

MINUTES  
GOLDEN TOWNSHIP PLANNING COMMISSION MEETING  
JANUARY 31,2006

7:30 PM Meeting called to order.

The Pledge of Allegiance was recited by all present.

Roll call was taken: Present: Leo Terryn, Carl Fuehring, Helen Lefler, Bill Kolenda, Steve Marciniak, & Brad Whitney. Absent: Terry Wiegand & Avery Wilson. Also Present: Jake Whelpley, Zoning Administrator.

Lefler: Our first order of business is to pick up on some minutes that have been pending for a few months. I sent them out to you a week ago, and I wonder if you've all had a chance to review. Does anyone have any comments or corrections?

Marciniak and Lefler briefly discussed the correct time adjourned from the November meeting, all confirmed the time was correct.

Lefler: Well if there are no corrections, I'll entertain a motion to accept them as written.

Motion by Fuehring, Second by Whitney. All in favor of approving minutes.

Lefler: We have a site plan to review for Judy Terryn. Jake will be back in a just a minute, he had to run home for something. Do you just want to tell us in your own words your plans for realigning you Go-kart Track.

Terryn: I just would like to realign the track, but keep it within the same lines that it is, the existing outside lines. Except for changing the shape a little bit.

Lefler: So your not expanding the area.

Terryn: No, it's a pear shaped track right now, with no curves in it really.

Lefler: Your adding that little S curve in there.

Terryn: Yeah, that's the only thing I'm changing. I won't be changing any building or structures.

Lefler: She's just changing the Go-kart Track without changing the perimeters.

Whelpley: The old track just came straight down and this is gonna be inside what was infield before.

Lefler: And this sharp angle doesn't present a problem?

Terryn: Well the architect did the angle did that because he said that maybe we could save a

couple of the trees and I'd rather not worry about the trees cause I need that corner to be a nice round curve inside where it looks like a point, that's not gonna be like that. It's gonna be rounded.

Whelpely: I don't see it has any kind of major change, reconstruction or anything, just kinda realigns it.

Lefler: Under paragraph 12.2 of chapter 12 and 10.2 of chapter 10. Carl has motioned to approve site plan for reconfiguration of the Go-kart Track.

Marciniak Seconds. All in favor.

Lefler: We have a guest here tonight. Ed McNiely is here. At the meeting before the last at the township board they reviewed the master plan and Ed is here to explain to us his recommendations he made to the township board.

McNielly: What you have before you is a draft of the proposed changes in the Master Plan that I went through and I expressed to the board and as I recall the board basically tabled the matter and they asked that I communicate with you concerning that and Jake was kind enough to take most of what I had when I spoke with him and put it in what I refer to as a red line stripe to basically show you some of the changes that were proposed and then I have taken that and gone through it to further refine my thoughts and what I'd like to do is walk you through page by page and give you my thoughts, also saying beforehand, you'll find very few of these are just straight up "well that's not right" I'm more talking about the taking some of the implications of what's proposed and just giving you some thoughts of what I brought to the board and then you guys take it from there. On page 2 introduction, and this not shown in the additions. In about the middle of the page, 2<sup>nd</sup> set of bullet points, the 4<sup>th</sup> bullet point says 'in order to benefit the entire community present and future, and to preserve the unique character of the area in its natural features and resources, the future development must occur in a planned and coordinated manner.' With respect to that, my thought to that, first of all, preserving natural resources and the natural character of the areas is a wonderful thing, one thing you've got to watch out for is setting it up as a trip wire or a reason in litigation for a potential complainant to say the township didn't even do what there goal is, so keep that in mind. Here if you look at how its worded when you said in order to benefit the entire community, now that's what the P.C. does and that's want your concerned about, benefits the entire community. Then you say 'to preserve the unique character of the area and its natural features and resources' as though that can be something separate. In other words, that you could have a benefit to the community that may conflict with, and quite frankly I'd make that estimate, that may conflict with protecting the natural resources of the area. I would suggest that this P.C. takes into account, and the board takes into account the natural resources when it determines what benefit there is to the community. In other words, you also take into account what the character of the area is, what the density is. You take into account a lot of different things, you know maybe, noise on the street and you don't necessarily elevate one as a matter of course over another. In this one paragraph what you said is we're gonna consider the benefit to the community and protection the natural resources and you can see all the sudden there two things that you're weighing. When in reality all your concerned about is the benefit to the community and part of that consideration is the protection of the natural resources. So if I had

