

**BIRCH RUN TOWNSHIP BOARD OF TRUSTEES
SPECIAL JOINT MEETING BETWEEN THE PLANNING COMMISSION/ TOWNSHIP
BOARD AND ZBA
JUNE 30, 2003**

The Planning Commission Chairman for the purpose of rewriting the Zoning Ordinance Book called a special joint meeting. Chairman Al Hunter called the Special Joint Meeting/Workshop to order at 7:00 P.M. Present for the Birch Run Township Board were Earl Schlegel, Supervisor; Amy Cook, Clerk; Debbie Trevino; Treasurer, Dave Stewart, Ed Magnus, Joanne Strahm, and Jeff Putnam, Trustees. Present for the Planning Commission were Al Hunter, Diane Timmons, Jim Totten, and Wyn Wilson. Present for the ZBA were Jerry Cook and Mike Marr. Mike Setzer the building inspector and zoning administrator was also present. There were zero (0) people in the audience.

Mr. Hunter introduced Mark Eidelson of LANDPLAN who was contracted by the Township Board as a consultant on the rewriting of the Zoning Book. There were two handouts referred to by the members present at the meeting, the Principal Tasks handout and a five-page discussion document.

The first handout discussed was the Principal Tasks handout. During this section Mark covered the process to writing a new ordinance book. The initial draft ordinance shall be submitted in three separate sequential submittals.

The meeting then proceeded to cover the five-page discussion document. Within this document there were two subsections. The first section discussed by Mark was the Ordinance Organization/Format of the new Zoning Ordinance Book.

Ordinance Organization/Format

A consensus was reached by the Township Board to approve the outline and tabular form as presented on page 2.

The Township Board reached a consensus with the proposed page format as presented on the bottom half of page 2.

A consensus was reached by the Township Board to maintain the current serif font of the Zoning Ordinance book and to use no smaller that font size 10.

Next, Mark directed the discussion from Organizational Matters to Administrative Matters.

Administrative Matters

1a. A consensus was reached by the Township Board to designate the building official to sign the Certificate of Occupancy.

1b. A consensus was reached by the Township Board to treat ordinance violations as civil infractions.

1c. No concerns or consensus was reached.

2a. A consensus was reached by the Township Board to increase guidance of the application requirements for text versus map amendments and the review of amendment petitions in Section 1703.

2b. No concerns or consensus was reached.

3a. A consensus was reached by the Township Board to allow change the wording in the Zoning Ordinance book to read a Township Board member *may* sit on the ZBA instead of a Township Board member *shall* sit on the ZBA.

3b. A consensus was reached by the Township Board to implement a section where the ZBA *shall* adopt by-laws.

3c. A consensus was reached by the Township Board to call a ZBA meeting a hearing and continue notification to neighbors within 300' and publications in the paper.

3d. A consensus was reached by the Township Board to not allow the ZBA to grant use variances.

3e. A consensus was reach by the Township Board that section 1704 is a concern and a copy of it was given to Mr. Eidelson.

4a. A consensus was reached by the Township Board to make the Planning Commission the approving body for a site plan review/special use permits, and Mark Eidelson agreed to compose wording to set a requirement that would limit the Planning Commission from making a decision on the first night.

4b. The Township Board reached a consensus that a clearer set of provisions would be recommended concerning review and approval for residential development.

4c. & d The Township Board reached a consensus that a site plan must be submitted 1 month in advance and must submit 7 copies of it.

4e. The Township Board reached a consensus that they are comfortable with minor deviations being defined more clearly.

4f. The Township Board requested that Mr. Eidelson submit a recommendation whether an individual should submit a preliminary site plan review prior to submitting a more detailed one.

4g. Some concerns were discussed concerning section 1705 and Mr. Eidelson will provide more information at a later date.

5a. The Township Board reached a consensus that the Planning Commission should be the final approving body for a special land use/special use permit.

5b. The Township Board reached a consensus that appeals from the ZBA should go to the circuit court.

5c. & 6a. No concerns were raised.

The next meeting special meeting of the Planning Commission is scheduled for July 21, 2003
at 7:00 pm at the Township Center
Another additional meeting was scheduled for August 20, 2003 at 7:00 pm.

