

SAUGATUCK TOWNSHIP PLANNING COMMISSION

October 25, 2004

The Saugatuck Township Planning Commission met on October 25, 2004, at the township hall on Blue Star Highway, Saugatuck, Michigan 49453.

Present: Darpel, Hanson, Marczuk, Milauckas, Olendorf, Rausch

Absent: Shanahan

Also present: Hank Gudith, Mark Sisson, Atty Doug Donnell, Karen Wolters, Atty Tom Shearer, Paul LeBlanc, Steve Smit of Focus Engineering, Robert Muusse, and several members of the general public.

Chairman Milauckas called the meeting to order at 7:07 P.M. Rausch made a motion to approve the minutes of September 27, Marczuk seconded and the motion carried. Rausch suggested that KRPA should be written out "Kalamazoo River Protection Association" on page 2 of the October 13 minutes. Hanson asked to amend those minutes to add at the end on page 3 "The Commissioners were in consensus to forward a letter to Al Blomaert, the developer of Lighthouse Estates, expressing concern over the excessive clear cutting at the entrance to the development." Olendorf made a motion to approve the amended October 13 minutes, and Rausch seconded. The motion carried.

Milauckas opened the public hearing on the proposed rezoning of a portion of A-2 to C-1 on the north side of M-89 between I-196 and Blue Star Highway. Paul LeBlanc, a PUD planning consultant from Grand Rapids, and Doug Donnell, the attorney for the Township in the Wolters Realty appeal, were present. Secretary Rausch read the notice published in the Commercial Record on September 30 and October 21. It described the north 92 feet of the south 300 feet of the permanent parcel number 03-020-032-046-00 as measured from the center of the highway M-89 right-of-way and the south 208 feet of permanent parcel number 03-020-032-049-00 also as measured from the center of the highway M-89 right-of-way. Milauckas stated that there is an affidavit of mailing of the notice sent to neighbors within 300 feet of the property in question. A drawing of the area of the property was displayed. LeBlanc said he thought the area to be rezoned was 127 feet north of what is already zoned C-1.

Atty Donnell gave a brief history of the situation. There was a request 2-1/2 years ago for a special use for a fueling station/convenience store/car wash on the southern portion of the Wolters property. The Planning Commission denied approval, as did the ZBA. Judge Beach, Allegan County Circuit Court, denied the appeal. Then a trial took place on the Wolters' claim that the current zoning was unreasonable because the C-1 portion was not large enough to be used commercially. Beach found that the existing zoning was unreasonable. The township appealed that decision to the Court of Appeals, which found that the property owner should have gone to the ZBA to claim the current zoning unreasonable and ask for a variance. Since the property owner had not followed that procedure, the Court of Appeals determined that Judge Beach of the Circuit Court did not have jurisdiction to hear the case and it was dismissed. Donnell suggested to the Township that it consider enlarging the C-1 portion to make it adequate for C-1 commercial uses.

Milauckas asked for clarification on the actual size of the portion to be rezoned: "the north 92 feet" noticed in the paper or "the north 127". Donnell said he had been advised that 127 feet was what was needed to enlarge the C-1 area to at least 85000 s.f. excluding the road right-of-way, the public notice was adequate and the hearing could proceed.

Milauckas read into the record a letter dated October 25 from Margaret Hill and William Harrison, Dale Court, Fennville, in support of rezoning the portion of the parcel to C-1 to provide consistency.

Milauckas opened the hearing to public comment. Larry Edris, 2534 Lakeshore Drive, said he was in favor of this rezoning but he asked the Planning Commission to always take into consideration the aquifer that serves the area because many of the wells in the area are polluted with MTBE and TCB.

Bill Corwin, 2452 68th St., directly north of the Wolters property, said he thought C-1 would not permit a gas station or car wash, and he was told that was correct. Corwin said he understood that was what the property owner wanted to put in, and he was concerned about the environmental issues and the waste water from the car wash. Milauckas reminded the audience that this hearing was solely concerned with rezoning to C-1.

Dayle Harrison, 3108 62nd St., said he supports the change to C-1.

LeBlanc reviewed the information he assembled in his memo dated October 18. The portion to be rezoned amounts to just under 40,000 s.f. and provides a total of 720 feet of width and 300-335 feet of depth to be used as C-1, whereas the remainder of the Wolters property would continue as A-2. He described the area: M-89 divides Saugatuck township from Ganges township and commercial, agricultural, light industrial and residential uses exist, but no public utilities are available. He mentioned that the Township and Tri-Community Comprehensive Plans agreed that commercial development be limited at the M-89 interchange so as not to detract from the downtown business districts in Saugatuck and Douglas and that "highway services" be concentrated at the northernmost interchange at Saugatuck.

