (the neighbors) only recourse would be circuit court and Commissioner Cox felt this would be too costly.

Commissioner Harmon asked Jackie if it was possible to email the agendas of the ZBA and the Township Board to the PC.

Commissioner Wolfram asked why the applicant for Crane's Pond didn't want a floodplain plan done by a private party. Commissioner Wolfram said he didn't think this would be a costly study.

Commissioner Harmon thanked Ms. Buck for being here tonight and weathering the storm very well.

Attorney Pat Lennon, Attorney for Bob Oudsema, said he was here to see the new recommendations for changes in the ordinance and see how these changes could help the Hillcrest Development even more. Lennon said they are now removing trees and brush along 46th St. and that moving the arsenic contaminated soil would be the next step they would begin.

14. ADJOURNMENT:

Motion to adjourn was made by Commissioner Cox, seconded by Commissioner Murray, to adjourn at 9:14 PM. Motion passed unanimously.

Respectfully submitted,
Jackie Whitney
Recording Secretary