

Milton Township
Planning Commission
Approved Meeting Minutes
November 6, 2007

Members present: Chairman Stilson, McKimmy, Merillat, Hefferan, Lockett, Cole and Geddes

Also present: Weinzapfel and 34 audience members.

Stilson called the meeting to order at 7:00 pm.

Approval of past minutes dated October 9, 2007:

Corrections: Last line, pg 1: add apostrophe to “townships” and plural “ordinance.”

Motion to approve the minutes as corrected by McKimmy. Seconded by Geddes. Motion carried.

Announcements:

Township Board meeting is scheduled for November 8, 2007.

Approval of Agenda:

Cell Tower Subcommittee will be moved to #2.

Motion to approve agenda as changed by Geddes. Seconded by Cole. Motion carried.

Public Hearing on Boat Spaces: 07-08:

Stilson discussed public hearing procedures.

There were no conflicts of interest. The subcommittee of Cole, Lockett and Merillat worked on this issue.

Advertised in October 11th and November 1st issues of the Elk Rapids News.

Three letters received:

One letter from Ed Porter against the proposed ordinance.

One letter from Dick Crout (Friends of Milton Township) in support, with changes, to the proposed ordinance.

One letter from David Templeton in opposition to the proposed ordinance.

Cole gave the subcommittee presentation:

The first part of the ordinance is definitions. Cole discussed some of the more controversial definitions such as “watercraft” and “watercraft spaces.”

Limiting people to two watercraft spaces seemed prohibitive. One of the major points is that the language must be reasonable. It was concluded that 2 spaces does not seem reasonable. Personal watercraft should be accounted for because they are common and are widely used. A maximum

usage could be two boats and two jet skis. The problem is that if the number were 4 spaces, people might not use all 4 and then some could rent out those extra empty spaces. The commission also looked at length of boats and this became too cumbersome. The commission is examining the 100-foot lot and allowing the max usage of two boats and two jet skis. We felt that this was the best way to go. The final break down is 1 boat for every 1/3 of a 100-foot lot. Cole listed the scale. The other main part has to do with docks. Neighbors are allowed to have a common dock. Each would have their three spaces and yet share a dock.

No one on the commission had questions regarding Cole's report.

Informational Questions from Audience:

Larry Smith of NW Torch Lake Drive: If you have a large boat and your dock is only going out so far, I think you're encouraging power loading which causes lake bottom erosion? Would you not be better off letting the owner decide the length of the dock, so they may accommodate their own boat? Cole said this is an interesting point that had not been addressed.

Dennis Fitzpatrick of NW Torch Lake Drive: Where in the ordinance will you include penalties for violating? There is a section at the back of the ordinance that deals with that, said Cole. Procedure indicates a letter first, letters from our attorney and then there may be fines and court costs.

Rick Hainer of Bussa Lane: Said he goes out 80 feet on his dock. The length of each dock section is 8 feet. He needs at least 10 sections of dock to get his boat out deep enough. Cole said this issue may need to be addressed.

Jim Trierweiler of N. Bridge Street: Are you allowed to have a platform on your dock? Yes. That would be allowed. He has a problem with the three-foot limit on water depth. He has several clients who put their docks out to 4 feet of water so their kids can dive and this may be dangerous. Cole said the depth for boats is a concern. A dive platform could be used for swimming.

Tim Earl of Cairn Hwy said his dock goes out 90 feet to get to 3 feet. Cole said this is something we may address.

Mr. Gabriel of NW Torch Lake Drive: The depth issue is a concern.

Denny Irelan of Wallen Lane asked regarding the definition "waterfront, separate" is it owned by one or more than one? Cole said separate frontage is considered as each new piece of land, it doesn't matter how many people own the lot. Irelan pointed out it is listed as "frontage, separate" and "separate frontage" in different places. Is there anything dealing with shared frontage? It can be shared, but it is a separate frontage.