LeBlanc cited six criteria to be considered in rezoning: (1) Is development under the current zoning reasonable? (2) Is the rezoning consistent with the goals, policies and future land use of the comprehensive plan? (3) Is the site capable of accommodating the allowed uses, based on size and environmental conditions? (4) Are the rezoning and all the allowed uses compatible with the surrounding land uses? (5) Is the public infrastructure capable of servicing all of the uses allowed in the proposed district? And (6) Is there a need for additional land in the proposed district? He stated that the rezoning of this portion of the Wolters' property would not impede the use of the remaining A-2 portions. It would afford enough additional area for buffers to potential uses in A-2. It would add to the C-1 district, which currently is mostly concentrated in the northern area of the township. LeBlanc provided his recommendations to the township.

Tom Shearer, attorney for the Wolters family in all the legal matters that have occurred, introduced Karen Wolters, president, and John Racine, executive vice-president, of Wolters Realty. He asked the dimension of M-89, and LeBlanc said he thought it was 120 feet, having checked with the County Road Commission. Shearer cited the minutes of September 27, p. 4, where Milauckas stated that the Township Board had asked the Planning Commission to expand the Wolters C-1 commercial on M-89 at exit 34, where Milauckas added that Wolters had applied for rezoning to C-3 to put in a gas station but he had not seen the application, and where the Planning Commission made a motion to set a public hearing for rezoning to C-1. Shearer said Wolters filed an application on September 10 and did not understand why the Planning Commission should not have seen that application by September 27 and set the hearing for a C-3 rezoning instead. Milauckas asked Atty Donnell to answer that question, and he said prior to the filing of Wolters application, he asked the Township Board and Planning Commission to set the hearing for rezoning to C-1. Shearer maintained that Wolters should have been given a hearing on their application before any other hearings on the township's proposed rezoning. Shearer also pointed out that the notices to neighbors were given for 92 feet rather than 127 feet, and he thought the

hearing should not be held for a different figure from what was noticed. He said all these calculations were important because they must be made from the center of the right of way of the highway, and he did not think the property was sufficiently large even for C-1. He also brought up the recent 2001 rezoning of commercial properties in the township to exclude gas stations from all but C-3, which he thought was designed to “close the barn door” on their applications. Shearer objected to this rezoning because he saw no difference between this interchange at exit 34 and any other. When Milauckas pointed out that C-3 is only at exit 41, Shearer maintained exit 34 is still on an interstate highway and quoted from a court case to the effect that Planning Commissions should not decide property uses based on environmental issues. He further stated that this case is on appeal to the Michigan Supreme Court and asked for a copy of LeBlanc’s memo, which was provided to him.

Milauckas asked Atty Donnell if in spite of all Shearer’s claims, he thought the Planning Commission should continue with this hearing and was told “Yes.”

Dan Emperor, an appraiser from Grand Rapids who testified in court for the Wolters, said he had never seen zoning at interchanges which does not allow gas stations, hotels or restaurants, businesses that cater to the traveling public. He added that parcels are getting larger for these uses now, 3 to 5 acres. This parcel might be as much as 2 acres, not large enough for current uses. The fact that there is a gas station across M-89 seems to indicate that it should be an allowed use.

Shearer presented a letter from Williams and Works, another witness in the trial for the Wolters, dated October 25, and read it into the record. The letter stated that this increase in C-1 zoning would not make the property large enough for commercial uses common to interstate highway interchanges and consistent with tourist areas, and setback requirements of the Zoning Ordinance reduce the buildable area to as little as 51000 s.f.

Janet Schroeder, 6944 Lakeshore Dr., said she uses the intersection in question and it is three-sided rather than the usual four-sided intersection, part of the Circle Tour for bikers and hikers, southernmost gateway to the tourist community, not a typical interchange, not the volume of traffic.

Harrison said he agreed this is a minor interchange as compared with exit 41 and he thought it was unheard of that the Planning Commission could not take into consideration the environmental issues as part of its analysis.

Edris added that there is very little development at either of the two interchanges south of exit 34, the Shell station at exit 34 sits on less than one acre and it is in Ganges Township, and he urged the Planning Commission to adopt this rezoning to C-1.

There being no further public comment, Rausch made a motion to close the public portion of the hearing. Marczuk supported. Milauckas asked for Atty Donnell’s approval, which he gave. The motion carried.

Milauckas asked Emperor, the appraiser, if increasing the size of the C-1 parcel in this instance had a positive or negative effect on the value of the property, and Emperor replied, “Negative.” Emperor said because it sits at an interstate interchange, it has little value when it is not large enough to develop for typical uses at interchanges.