Motion by Wyn Wilson supported by Jim Totten to adjourn at 10:55 PM
Motion carried

Amy Cook
Township Clerk

Birch Run Township Zoning Ordinance Project

Principal Tasks

June 30, 2003

Task #1: Orientation Meetings *(3 or 4 Meetings Anticipated)*

LANDPLAN shall meet with the Township for Ordinance Orientation Meetings. The purpose of these orientation meetings shall be to identify key aspects of the new Zoning Ordinance prior to the actual drafting of the new ordinance. These workshop meetings shall be conducted by LANDPLAN and address, at a minimum, the following issues: 1) overall format of the Ordinance; 2) procedural, administrative, and enforcement aspects of the Ordinance; 3) zoning district regulations; and 4) miscellaneous general provisions.

Task #2: Preparation of Initial Draft Ordinance

Based upon the Orientation Meetings held during Task #1 above, LANDPLAN shall prepare the initial draft Zoning Ordinance and forward 20 copies of the draft to the Township for distribution to local officials. The initial draft ordinance shall be submitted in three (3) separate sequential submittals. This will allow the Township to begin the review process while other independent sections of the draft Zoning Ordinance are being prepared. The initial submittal shall be provided to the Township approximately 6 weeks from the date of the first Orientation Meeting, as described in Task #1 above. Each subsequent submittal will follow approximately six (6) weeks after the Orientation Meeting where the necessary information will be gathered to prepare the submittal.

Task #3: Review of Initial Draft Ordinance *(4 or 5 Meetings Anticipated)*

LANDPLAN shall meet with the Township for Ordinance Review Meetings for the purpose of reviewing the entire initial draft Ordinance and identifying provisions of the draft Ordinance that may require revisions and/or further exploration and discussion.

Task #4: Preparation of Revised Draft Ordinance *(1 Meeting Anticipated)*

Upon completion of Task #3, LANDPLAN shall make the necessary revisions to the draft Zoning Ordinance and shall provide the Township twenty (20) copies of the revised draft Ordinance.

Task #5: Public Hearing *(1 Hearing Anticipated)*

LANDPLAN shall attend a public hearing on the draft Zoning Ordinance.

Task #6: Ordinance Recommendation, Adoption and Final Products *(1 Meeting Anticipated)*

Following the public hearing, and at the direction of the Township, LANDPLAN shall revise the draft Zoning Ordinance, if necessary, for recommendation to the Township Board for subsequent adoption. LANDPLAN shall meet with the Township to finalize the Ordinance for adoption. LANDPLAN shall provide the Township with a camera-ready 8 1/2" X 11" black and white original of the final adopted Zoning Ordinance and twenty (20) bound copies (zoning map to be provided by SCMPC), and a digital copy of the text in Microsoft Word 6.0.

Date: June 7, 2003
To: Birch Run Township Planning Commission, Township Board, and Zoning Administrator
From: Mark A. Eidelson, AICP
Re: New Zoning Ordinance / June 30 Orientation Meeting

INTRODUCTION

The recently adopted Birch Run Township Master Plan represents the completion of the first phase of the Township's efforts to improve its growth management program. We are now off and running on the second phase – preparation of a new zoning ordinance. I want to thank Birch Run Township for providing me with the opportunity to assist in this endeavor. The new ordinance will reflect improved formatting, organization, and user friendliness; address existing deficiencies and frustrations identified by local officials; and implement the policies of the new Master Plan. The tasks to accomplish this project calls for, initially, a series of Orientation Meetings to discuss key elements of the new ordinance. These orientation meetings are very important to ensure a common understanding by all parties involved and minimize revisions (and additional project costs) after the initial draft ordinance is prepared.

While the Planning Commission is the authorized body to prepare zoning regulations for consideration and adoption by the Township Board, I have found that a smooth and successful zoning ordinance project is greatly enhanced when both parties are present at these orientation meetings. If a quorum of the Township Board is to be present at any of these Orientation Meetings, I recommend such meeting be advertised as a joint Planning Commission / Township Board meeting to comply with the Open Meetings Act. Our first Orientation Meeting is scheduled for June 30 at 7:00 p.m., and will likely run about three hours. The specific agenda is as follows:

- 1) Summary of process to be followed in preparing the new zoning ordinance.
- 2) Discussion of the organizational framework of the new zoning ordinance.
- 3) Discussion of administrative issues and procedures in the new ordinance. *It is very important that you carefully review Chapter 16 (Sections 1601 – 1603) and Chapter 17 of the current Zoning Ordinance prior to our June 30 meeting as much of our discussion will focus on matters pertaining to the provisions of these Articles.*
- 4) Identification of meeting schedule/dates.

