CITY OF LUDINGTON
PLANNING COMMSION
MINUTES 12/02/08

A meeting of the Ludington Planning Commission was held on Tuesday, December 2, 2008. The meeting was held at the Ludington Municipal Building, 400 S. Harrison St., Ludington, MI and was called to order at 7:00 p.m. by Tom Coleman, Chairperson.

ROLL CALL: The roll call showed the following results:

Present: Robert Garrett, Kaye Holman, Chris Gamble, Clay Olmstead, Joe Moloney, Tom Coleman, and Mike Nekola

Absent: Chris Pontz, absent and Gary Schnitker, excused

Also Present: Recording Secretary, Carol Ann Foote and City Attorney, Roger Anderson

AGENDA APPROVAL:

Commissioner Holman made a motion to approve the agenda, seconded by Commissioner Olmstead. Motion carried unanimously.

PUBLIC COMMENTS:

Reith Riley's request to modify their special land use:

Gary Schenk, Attorney for Reith Riley, presented a conceptual drawing of a proposed berm to be built on the east property line. He told the Commissioners that Reith Riley and 106 Laura St., LLC met last Tuesday and discussed the overall project. They did not come to an agreement. We did propose to construct a berm that would have earth fill six ft. high and five ft. trees on top of that to bring it up to eleven or twelve feet high. Two ft. high precast concrete blocks would contain the fill, using about 15ft. of space which would include a portion of the setback in order to construct the berm. The concept of the berm itself was something that I believe was generally acceptable to 106 Laura St., LLC, but they want it higher. They want the berm along with the trees to reach about sixteen feet. The additional space it would use and the additional cost involved makes that prohibitive for us to do. We do think that it is time, irrespective whether the development next door ultimately comes to fruition or not, to address the berm. We are prepared to construct a berm of this nature and therefore I presented that to you for your review.

David Haywood, Attorney for 106 Laura St., LLC and the developers. As Mr. Schenk said, we did meet and spent two-three hours discussing various things each of the parties were preparing to do on the sites. We did come to a general consensus that a berm would be an acceptable way of creating a separation. The six ft. high berm that was proposed will not provide the separation that would be necessary to both screen and prevent the various interruptions that could occur to their development. And as such, we were not able to reach an agreement so that we could withdraw our objection to their present proposal. Our whole objection is primarily based on two things in Section 900.2:6, Standards. Mr. Haywood read from the Ordinance: 1. No special land use shall be approved by the Planning Commission unless the Commission finds: That the establishment, maintenance, or operation of the special land use will not be detrimental to or endanger the public health, safety or general welfare. He reminded the Commission of previous comments about public health. He stated that public health is not a condition that they want to rally around too heavily, but they do think the general welfare is something that should be considered. The general welfare will be affected for some distance in the circumference of this development. 2. That the special land use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted. He said that the use proposed by 106 Laura St., LLC was approved by the Commission about one and a half years ago. The special land use permit has since expired because of the fact that they are still negotiating a permit from the state. He stated that when they have the permit from the state, which will be a lesser proposal than the Commission approved, they will be back for approval that is consistent with state approval. Mr. Haywood read further: nor shall it substantially diminish and impair property values in the neighborhood. He said it is their position that the special land use that is now being requested in terms of their expansion will be injurious to the use and enjoyment of the adjacent property. We do not purport that the Commission deny any and all special land uses; we are not here trying to prevent Reith Riley from using that site. The special land use that was permitted in 1996 provided a significant buffer. That buffer was sufficient in our view to allow the kind of activity that 106 Laura St. proposes. We are suggesting that to move this activity some 56 ft. closer than what was originally allowed, would be injurious to the use and enjoyment of the 106 Laura St. property. To put it in a nutshell, those are the two areas that are major to our concern. We do not think that the two uses cannot coexist. We do feel, to have a very

industrial use, although a use that is permitted in the waterfront district, to come right up to the property line would be very detrimental to our use.