Greg Wotazic of NW Torch Lake Drive is concerned regarding how the ordinance enters into the frontage issue, section 117.214. He would like the commission to look at if the new boat section

interferes with this current part of the ordinance. Cole said this refers to funneling people upland into a jointly owned waterfront space.

Dick Grasson of Bussa Road: Was there any consideration to angling of a dock into a neighbor's riparian property. The commission wrestled with this for a long time. On a round lake, it is not too hard to deal with. But, when you look at Torch Lake and there is a pie shape angling toward your neighbor, how is it determined? It has been dealt with on an individual basis in the courts. In most cases it is a good neighbor issue and the court will deal with problems.

John Jorgenson of Cairn Hwy. If you have 11 owners and those owners have deeded waterfront property, how is that being treated? If you have 200 feet per person, you get 22 feet per person. Florand cottages are being taxed accordingly. It's not separate on the deeds. Non-conforming lots cannot be created. The 200 feet is shared frontage. According to the chart, you would get 5 spaces. Cole said there are properties in the township that would be grandfathered. This one would also be grandfathered. Whatever you have been using, you can continue to use.

Tim Earl of Cairn Hwy: How are swim rafts considered? Cole said this is not an issue for us and it is not considered in this ordinance.

Larry Smith of NW Torch Lake Drive: If rafts became a problem would all current rafts be grandfathered? Yes.

Dennis Irelan of Wallen Lane: If rafts aren't a problem, then these other things are a problem. What are the problems? Cole said basically, it is the language of two boats per 100 feet. It is outdated and does not accommodate all the types of watercraft being used today.

Geddes said as a point of clarification we are updating what we had in the ordinance, which was one sentence and it was very vague and basically stated two boats per 100 feet.

All those speaking in support:
No one wished to speak

All those speaking against:
Mike Wright of SW Torch Lake Drive has been boating many years. He does agree that the ordinance must be updated. He feels that he who has the gold makes the rules. People with more frontage get more boats. He spoke about pollution and said the best thing we can do is to reduce fertilizer.

Larry Smith of NW Torch Lake Drive: The 75 foot length of dock must be addressed before this is approved.

Keith Clark of Ridge Lane represents Weathertop Property Owners Association: He said the limit on dock length should be removed. It is not a problem right now and it is subjective and enforcement would be difficult. Regarding the number of dockage spaces, there should be a proportional number of spaces. People that own the lots expect that, regardless of which 100 feet

you own. It should be 3 boats per 100 feet

Dennis Fitzpatrick: Is concerned with jet skis being considered as half a boat. Some are as big as small boats. You could get six of these on a 100-foot lot. I am concerned as they get bigger, it could get out of control.

Dennis Irelan of Wallin Lane submitted a letter that he read into the minutes. This letter will be a permanent part of the minutes. The letter is in opposition to the proposed ordinance. Irelan said that he is concerned that the chart was never publicized. Weinzapfel said this was acceptable to legal because it was on the website and here at the office for review. Irelan said he feels that a boat should be purchased to police the new ordinance.

Bob Dennis of Ridge Lane: Do airplanes count as boats? Airplane and floatplanes are governed by the FAA and supersede any township regulations. If they wanted to moor it, then it would need to be considered. Right now he is not sure how it would be addressed.

Bill Kiesson of NW Torch Lake Drive: This is a perceived problem rather than a real problem. If it's not broken don't fix it.

Paula Clark of Ridge Lane: Supports simplicity but the intent is to accommodate wave runners. She suggests using 3 boats per 100 feet and keeping it simple.

Mike Wright of SW Torch Lake does not feel that anyone has the right to determine the number of boats that a person is allowed to have.

Vi Patchen of NW Torch Lake Drive: Have rentals been taken into account? Your main job is to protect the lake.

Rick Hainer said if it's not broke, don't fix it. From an enforcement standpoint, why are we getting into something like this? How would Chris police this? This would add another burden on the taxpayers.