my brothers there I would leave that phrase out. “And to preserve the unique character of the area and its natural features and resources’ so that it would read ‘ in order to benefit the entire community, present and future, future development must occur in a planned and coordinated manner.’ So I would just strike that one clause. Because again that is what you’re doing, that’s your job, to decide what benefits the community. Likewise, if you go down to the bottom of the page there’s a group of bullet points there. The 2<sup>nd</sup> bullet point says ‘ provide goals and policies for future land use and development which recognize and reflect the interrelationship between economic, environmental and social interest.’ I believe is what it used to say and now you’ve inserted environmental again. Not to say that you don’t think about environmental interests but somehow it seems like environmental interests have been elevated as a third player in your decision between economics and social interests. Whether or not you approve somebody to go out and produce a development and Whether that’s economically a good thing, tax base, they’ll make money off of it, whatever. And the implication of the social is the community and all the sudden there’s a third consideration there, that’s environmental questions which again would be my argument that you’re making those considerations and an elected body does, an appointed body does anyway. But by putting it in there, I’m gonna make the argument, if I’m on the other side either trying to stop a development or say that you made an improper decision. I’m gonna try to say, your honor, they inserted environmental in this draft in those competing interests, social and economic, and inserted environmental, that means there’s something new in the ball game and it gives me a reason to say now show me all the science that went into the this, show me the studies you did, show me the environmental impact studies you did in considering this development.

Lefler: Ed, if somebody wanted to bottle our water here, like somewhere in Michigan there’s a big complaint. There’s no social implication to that, there’s certainly a positive economic implication to that. Wouldn’t this put us in position to say that it would damage the environment?

McNeilly: There’s certainly a social implication of having the factory there in the first place, just by virtue of the fact that you’re considering it.

Lefler: If we wanted to deny it, how would we argue to deny it unless we mention some concern about the environment?

McNeilly: That would come under you social considerations. Its just like anything else you consider. If that was a consideration that you were making and you’ve got to back it up. If you put it in writing here, I’m gonna make the argument, lets say there’s a plan that the township makes the determination that it wants whatever plant or development it is and it’s determined that socially we think that this is gonna be a benefit to us. We’ve look at whatever considerations and you may have included environmental consideration in that and that you’ve also looked at the economical interests. You made that determination and you’ve determined that it benefits the community. If I’m apposing the project one thing I’m gonna look at is I’m gonna say, your honor, there talking about these 3 things that they look at, there only used to be 2, social interests, economic interest and now there’s environmental- show me the studies. Now we’re into a ball game of competing.

Lefler: The reason, I remember now, the instance in Mason County Master Plan and when I talked to there planners about it, they explained that it was a way for them to protect against environmental damage by having it in there Master Plan. And if it weren't in there Master Plan the people of Mason County said they would not have that leg to stand on.

McNeilly: I would respectfully disagree. You mention quite frequently on this a lot of this document references natural resources and environmental cost. This is not the law that you are enforcing. This sets up goals. This is where we want to go, that's why its called the Master Plan. What I am saying is that in stating that the things that guide you, I don't think that you want to include that between social and economic considerations which are the 2 ones that are naturally always dealing with. My argument would be that is a social consideration. I don't see it as a problem. If you had Nestly coming in and they had all the permits and you say no, its not environmentally correct, well you better bring your experts because you're gonna be in for a raft of litigation. And what I'm saying is on the other side of that, you're inviting litigation on the other side to stop projects which happens often where environmental interests are brought up as being paramount.