Olendorf asked if it would be appropriate to make the record show that what is being considered is the north 127 feet of the south 335 feet of Wolter’s parcel, and Atty Donnell said he did not know there was a confusion

about it until he arrived at this meeting, but the calculations done to arrive at 86000 s.f. total assumed a 120 foot right of way on M-89. Donnell added if the measurement is more (92' to 127') and the right of way is less, that gives even more property C-1 zoning. Shearer said the width of the property is 313 feet, east to west.

Milauckas asked Sisson to check on the legal description in the Zoning Ordinance because of the questions raised by Shearer that it did not jibe with the map as far as C-3 goes. Sisson said they do not reflect the zoning changes made in 2002, but there should be a new ordinance that does reflect those changes.

Milauckas asked if anyone thought this issue should be tabled, and they did not. After considering criteria provided by LeBlanc in his memo, Marczuk made a motion to recommend to the Township Board that they rezone from A-2 to C-1 the north 127 feet of the south 335 feet of permanent parcel number 03-020-032-046-00 as measured from the center of the highway M-89 right of way because (1) the rezoning is a logical extension of the existing C-1 district, (2) the rezoning is consistent with the goals, policies, and overall direction of the adopted Comprehensive Plans, (3) the uses permitted are compatible with the existing and potential land use patterns of the surrounding area, (4) the C-1 zoning will not place demands on the public infrastructure beyond the ability to service the allowed uses, (5) expansion of the C-1 district will afford more opportunity for appropriate development, good site planning, and ample buffers from adjoining non-commercial uses, and (6) approval of the rezoning does not create a surplus of C-1 land in the Township. Rausch seconded. Darpel stated that this rezoning is consistent with the revised Master Plan pursuant to the survey of the populace. A roll call vote produced a unanimous approval of the motion.

After a brief recess, the meeting continued with a presentation by Steve Smit, Focus Engineering, on the changes to the preliminary PUD site condo plan for LaPointe in R-2 off Silver Lake Drive, in response to the concerns of the Planning Commission during the public hearing on September 27. Unit #1 has been moved across the street, unit width has been increased to 100 feet, depth of units #13-15 has been decreased to increase the open space along the Natural River Overlay District, no pools or accessory buildings will be allowed on the units to keep tree cutting to a minimum, drain fields have been reconfigured and placed at higher elevations to allow for greater isolation from the water, a preservation easement (to be written into the master deed) has been added along the river where only dead trees or those in drain fields may be removed unless the reserve drain fields are found to be necessary, a 46-foot strip is proposed for the road with 10 feet for utilities, a valley/gutter construction is proposed to collect all storm water and bring it down to the far end of the road. Smit said it has been found that the sight distance at the entrance to this development is adequate at 35 mph. They are proposing just two street lights, one between units #6 and 7 and the other at #16, and a downlit project sign on the east side of the entrance.

At this point Milauckas asked if there were any general public comment from the audience, and there was none.

Milauckas referred to the memo from Planner Sisson dated October 22. Smit said he had modified the narrative to fit the changes made since the last meeting. Olendorf asked if he was considering a conservation easement, and Smit said there were some areas to be totally preserved and other areas in which the association might later want to create recreation facilities. Hanson asked where the house would be built on such small units, and Smit said the house would be built half on and half off the bluff. Hanson continued that he was envisioning all the hardwood trees being knocked down, and how difficult it would be to enforce a preservation commitment when everything needed would involve cutting down trees. Olendorf tried to compare this development to the Ravines where it was decided to keep the building envelope 30 feet back from the bluff. Muusse said by using the edge of the bank they will be making the footprint smaller for each home and preserving trees. Darpel

asked how the soil is, and Smit said it was sandy, there would probably not be a requirement to provide a reserve drain field, and there will be no raised mounds. He said there has been no soil borings because he needs a preliminary approval of the plan first. Walk-out basements, decks and the large machines needed to grade for building were discussed. Sisson concluded that about a third of the bluff would be denuded if decks were constructed.

Milauckas asked about a deed that conveys property to the DNR because there seemed to be a discrepancy in the descriptions. He asked Smit to research this question. Overall acreage of the parcel and the calculation of open space would be affected. Milauckas asked Smit to check the total acreage, the open space band and the DNR deed, and the exception area or DNR parking lot.

Milauckas asked why not build in the 14 acres of flat land instead of going into the banks along the water front. Smit said according to the base density plan 16 lots could front the river, but this plan has 15. It was at this time that it was discovered that the Commissioners were examining an old plan, and Smit revealed that the plan he was working from was "L2."