Sandy Anderson of Ridge Lane said let's make it simple. 3 boats per 100 feet and wave runners are one boat.

Barb Fitzpatrick of NW Torch Lake Drive: It should be 3 boats per 100 feet.

Stilson closed public comment and began deliberations.

Stilson said length of dock is an issue, as well as resorts.

Cole suggested changing the length of a dock and the depth of water at this meeting, rather than have a new public hearing. Weinzapfel said he is unsure if you can make the change and still continue with the hearing. Any change on the proposed amendment needs to be re-published. Cole said either we pass as is, or change later or we go back to subcommittee. McKimmy

asked if we omitted a piece, would we have to start over. Weinzapfel said probably not.

Stilson said that the shape of the dock is not an issue.

Shared dockage has been taken care of and this issue depends on grandfathering issues that have been set up in the past.

Airplanes are an issue. Should this be considered a watercraft space? Cole said since we are dealing with watercraft spaces, if it is moored on his property, it should be considered as a "similar vessel". However, the FAA does supersede all township regulations.

McKimmy asked Larry Smith to discuss how many lakefront boat owners are in violation of the current ordinance based upon the 2005 shoreline survey. About 5 percent would exceed the current regulation. It is about 15 percent if you count personal watercraft as a single boat. Under this new ordinance, you would have less than 5 percent in violation.

McKimmy said he shares the concerns over the length of dock. Cole said this can obviously be changed. Regarding enforcement, it would be like everything else. It is on a complaint basis. If someone is violating, we will get a phone call and then go out to investigate. No one would be hired to police this ordinance. We do not go around looking for violators.

Geddes said we are talking about watercraft spaces, not boat ownership. You can own as many boats as you want, but you cannot put every single one of them on your waterfront. Cole said the large personal watercrafts are actually going away. They are now starting to make them smaller because the sales of the larger versions are dropping off. Geddes said the new issue tonight is the dock length. We need some length limitation due to areas like south Torch Lake where you do not want someone putting out a 300 foot dock. Cole said at some point, you run into safety problems with the DNR. Geddes said Floran would be grandfathered. Geddes said regarding "if it isn't broke, don't fix it." that the current ordinance does have a problem. We would be reverting back to our one sentence that does not work well and a large percentage of the waterfront population is in violation of.

Luckett said this is the first time the dock length has come up. She does feel that the chart does keep it simple. It is not possible to make everyone happy, but this is the best for the majority of the township. She is comfortable with everything else in the ordinance except the dock length.

Geddes referred to Dick Crout's letter. He would suggest not stopping the procedure, but looking at his suggestions at a later date.

McKimmy asked if we could go over our rationale for counting personal watercraft as a half a boat. Cole said they started looking at personal watercrafts as one whole watercraft space. In terms of a 100-foot lot, you would have to go for 4 watercraft spaces. McKimmy said why not go for 3 and let them decide how to use those spaces. Cole said because it is not uncommon to have 2 jet skis. That would take up two whole spaces and leave only one for other types of craft. If you go to court, is it reasonable to tell a person, they cannot have two jet skis, a pontoon and

cruiser? We are getting into the issue of reasonableness. By going to a half, we are letting a family have 2, as well as two other boats. It allows for a common breakdown of watercraft on the lakes. Yes. It's only a 3-month season, but many people pack as much water usage into those three months as possible. If you went to 4 spaces, without discussing jet skis then, it's possible to have four very large boats on an individual waterfront.

McKimmy asked how we should deal with dock length. Cole said the water depth needs to be addressed. We may need to change the 3 feet to 4 feet in water depth and a dock that allows you to get to 4 feet in depth.

Merillat said the plane issue would not be considered a boat, but now that we are dealing with spaces, rather than boats, it could be counted. Cole said if he parks it on shore, it's considered a space. Cole said it could be considered "similar".