Roseman: Are you saying that if you have a set of all interests, that all the interest would be covered by social and economical and that environmental interests are a subset of environmental interests.

McNeilly: I think there are a lot of subsets of social interests.

Roseman: But your saying that environmental would be covered under social issues.

McNeilly: Your standing is to the community, as least in my explanation, and again that's more of a political one than a legal one. The boards voted in by the community. What this sets up, answering Dr. Roseman's question, is there a separate constituent called the environment that is separate from the citizens and community that you serve.

Lefler: Well, later on we made special mention to a hearing to zoning ordinance provisions which means not being as lenient on ZBA with regard to waterfront property and we had in mind septic system problems and the pollution of Silver Lake when we did that. That was an environmental concern now maybe we could think of that as a social concern but we thought of that as an environmental concern since it was polluting the lake. People have been putting septic systems in and throwing a couple yards of gravel in and the lake is getting polluted. People are getting swimmers itch and all sorts of stuff. You talked about to great lengths to make sure that we were more particular about those things because of the environmental impact. I hear what you're saying about it being a social impact. It is. But the lake is there even if there are no people there. And we were concerned in those discussion, and I'm jumping ahead, and this is sort of one leg of a stool that holds up that section too.

McNeilly: Right. And we'll approach that and I'll be glad to answer that and stay as long as you like. I hear what you're saying.

Whitney: Do we take on a legal requirement by putting the word environment in there. Do we

have to prove it.

McNeilly: If I'm on the otherside that's trying to appose something that you approve, the way I'm going to do it in court is by saying that you didn't follow your own rules. What I'm gonna follow up with is here the rules that they must follow. But here they tell us what they intended by those rules so I'm gonna pull this in anyway. Quite frankly, a judge is gonna let it in. And then I'm gonna say look here at what they tell us, what they intended. Then I'm gonna say they didn't do that. I'm gonna ask to stop it. They didn't do what they said they'd do, make them do studies.

Lefler: Well, we have required people to present to us environmental impact studies.

Terryn: You're saying its on the other side. If somebody comes in and they got everything approved and you say you can't because of the environment. But then the company tells me its already approved they you have to fight the company doesn't have to. The companies already ok.

McNeilly: Well, you're gonna be necessary included and the best thing is for you to stay out of it, to the extent possible not to be involved in litigation.

Terryn: Anytime you get to much detail in the attorneys like details. You get the details in and the attorney can pick that out and they you got to back your details up. The attorney doesn't have to he just made the allegation and you've got to back it up.

McNeilly: Right, and don't forget that by virtue of the fact that it says environment here or that you took it out here, that doesn't affect you ability to pass ordinances or the boards later on.

Lefler: So you see a negative and no positive for it.

McNeilly: That's correct. And that's from the stand point of litigation. In this particular case I'm thinking as a lawyer how I would represent the people who didn't want a particular event to occur. And quite frankly that is the classic strategy involved in environmental law. Stopping projects, lets just say that the government didn't do what they said there goal was.

Lefler: You don't think by having this out, we're putting ourselves in a position to get rolled over.

McNeilly: No, I don't think so.

Lefler: We're getting into wind turbines and there are environmental impacts with that. We are not in the lever position to take those under consideration with the environmental impacts of wind turbines because if this is out of there rather than in there.

McNeilly: No, I don't think so. This is just my opinion. That's not written in stone, I'm just giving my take on how these things go. There's a few of them that I'll say I just think are flat out wrong but not very many and this is one of the ones that I would say might get you in trouble. (Lefler questions bottom bullet of page 2). The question there is that the statement says 'provide a means for residents to participate in determining the future of there community' now what your

adding to that limits what you just said. 'Recognizing the validity of the townships varied interest and interest groups.' limits the general thought of providing a means for residents to participate in determining the future of their community. The question is there some special status that somebody wishes to give to varied interest groups. Is there some elevated means.

Lefler: Well, there sure is. Farmland preservation, we want to hear from our farmers. We want to help preserve and have a say in preserving farmland.

McNeilly: Sure there residents of the community.