The second orientation meeting will address the basic structure for zoning districts in the new Ordinance, and you will receive a memo for review as the meeting date approaches. A third (and fourth if necessary) orientation meeting will address miscellaneous regulatory issues such as home occupations, temporary dwellings, accessory buildings, and particular sources of concern and/or frustration with existing ordinance provisions not otherwise addressed in the previous meetings. I look forward to working with all of you on the new zoning ordinance. *Please do not hesitate to call throughout the duration of the project if you have any questions.*

ORDINANCE ORGANIZATION/FORMAT

It is important that a zoning ordinance be organized to encourage "user friendliness" and assist local officials and residents locate provisions in a reasonably efficient manner. I am proposing on the following page the organizational framework for the new zoning ordinance. The proposed organization of the new Ordinance is considerably different than the current Zoning Ordinance. Of course, I will defer to the preferences of the Township. It is important that the basic organization and page format be established at this first meeting so that work can progress efficiently. The page format will follow a traditional outline format as illustrated at the bottom of the following page.

Proposed Ordinance Articles /Organization

- Article 1: Title, Intent, and Purpose
- Article 2: Interpretation, Severability, Vested Rights, and Effective Date

(Administration / Procedures)

- Article 3: Procedures for General Administration, Enforcement, and Penalties
- Article 4: Procedures for Plot Plan and Site Plan Review
- Article 5: Procedures for Special Land Uses
- Article 6: Zoning Board of Appeals
- Article 7: Procedures for Amendments
- Article 8: *Reserved for Future Use*

(District Regulations & Land Use Standards)

- Article 9: Zoning Districts and Map
(includes Districts; purposes of each Districts; site development requirements such as minimum lot area, width and setbacks; and permitted uses; all in tabular form)
- Article 10: Open Space Communities District (if applicable)
- Article 11: Planned Unit Development District (if applicable)
- Article 12: Standards for Special Land Uses
- Article 13: *Reserved for Future Use*

(Miscellaneous Development Standards/Provisions)

- Article 14: Nonconforming Lots, Structures, and Uses
- Article 15: Signs
- Article 16: Off-Street Parking and Loading
- Article 17: Landscaping and Screening
- Article 18: Environmental Protection
- Article 19: *Reserved for Future Use*
- Article 20: General Provisions (home occupations, temporary dwellings, condos, outdoor storage, etc.)
- Article 21: Definitions

Some articles are purposefully "reserved for future use" to more easily accommodate any complex or lengthy amendments that the township may adopt at some point in the future that do not fit "neatly" elsewhere in the ordinance. Administrative provisions are included in the first portion of the ordinance to, in part, emphasize requirements for issuance of a zoning permit. Definitions are placed in the last Article for easy reference and to avoid the placement of the lengthiest Article in front. The determination of how "open space communities" (Article 10) and PUDs (Article 11) are to be presented will be discussed during our second Orientation Meeting.

Proposed Page Format

Article 20
General Provisions

Section 20.01 Condominium Subdivisions

A. **Applicability of District Regulations:** A condominium unit, including single family detached units, shall comply with all applicable site development standards of the district within which it is located, including setback, height, coverage and area requirements, and all other provisions of this ordinance except as may be varied through a planned unit ...

B. **Review and Approval Procedures:**

1. Zoning Permit Required: Construction shall not be initiated prior to the issuance of a zoning permit.
2. Site Plan Approval Required: The issuance of a zoning permit shall require the submittal of a preliminary and final site plan pursuant to Article 7 and master deed and bylaw documents. The site plan shall include:
 - a. all information required by Section 7.04.
 - b. information constituting a condominium subdivision plan, including the size, area, width, and boundaries of each condominium unit; building locations; the nature, location, and approximate size of common elements; and other information required by Section 66 of Michigan Public Act 59 of 1978, as amended...
3. Master Deed/Bylaws Approval Required: The applicant shall furnish the Planning Commission with fifteen (15) copies of the proposed master deed and bylaws and shall be reviewed for compliance with Township...

End of Sample Page Format

ADMINISTRATIVE MATTERS

The first portion of the new zoning ordinance to be submitted will address administrative/procedural matters, such as special land uses, plot plan/site plan review, ZBA proceedings, and amendments. Please give the following matters consideration prior to our June 30 meeting so that we can use our time in a productive manner. I will be raising other issues as well. *Please note that while much of the substance of the current Ordinance will be carried over into the new ordinance (except as otherwise directed by the Township), wide-sweeping text and format changes can be expected to ensure internal consistency, user friendliness, and improved wording.* Some changes will likely provide increased detail while others will consolidate and shorten existing areas of regulation.