Mr. Schnek stated that he was not there in 1996, but he did know why the 50 ft. was provided along the property line and it was not because the Planning Commission was trying to create a buffer. It was requested because Lake Michigan Carferry wanted a 50 ft. reserve there in case they wanted to do a development. They said to use that property until they were ready for it. Unfortunately, out of ignorance or inadvertence, did not give the Commission a legal description that had the entire parcel that is being used and has been used for the past ten years to accommodate the growth and development that has occurred in the working harbor. He said that he was not there to tell the Commission that it will be injurious to 106 Laura St.; in fact it is the other way around. Their development is going to be injurious to the commercial operation, the commercial shipping in the harbor. He said that they were not opposing it for that reason, they have their approval. If they have to come back and ask for something different, so be it. The property line and the property is not one bit different than the day they bought their property. He stated that they have not asked for an expansion of what they were doing in operations. They are asking that the operations be approved as they are, permitting a revision of the description which includes all of the area being used. Mr. Schnek said that he felt Mr. Haywood conceded that the expansion on the north end is not the problem; it is along the property line. The Ordinance sets the standards. The ordinance says what setback is required in order not to be injurious which is 7 ½ ft. He said that they did not want to go right up to the property line with the operations and they were proposing to put in a berm that provides 15 ft. and still set off the property line. The standard in the ordinance is a 4 ½ ft. berm and we are going 11 – 12 ft. The only reasons they did not accept it is that they want 16 ft. and wanted us to concede that their marina is an appropriate use along side our commercial shipping. We have issues that are between us, but when you get away from that and look at what we are asking for, it is merely to approve the operations as they have existed and existed on the day they bought their property. We are talking about improvements along the east line that are consistent with the approval of 1996 that reserved the Commission's right to tell Reith Riley when to install a berm on the property. We are prepared to do that. We think that 11 ft. with a 6ft. high berm, 5 ft. evergreens on top that will grow, is more than sufficient screening. It is a concept that they were certainly in agreement with, they just wanted it higher from the get go. In the couple of years that it will take to get their project up and going, those trees will probably have the growth to give them the height that they want. We are still asking that you approve the amended description.

Mr. Haywood said that when the developers did their due diligence in terms of purchasing the property or putting in the type of development that they considered, they looked at the activities going on around them. They looked at the special land use permit that was on the immediate adjacent property. It indicated that there was 50 ft. between. Mr. Haywood said that he was not there, so he did not know if that was something the Commission asked for or if it was part of a plan submitted. He said he had no reason to believe it was anything but what Mr. Schenk represented. The fact of the matter is, the special land use provided for 56 ft. off of the property line. They were not abiding by that. It seems that if an issue was made about a land owner violating a special land use permit, something would be done about it. Due to the fact that there is nothing on the site at this time, there is no reason for us to complain. They are not hurting us at the moment. If a special land use is granted that allows them to go to the property line, or 7 ½ feet off the property line, that use combined with the use going on the adjacent property will be detrimental. We do not know, or have any reason to suggest that there was any kind of fraud or collusion in the application that was made originally or the application being made now, we were not here. But when we did our due diligence, it appeared that we would have a setback, or buffer that would set our uses off so they would not be so conflicting.

Close public comment session.

APPROVAL OF MINUTES:
Commissioner Olmstead made a motion to approve the minutes of the November 5, 2008 meeting, seconded by Commissioner Garrett. Motion carried unanimously.