Cole said he feels that the issue of dock length does need to be considered. Weinzapfel suggested that if those are the changes to make, make the motion to approve as amended, but if he feels it has to go back through a public hearing, it will have to go back through.

The proposed changes would be changing dock length from 75 to 80 feet unless you need more to get to a water depth of 4 feet.

Motion to approve amendment 07-08 by Hefferan with the change to 117.212, subsection 3C Dock Length to state: No dock shall extend more than 80 feet into a body of water, measured perpendicularly from the shoreline unless necessary to reach water with a depth of 4 feet and then no further than necessary to reach such depth. Docks on a river shall conform to DEQ requirements. Seconded by Luckett

Roll call Vote:

Geddes: yea; while I have reservations regarding Milton Township's jurisdiction with respect to maritime matters applicable to Grand Traverse Bay, I vote in favor of the proposed revision to the Limitations of Boat Dockage ordinance section 117.212 D as amended this evening because the new text provides an updated and more comprehensive regulation regarding boat dockage. Further, the regulations as proposed seem to be reasonable and fair for most waterfront property owners. Resort owners with commercial businesses and properties which pre-date the Milton Township zoning ordinance will not be adversely impacted by this revision.

McKimmy: yea; with the understanding that this is applicable to inland lakes and not the bay.

Cole: yea; I believe this fulfills our intent and purpose fairly to all people.

Merillat: yea; the old ordinance was unreasonable and a personal watercraft was counted as a full boat. The new ordinance makes it clear on definitions and it makes it reasonable for all people.

Luckett: yea; after extensive meetings, it is a reasonable compromise protecting commercial and residential, as well as those who want personal watercraft and those who don't. It also protects health and safety.

Hefferan: yea; updates old, unreasonable ordinance while keeping the characteristics of the township.

Stilson, yea; this will help many of our township residents become compliant with our ordinance

and does update an old and unreasonable ordinance.

Motion carried. 7-0.

Subcommittee Reports:

Cell Tower Subcommittee Report:

Terry Martin of Lakeland Tower Leasing has gone into lease agreement with Larry Bargy on Cairn Hwy. He would like to build a monopole cell tower. This is due to the lack of coverage in some areas in this township. There have been complaints to the carriers for this area. Cellular One has a lack of coverage. They have an antenna on the Sutter Road tower and the cable company tower in Elk Rapids. If this tower goes in, they will have to cut their power back at those other two locations. A question that came up previously was if these existing towers were fully loaded before any other towers can be considered. The Sutter road tower is loaded. The new tower will have one carrier to start with.

Geddes asked if building this tower will satisfy Cellular One? Will other carriers have access? Will other carriers have to come to us to get more towers to cover their areas? This tower should cover 3 carriers. Geddes asked if there are more than 3 carriers. Martin said there are 7 carriers, but this area has five carriers.

Cole asked regarding the design. Martin said it's much like a power pole.

Stilson asked if there would be any landscaping. There will be a 50' x 50' fence around the site. What if this land is sold off and there are a bunch of houses? Currently it's in the middle of an orchard. It is well off the road and not visible because it's in an orchard.

Luckett clarified that this pole could also be used for Internet. Martin said yes.

Geddes asked if there would be demands for several other antennas in the future. Martin said he is unsure about future demand. When NPI built their system in the 90s, they had very poor engineering and information. When that system was built, they put too much space between sites. When Cell One came into the area, they had the same problem. They had the advantage of lower frequencies and they had better coverage. The lower the frequency, the longer the waves travel. As long as they keep opening new shorter frequency ranges, that is where you will start seeing more towers closer together. As long as townships keep limiting height of structures, this will cause more towers in a smaller area. This is the choice that townships have made all over the country; to have more towers, shorter in height.

This tower can have five carriers. It will handle additional smaller loads, as well. Does this mean that there will be five carriers? No. Initially Cell One will be on it. The next carrier will come along and they will take the next spot down.