1) General Administration

a) The current Ordinance's references to and use of the term "code enforcement officer" is largely linked to compliance with building codes and issuance of certificates of occupancy permits. These duties typically fall within the realm/jurisdiction of the Michigan Construction Code and the Code addresses such matters as structural integrity, plumbing, heating, electrical and related building construction matters. On the other hand, zoning ordinance regulations typically address such matters as land use, lot area and width, setbacks, signage, off-street parking, landscaping and screening, and related site development matters. The Ordinance appears to be nearly entirely silent on the position usually referred to as "Zoning Administrator" (except Section 1701(1)). The Zoning Administrator is to zoning as the Code Enforcer is typically to the Construction Code. While the staff person may be the same and wear two hats, the responsibilities are quite different (typically). For clarity and zoning administration purposes, I recommend the new Zoning Ordinance provide for the establishment of a "Zoning Administrator." Similarly, I recommend the Zoning Ordinance clarify, and establish the permit process, whereby a Zoning Permit is issued to signify an application conforms to the Zoning Ordinance's standards, and then a Building Permit is issued upon conformance to the standards and requirements of the Building Code. Looking at it from a different angle, if I am to develop a retail center in the Township, I do not want to spend money on detailed architectural, electrical, plumbing, and structural drawings until I have been assured that my proposed use, and associated site plan, meets the standards of the Zoning Ordinance and I have been granted zoning approval (Zoning Permit). Once I have obtained the Zoning Permit, I will then proceed to the next stage – acquiring building permits. Questions:

1. Is this the manner in which the current Ordinance is operating?
2. Do you support such an approach?

b) The current Ordinance treats ordinance violations as civil infractions. Is this the manner in which violations under the new Ordinance should be treated?

c) Are there any provisions of existing Section 1701 or 1702 that are of concern to local officials (due to past practices or experiences) that should be addressed in the new Ordinance.

2) Amendments

a) Section 1703 (Amendments) does not differentiate between the application requirements for text versus map amendments, nor does it provide widely-recognized and accepted standards for the review of amendment petitions. Such standards assist officials effectively evaluate petitions, make defensible decisions, and encourage consistency in the review of such petitions. Does the Township want this increased guidance incorporated into the initial draft of the new Ordinance?

b) Are there any provisions of existing Section 1703 that are of concern to local officials (due to past practices or experiences) that should be addressed in the new Ordinance?

3) Zoning Board of Appeals (ZBA)

a) Section 1704(1)(B) requires a member of the Township Board sit on the ZBA. The law does not require this. The Township Zoning Act states that a Township Board member may sit on the ZBA. Does the Township want to continue with this requirement?

b) Section 1704(1)(B)(2)(a) requires the ZBA to adopt a set of rules of procedure. The law does not require this. The Township Zoning Act states that the ZBA may adopt such rules. Has the ZBA adopted rules? If not, does the Township want to continue with this requirement? I recommend the ZBA have such rules.