PUBLIC HEARINGS:
None

NEW BUSINESS:
None

UNFINISHED BUSINESS:
To consider a request by Rieth-Riley Construction Company, Inc. to modify an existing 1996 Special Land Use at the following described property:

Part of Tax ID #53-051-590-019-00 described as: Beginning at a point on the North line of Section 22, T18N, R18W, in the City of Ludington, Michigan, that is N86° 44'01" E274.58 feet from the North quarter corner thereof, thence continuing N 86° 44'01" E 141.82 feet along said Section line to the extended West right of way line of James Street; thence S 01° 27'05" E 481.55 feet along said right of way to a traverse point adjacent to the waters edge of Pere Marquette Lake; thence N 86 ° 51'20" W 208.54 feet along a traverse line adjacent to Pere Marquette Lake; thence S 14° 39'48" W 77.58 feet along a traverse line adjacent to Pere Marquette Lake; thence N 68° 37'02" W 376.34 feet along a traverse line adjacent to Pere Marquette Lake; thence N 19° 05'29" E 187.42 feet along a traverse line adjacent to Pere Marquette Lake; thence S 70° 21'18" E 266.89 feet; thence N19° 42'13" E 331.76 feet to the place of beginning. The lease area is +/-3.79 acres.

Commissioner Garrett asked if they planned to use deciduous or coniferous trees. He said that he did not feel as though deciduous plants should be used. Mr. Schenk said that they planned to use evergreen trees. There would also be a water line running down the berm to irrigate the trees. There would be maintenance on the berm to keep it in good shape.

Chairman Coleman commented that the Commission had no authority over the marina, the authority lies with the State of Michigan, and the marina is not a part of the decision making process.

Chairman Coleman pointed out that since the conception of the waterfront shipping district, an R3, multi-family, component has been allowed as a special land use.

Chairman Coleman asked for clarification on the rendering of the berm. Keith Rose, Reith Riley, explained that the 15ft. berm is measured from outside of block to outside of block. It would be placed in close proximity to the fence for maintenance purposes. He explained that the fence was less than one foot from the LMC property line and is required by Homeland Security. He said that according to Mr. Radashaw, the fence is eight inches from the line. The fence stops 25-30 feet from the water's edge. The proposed berm would be placed to the point of stability closest to the water's edge. There will be a 2 on 1 side slope going to the flat part of the berm to the top platform.

Chairman Coleman commented that the standards of a special land use are just that. They are standards that will apply to both parties. One party may say that the other is interfering with their business, but the same thing is coming from the other side.

Commissioner Nekola stated that he was here in 1996 for the original special land use. He said that the sub-committee did meet and found that the general standards and the standards for storage of aggregate and containerized cargo in waterfront shipping district had been met and they recommended the approval for Reith Riley to amend the special land use of 1996 with several conditions.

Commissioner Nekola made a motion to approve the request by Reith Riley to amend the 1996 special land use with the following conditions:

A. A berm, constructed of materials suitable to support vegetation (trees, bushes, grasses, etc.) shall be placed on the East Property Line behind the existing fence. The easterly toe of the berm shall be located behind the required setback. A site plan review will be required showing berm location, cross sections including a minimum height of 5 ft. and a minimum width of 8 ft., materials, screening vegetation, and drainage controls. Included should be improved screening at the north entrance.

B. The hours of trucking shall be limited every day from 6:00 am until 10:00pm. Ships which arrive at night will be allowed to unload at time of arrival.

C. The site must be graded to prevent all run-off directly into Pere Marquette Lake and suitable erosion controls provided.

D. Environmental control systems as, but not limited to; water sprinklers, chemical control or coatings, tire cleaning baths, sweeping, conveyor enclosures, etc. shall be used as appropriate to minimize dust and tracking.

E. This Special Land Use is granted for an aggregate dock only. No other uses are allowed. Any expansion or change in the operation said aggregate dock as expressed in or on the site plan submitted and as further required and the conditions set forth must be reviewed and approved by the Planning Commission through the SLU process.