Lefler: And there a special interest group. And have a lot to do with the character of Golden Township.

McNeilly: Right, and the question is are you elevating the special interest groups to something greater than the community at large.

Lefler: Well, that's a tough there and I'll tell you why. Carl owns I don't know how many acres in farms and so do other farmers and they have a big percentage of the economy. They have a big percentage of the land and they have one vote. Things happen by vote and we've got trailer parks and all kinds of people, the more people that move in here, the less they have to say and the less of a recognized special interest group they are the more we're gonna change in ways that we might not want to change. The harder it will be to preserve farm land.

McNeilly: I appreciate the thought but I don't think in a straight up democracy where the public came in and voted for everything you do, I'd agree with you. But that's not the way things work. You get elected board members and then the board members appoint the P.C. and the community at large is taken in to account and the varied business interest, farmers and all are considered in making a political decision. My question is, lets say that I'm apposing development XYZ and I have an interest group, does my interest group somehow have an elevated place in the participation of the community? And if I'm not given an elevated place, is that where I can dig my heels in.

Lefler: Then could you just take out 'and interest groups' and leave in 'recognizing the validity of the townships varied interests'.

McNeilly: Yes.

Lefler: So instead of taking out the whole phrase, just take out the last few words.

McNeilly: Yeah, I don't have a problem with the township having varied interest. On page 3 on the 4<sup>th</sup> bullet point we had (see Master Plan). That would go back to the discussion we had before in that generally what your doing is determining how future land uses should be established period, in making that determination you take a lot of different things into account. Why specify. Why give somebody, I blew by the community profile not that I don't have an interest in the community and housing. I think the next one is on page 6, in the 1<sup>st</sup> paragraph (see Master Plan) I did not see the point in saying (the deleted portion).

Lefler: We had in mind and we talked about the political township Master Plan and Z.O. which has restricted view lots from development. They are basically areas from which they have decided to steer development although they make that area particularly for development and we here talked about the possibility of restricting new lots from development in the future. We may or may not ever put that in the Z.O. but if we were to, this was the foundation.

McNeilly: My thoughts there would be that was that were talking about natural features and starting with natural features and I can't think of a thing in this township that's not a natural feature so I understand what your saying about view lots but to me it sets forth a philosophy of natural features are basically areas from which to steer development. And that just seemed counter to me.

Lefler: We can take it out. I was just telling you where we were coming from and what the thought was behind it. The less we say the less they can pin you down and every time you're specific, everything you haven't mention is excluded by extrapolation. So leaving these things out doesn't bother me.

McNeilly: I think that as you go forward you have in this document in numerous places talked about the value of resources of the township and having said that specifically them passing something that effects a certain area for a given reason is not out of the question and I think has basis. The next couple deletions are merely typographical. When you get down to the bottom when we were talking about wetlands in the first paragraph we say 'wetlands are found along streams' strike are and put in 'may be' again with the thought that you're not pinning yourself down saying with every stream there is a wetland. In the next line one thing in the column (see Master Plan) my problem with that was we are lending that book authority and I haven't read that book and I don't really know what else it says and how it defines wetland and how it doesn't but everything else I do know about it on the other side, one of the tricks in litigation, is to get an expert to say this book on accounting and they ask if you agree if its authoritative on accounting and the guy says yep and all the sudden that whole book is in play. The whole book now becomes in play and we may not have wanted to bring everything that that book says in to our consideration. I urge taking that out. The quote following it I just didn't find the point in defining a wetland. As we go on your gonna find that I don't necessary appose or favor what it is that goes on in here but more to realize the implications of what you're doing. And one thing with respect to wetlands is when this came up were there was a goal of inacting a wetland ordinance which is allowed under the wetlands protection part 303 is that you're gonna take on technological burden expertise to determine what's a wetland and to make that fight and are you gonna have somebody to go up or are you gonna sent Jake somewhere to acquire some type of degree or something to be able to go out and do the test and determine what is wetland, how is that gonna work in this particular case I think you overall get the same thing done by saying (see Master Plan without deletion). In this particular case I would just drop the definition as unneeded.