- c) Section 1704(2)(E) delineates the public hearing requirements for matters that come before the ZBA. The procedures that are presented generally mirror those required by law for special land uses. Subsection (2)(E)(1)(E) leaves the door open as to whether a public hearing will or will not be required. The ZBA is not required by law to hold public hearings in the traditional sense of the phrase, but they are required to hold hearings open to the public. Does the Township want to continue to leave the door open and deal with each case individually, or require a hearing (or public hearing) across the board? What has been the past practice?
 - d) Common opinion has been that the Township Zoning Act does not authorize ZBAs to issue use variances, only dimensional or similar variances. This continues to be the dominant opinion but has been weakened somewhat due to several court cases. Use variances can provide a desired level of flexibility, but they can also undermine a planning and zoning program if inappropriately issued. Does the Township want to authorize the ZBA to issue "use variances" at this time, and include appropriate standards in the Ordinance to address such requests?
 - e) Are there any provisions of existing Section 1704 that are of concern to local officials (due to past practices or experiences) that should be addressed in the new Ordinance?
- 4) Plot Plan and Site Plan Review
- a) Who is to be the approving body for site plans (commercial, industrial, and other similar uses)? This responsibility is currently placed with the Planning Commission, and is typically granted to a Planning Commission or Township Board. Planning Commissions are probably the more common site plan approving body although many communities place this responsibility with the Township Board. There are advantages to each. Some of the reasons Planning Commissions are designated as the approving body include: 1) the Commission is frequently more familiar with the Ordinance and day-to-day planning/zoning matters; 2) the Township Board is confident in the Planning Commission's abilities; 3) the Township Board is busy with many other matters and does not have the time, or is not interested, in site plan review activities; 4) the review process is considerably shorter if only the Planning Commission is involved; and 5) the Township Board prefers to have the Planning Commission take the "heat" on controversial decisions.
 - b) Comparably simple uses such as single-family dwellings typically go through a less rigorous review and approval process than commercial, industrial and many other uses. The submittal of a plot plan, or similar plan, serves as the principal mechanism by which such projects are frequently reviewed and acted upon by the Zoning Administrator. A plot plan is a simplified version of a site plan. The current Ordinance appears to be silent on this matter, or at least not very clear. I recommend the new Ordinance further clarify this approach through the establishment of specific provisions addressing plot plan and site plan review. Plot plan review would be performed by the Zoning Administrator and primarily apply to single and two-family dwellings and their accessory buildings, while all other uses (commercial, industrial, etc.) would fall under site plan review by the designated site plan review body (see (a) above). Since the vast majority of development in Birch Run Township is and will be residential development, I believe a clearer set of provisions addressing this matter is particularly beneficial. Is there support for this greater clarification and, if so, what minimum submittal information should be presented on a plot plan for a single family dwelling?
 - c) Section 1705(2)(A) requires the a site plan be submitted at least 7 days prior to the Planning Commission meeting when it will be reviewed. It is common practice by most of the communities that I work with that a site plan must be submitted approximately one month in advance of such a meeting to afford Planning Commissioners and consultants (if applicable) reasonable time to thoroughly review the project and be prepared to ask appropriate questions and take appropriate action. I strongly recommend such a time frame
 - d) Section 1705(2)(B) requires the submittal of only four copies of a site plan. Why would each Planning Commissioner not be expected to receive a copy if he/she is expected to become familiar with the project and pass judgment on the project?
 - e) The Zoning Administrator is granted extraordinary power to interpret what constitutes "minor deviations" under Section 1705(5), Deviations from Approved Site Plan (first paragraph). I recommend standards be included in the Ordinance to provide greater clarification as to when a site plan change constitutes a minor or major deviation. Is the Township comfortable with such an approach?

- f) It is very beneficial to either require the submittal of a preliminary site plan prior to the submittal of a more detailed and costly final site plan, or provide the applicant with the option to do so. The Township's current Zoning Ordinance does not expressly authorize this, and I recommend the new Ordinance incorporate such provisions. Does the Township support such an approach? If so, should the submittal of a preliminary plan be required or be voluntary?
- g) Are there any provisions of Section 1705 that are of concern to local officials (due to past practices or experiences) that should be addressed in the new Ordinance.

5) Special Land Uses

- a) Who is to be the final approving body for special land uses in the new Ordinance? The current Ordinance places such authority in the Planning Commission. My comments above in (2)(a) equally apply to this issue.
- b) The Township Zoning Act provides that appeals of special land use decisions can not go the ZBA (must go to circuit court) unless the Ordinance specially authorizes ZBA appeals on special land uses. My experience reveals that those comparatively few townships that permit special land use decisions to be appealed to the ZBA typically do so because of their interest in minimizing costs to the applicant and/or their belief that such appeals should be first handled locally by the community's "own people." Townships typically prohibit special land use appeals to the ZBA for one or more of the following reasons:
 - 1) In light of the rigorous review that special land use applications frequently go through, many communities believe that frivolous appeals should be minimized by requiring circuit court review.
 - 2) In light of the potentially controversial nature of a special land use application, it is believed that an appeal should go to the circuit court where politics is less apt to be a part of the appeal proceedings.
 - 3) Many ZBAs do not meet regularly and are not nearly as versed in the local zoning ordinance, site plan, and local planning and zoning issues, as is the approving body for the special land use and, thus, letting a special land use decision be appealed to the ZBA is discomfoting.
 - 4) Even though the "record" of the approving body's deliberations and decision can be forwarded to the ZBA, the ZBA is generally not present throughout the principal deliberations and can not gain the full insight obtained by the approving body regarding the many aspects of a particular project.
 - 5) The Township Zoning Act implies such an approach, reading in part: *"With regard to special land use and planned unit development decisions, an appeal may be taken to the board of appeals only if provided for in the zoning ordinance."*

Should the new Ordinance permit special land use appeals to the ZBA?

- c) Are there any provisions of existing Chapter 16 (Special Uses) that are of concern to local officials (due to past practices or experiences) that should be addressed in the new Ordinance.

6) Other

- a) Are there any administrative/procedural issues of concern with the current Ordinance (due to past practices or experiences) that should be addressed in the new Ordinance.

End