Harrison said he thought the smaller footprint with two-story homes over the bank and septic fields in front of the homes down the bank was a good idea. He thought boaters would not be able to see much development this way. Darpel brought up the conservation easement to clarify whether Smit was talking about putting it into a land conservancy or just preserving open space for this development. Smit said it was the latter. Darpel pursued the idea to say it would be acceptable if Smit wrote the open space that would never be used for recreation facilities into the Master Deed.

Milauckas asked that parcel A be described as not to be split again by the buyer. Its acreage is included in the overall acreage of the PUD, but it is not included in the site condo. Harrison asked that Sec. 40-591 language be incorporated into the motion. The road construction was discussed, and Milauckas and Harrison pointed out that the Road Commission was putting in a 20-foot road without a ditch or a valley or basins, just letting the water perc on either side of the road. Smit thought he could not get this past the Drain Commission. Sisson said it would not be a problem if the storm water drains off away from the front yards of the homes. Smit said he could tip the road toward the east rather than crowning it, except for the few units with homes on both sides of the road and the areas with steep inclines. Sisson also pointed out that tree limbs will have to be trimmed for trucks. Milauckas asked if all the utilities would come through the trees on either side of the road at the same time because otherwise it would be chaotic. Milauckas suggested moving some of the units to the other side of the road and making larger side yard setbacks on the bluff. Stairways were considered until Harrison said the slope is so gradual stairs would not be needed, but Sisson thought something should be decided about where they would go.

Hanson read the list of concerns the P. C. still has about the project:

1. Check the open space and total acreage calculations and the deed to the DNR
2. Question about moving the rear setback line
3. Parcel A homesite for one single family residence only in the narrative and general notes
4. Add language from Sec. 40-591 Natural River Overlay District concerning "filtered view" to narrative
5. Road narrowing to 46 feet or less, letting storm water flow off to the side, consult Drain Commissioner (Sisson asked Smit, when he gets permission from the Drain Commissioner, to make a construction drawing showing the limits of excavation and grading to be submitted as part of the final plan, and Smit said he would.)

- 6. 15 foot side yard setback
- 7. Common path of 10-foot width between units #8 and 9
- 8. Question of conservation easement, preservation of trees left to final plan and Master Deed (Olendorf preferred a legal conservation easement giving up development rights so future homeowners cannot destroy natural areas; Sisson said there must be different language in the Master Deed distinguishing common areas which can later be used for recreation and common areas to be left natural in perpetuity)
- 9. Road agreement with residents on Silver Lake Drive is a private matter; Muusse has the right to use Silver Lake Drive to access this development.

Olendorf made a motion to approve the preliminary plan for LaPointe PUD site condo dated 10/14/04 with the following conditions: (1) that the developer check the total acreage, the open space acreage and the DNR deed; (2) that the rear yard setback be moved on units #1-15 to 15 feet west of the reserve drain field; (3) that Parcel A be described in the narrative and general notes as one single family residential homesite only; (4) that the language from Sec. 40-591 Natural River Overlay District concerning “filtered view” be included in the narrative; (5) that the road be narrowed and drained according to Drain Commissioner approval; (6) that side yard setback be 15 feet; (7) that there be a common 10-foot wide path between units #8 and 9; (8) that the developer and Planning Commission arrive at an agreement over the preservation of trees on the bank and below before the final plan approval; and (9) that the developer specify that the westerly portion called “preservation area” along the river remain natural in perpetuity. Darpel seconded the motion and it carried 5-1, with Hanson voting NO.

Milauckas asked the Planning Commission to review the joint comprehensive plan on Thursday, October 28, at 5:30 P.M. before the Tri-Community meeting at 7:00 P.M. because there are discrepancies. He tabled the Zoning Ordinance amendments and a question about the August minutes and a letter from Darpel to the next meeting.

Meeting adjourned at 11:47 P.M. The next regular meeting is November 22 at 7:00 P.M.

Betty A. White, Recording Secretary

Sandy Rausch, Secretary

MOTIONS

- 1. Motion by Rausch/Marczuk to approve the minutes of September 27.
- 2. Motion by Olendorf/Rausch to approve as amended the minutes of October 13.
- 3. Motion by Rausch/Marczuk to close public portion of hearing on rezoning portion of parcel on M-89 from A-2 to C-1.
- 4. Motion by Marczuk/Rausch to rezone north 127 feet of south 335 feet of a part of Wolters’ property on M-89 from A-2 to C-1.
- 5. Motion by Olendorf/Darpel to approve the preliminary plan for LaPointe PUD site condo with conditions.