Marciniak: What you're saying is that we would be responsible for having the wetlands checked out.

McNeilly: It will come up later and I will speak to that. On page 7 under lakes and streams on the 3<sup>rd</sup> sentence (see Master Plan). I was pretty uncomfortable with that from the stand point of I'd rather see it say 'may effect.' Just because one, I don't think its always necessarily true and two, don't point the finger at yourself. The next deletion in addition is just typographical. Page 9 under infrastructure and transportation the last paragraph, we said (see Master Plan) I thought there we were stating things 1, that we didn't need to state and 2, that probably aren't' true. I think there's probably plenty of 2-tracks around that would be a stretch to say that they are in good condition and I don't know why we would be saying that in the first place. I don't think its something that we need to say. Going down under community water and sewer the 1<sup>st</sup> paragraph is just a typo and the next down says (see Master Plan) again I saw that just didn't need to be said. I understand that we were talking about Silver Lake pollution but again I just think we can leave that out with the thought that we've stated what the goal is.

Marciniak: I have a friend that owns a septic tank business and he just attended last years meeting and the state of Michigan is getting so tough on the sewage from septic tanks that he has until 2007 to come up with his own spot to rid of his own sewage that he pumps. From what he told me Michigan is just gonna get tougher and tougher. So if there gonna make him do that for development would we consider that.

McNeilly: Let me press that what I think isn't relevant, I don't live here but I understand wait you're saying and my answer would be yeah, I think your when you say (see Master Plan) you've covered that. Then I think I go all the way to page 12 under public uses where Cedar Point County Park (see Master Plan) I see as repetitive. Page 13 under general goals and implementation steps under #8 (see Master Plan) I more comfortable with minimization as your never gonna avoid everything. #12 (see Master Plan). Bottom of page #2, I just want to make sure with the board that when you say (see Master Plan) you just don't want to say things that you're never gonna do. That was one thought that I had. Page 14, (see Master Plan). Page 15 is typos. Page 17 (see Master Plan) Page 18, 19, 20, 21, 24, and 25 (see Master Plan).

Roseman: Page 14, #9, #3B, 18, 21 questions.

Dodie Stark: Page 6, bullet point #9, 'Township may provide an opportunity'

Lefler: Next thing on the agenda has to do with wind turbines Z.O. provisions and we start out with a timetable for us to complete our job on this and starting with getting a recommendation revised Z.O. provision on wind powers. First we should decide what we'll call them and that will be included in what we name the Z.O. But Jake, we want to get something recommended at our July 25 meeting to the Township Board so they can address it at their August meeting. Backing up from there when will we have the public hearing before that, is it a 30 day thing.

Whelpley: You would need to have the public hearing probably the end or middle of May because once you have the public hearing you come up with to send to the county and they have 30 days to review it and look at it. I suggest you have it somewhere in the middle of May. The latest you could have it at the end. You'd have to hold the public hearing and make a determination on how you're gonna word it and then get it to the county which they got 30 days which would put them in the middle of June, you'd have to take care of that at the July meeting

to got to the Township board in August. So May is the latest.

Lefler: So we should have our final draft at the April meeting. We can schedule meetings and workshops before that. Here is an outline of the topics to be discussed. Right now I believe that it's a permitted use in A.R. A lot of the Z.O. provisions on one town that I've looked at from other jurisdiction have it as a special use, I think we should discuss what the implications to the Township and the land owner are described as a permitted use or a special use. (See Outline).

Whepley: I suggest that we have another special workshop type meeting specifically geared to this because even starting next month, I already know of one development that's gonna come into you for your Feb. meeting.

Lefler: One thing I would suggest to you is Norm Meyers sent to me the Michigan guidelines to wind energy. Here is a model with recommended topic for wind energy Z.O.

Date selected for wind turbine workshop- Wednesday, February 15,2006 at 7:30 PM.

With nothing further to discuss, the meeting was adjourned at 9:30 PM.