Cole asked if when some of the Baby Bells came into existence, is there some sharing that could come into this. Martin said no because the frequencies are different.

Larry Smith said the one on Sutter has a metal building inside the fence. Martin said he would like to say no, but it will be up to the carrier to what they put in. Most carriers are trying to get away from that and have more of a large cabinet. If there are five carriers, there would be five cabinets. There would not be a huge amount of traffic in and out of the site.

McKimmy asked if 200 feet is the max without lights. In townships to the north, they are going up to 230 feet. FAA restrictions require a light at 200 feet.

Merillat highlighted that the subcommittee met and completed a site plan review. There was concern of removal of abandon towers. The prior tower did require a performance bond for removal. The master plan does have three areas where cell towers are discussed. There is no language that requires the full load on a tower. It was recommended by a prior subcommittee, but it is not in the ordinance.

The subcommittee found that the site plan meets the requirements. The subcommittee recommended that there be no additional conditions placed on this as a special use because it is concealed in an orchard.

Cole asked regarding the cost of removal. The subcommittee does not have a proposal for that. McKimmy said every ordinance he has read has a performance bond for removal. He would like to have a performance bond here as well. Cole said he is not sure what a performance bond is. Mrs. Martin said that she was speaking with the insurance company and they would need an estimate of what is needed before they can go forward. McKimmy said we would need help from legal to determine what this would be.

Martin said the industry standard would be a \$15,000 bond.

The subcommittee would like to call for a public hearing on this special use permit at this time.

Motion by Merillat for special use permit for Lakeland Tower for December 11th. Seconded by Cole. Motion carried.

Lakeside 21 Subcommittee Report:

As given by Luckett from report dated 10-25-07. At the last meeting, the subcommittee looked at four possible solutions, but could not come to a consensus as to what should be done with the area in front of Ancient Mariner. It was not included as part of the site plan for Ancient Mariner. Currently, it is zoned Manufacturing. One option is to re-configure this area into our village zone. However, a review of the master plan suggests that the current Village zone boundary be retained. The subcommittee also looked at rezoning it commercial, but that could be considered spot zoning. The third option considered was to include it as a PUD with Ancient Mariner, but this would require a residence on the property. The fourth option considered was to amend the language of the Manufacturing zone to allow for boat repair. Because we could not come up with a recommendation, Mr. Ireland asked us to come back to the full commission for review in the hopes that we could come up with something.

Cole asked why not include boat repair in the Manufacturing zone? McKimmy said the Manufacturing zone says you can store things and build things, but you can't fix things. At the time we added Manufacturing, we were forced to, even though there wasn't a demand. McKimmy said if we wanted to work on that definition, we would have to change the ordinance. McKimmy suggested changing the Manufacturing zone language.

Luckett also suggested it fits better with commercial, ~~except~~ boat repair is ~~not~~ allowed in commercial.

Motion by Geddes to proceed to a public hearing with regarding to Mr. Irelan's request for rezoning the parcel in front of Ancient Mariner (2.3 acres) from present manufacturing to commercial. Seconded by McKimmy. 4 yea, 3 nay. Motion Carried. The meeting will be December 11, 2007.

Wind Turbine Subcommittee Report: Hefferan gave the report. The committee members would read materials provided and prepare to meet again November 19th at 5:30pm.

Ordinance Review Subcommittee Report:

44 meetings to date. They have gone through PUD chapter and now they are going back through it. They are facing the issues of a PUD in the village. The subcommittee is moving along, but in the process of solving issues, they are finding more. The subcommittee will meet November 7, 2007.

Signs Subcommittee Report:

As given by Luckett. They are reviewing information given by Alan Hubbard and Long Lake Township. Looking at each zoning district and what would be allowed. The subcommittee will meet again November 26, 2007 at 8:30 am.

Meeting adjourned by order of the chair at 10:51 pm.

Respectfully submitted,

Joseph Merillat
Secretary