F. Part of Tax ID #53-051-590-019-00 described as: Beginning at a point on the North line of Section 22, T18N, R18W,in the City of Ludington, Michigan, that is N86° 44'01" E274.58 feet from the North quarter corner thereof, thence continuing N 86° 44'01" E 141.82 feet along said Section line to the extended West right of way line of James Street; thence S 0° 27'05" E 481.55 feet along said right of way to a traverse point adjacent to the waters edge of Pere Marquette Lake; thence N 86 ° 51'20" W 208.54 feet along a traverse line adjacent to Pere Marquette Lake; thence S 14° 39'48" W 77.58 feet along a traverse line adjacent to Pere Marquette Lake; thence N 68° 37'02" W 376.34 feet along a traverse line adjacent to Pere Marquette Lake; thence N 19° 05'29" E 187.42 feet along a traverse line adjacent to Pere Marquette Lake; thence S 70° 21'18" E 266.89 feet; thence N19° 42'13" E 331.76 feet to the place of beginning. The lease area is +/-3.79 acres.

Motion was seconded by Commissioner Moloney. Motion carried unanimously.

Chairman Coleman stated that a site plan review would be required for the berm and the vegetation.

Comprehensive Plan:

Vendors:
Commissioner Holman reported that she was gathering information from other cities regarding vendors. She will have the information to present to the text committee in January.

East Ludington Avenue Architectural Preservation:
No report

US-10 Access Management:
Chairman Coleman reported that the proposed Access Management text was in legal review at this time.

Downtown Walk ability:
Commissioner Moloney stated that Shawn McDonald continues to be very cooperative. They have eight more sites for bike racks. He said that he is waiting for the January meeting with the County to talk about the East Ludington Ave. entrance area. He said that he would meet with Mary Reilly regarding non-motorized pathways connection Ludington and the County. In December, he will be meeting with Holly Always and Cal Dekiper to discuss the safe routes to school program.

Chairman Coleman said that he would be meeting with Al Deemester regarding the joint efforts of the Mason County, Pere Marquette and Ludington Planning Commissions.

Commissioner Garrett reported that he met with Pere Marquette Township regarding their wind energy ordinance.

Daycare:
Commissioner Nekola has referred daycare text to the text committee.

Planned Unit Development Consolidation:
Chairman Coleman went through the proposed Planned Unit Development text and discussed the changes that had been made. He said that this text was a combination of reviews by Williams and Works, Roger Anderson and the Text Committee. There is a clarification that still needs to be made by the text committee and another review by Roger Anderson. It will then come back to the Commission.

Signs:
Chairman Coleman reported that the text committee had been working on temporary signs and sandwich boards. This will not be brought to the Planning Commission until after a meeting that is scheduled with the downtown merchants. Chairman Coleman said that they were also looking at electronic signs.

SITE PLAN REVIEW REPORT:
None

COMMISSIONERS' COMMENTS AND COMMUNICATIONS:
The monthly building and zoning report was distributed.

The next meeting was set for January 6, 2009 at 7:00 p.m.

Commissioner Garrett told the commissioners that he was reviewing sample ordinances for wind energy turbines. He said that he felt that the Commission should set this for one of their 2009 goals. With "Go Green" and "Renewable Energy" and the new guidelines set by the State of Michigan, he thinks that it is time to deal with the issue and put some zoning in place.

Commissioner Moloney commented that the Planning and Zoning News was an excellent publication. He read an article regarding communities planning for elderly communities. The trend is that elderly parents moving in with their children. He thinks that the Commission should be planning for zoning. Commissioner Nekola said that when the Commission looked at non-conversions on single family homes, they took this into consideration. He said that they did not want to stop the family, not like a two-family situation. Roger Anderson said that normally, the kitchen facility determines the family. If someone was to put in another kitchen facility, it looks more like two families. Chairman Coleman asked Commissioner Nekola to review what has been done in the past and report back in January.

Commissioner Nekola read Chapter 5 of the City Charter, GENERAL PROVISIONS REGARDING OFFICERS AND CITY PERSONNEL

ADJOURNMENT:
The meeting was adjourned at 8:10 p.m.

Respectfully submitted,
Carol Ann Foote, Recording Secretary

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Tom Coleman, Chairperson