

# **Birch Run Township Planning Commission Minutes**

Special Joint Meeting of the Bodies called by the Planning Commission, 30 June 2003

## **Planning Commission Members Present**

Dennis Bronner (absent)	Jeff Putnam
Bob Scharrer (absent)	James Totten
Alan Hunter	Wyn Wilson
Diane Timmons	

Members of the Birch Run Township Zoning Board of Appeals and Board of Directors were also present.

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The meeting was called to order at 7:00 pm by Chairman Al Hunter.

A quorum was present.

**Purpose of the Meeting:** To hold a workshop, conducted by Land Plan, Inc. to guide the Township in constructing a new Zoning Ordinance.

There were no members in the audience.

No minutes were approved from previous meetings.

Chairman Al Hunter turned the floor over the Mark Eidelson of Land Plan, Inc. at 7:06 pm.

There were two handouts which are attached to these minutes and will be referenced in these notes as Document 1 and Document 2.

1. One page Overview of the Total Project, Principal Tasks (meeting handout)
2. Five-Page discussion document (mailed to participants before meeting)

## **Document 1 Discussion**

The consultant, Mark Eidelson, went over the Principal Tasks #1 through #6 in Document 1, He estimates the total project will be finished in about a year. He stressed that we, the joint bodies, need to adopt a mind set with a great level of detail for:

1. Enforcement of the ordinances
2. Variable interpretation of the ordinances
3. Attention to detail within the ordinances

Mark stated that the Planning Commission has to be the driving organization in this effort. He said every decision for the creation of this document is a draft until the Planning Commission approves it and adoption by the Board. If the Board disagrees, it goes back to the Planning Commission. He recommended that the joint bodies should go through the drafts section by section pending discussion with Mark. Mark expects to supply us with a draft about six weeks after each orientation meeting. The project will be submitted in three separate sequential submittals by Mark to Birch Run Twp Joint Bodies.

## Document 2 Discussion

The following decisions were made regarding general preferences for the structure of the new Ordinance document by a show of hands. The document referenced here is Document 2.

- Approved outline plan as shown in the top 2/3 of Page 2
- Approved tabular form of showing detailed information in the Ordinances
- Approved proposed page format in outline form as shown in bottom 1/3 of page 2.
- Approved the use of a serif font no smaller than font size 10.

**Document 2, Page 3.** Administrative Matters were discussed with the following feedback for Mark.

Document 2 Section	Feedback to Mark
1a. General Administration	A "Building Official" will sign off on a Certificate of Occupancy.
1b. Ordinance Violation	Will be treated as a civil infraction
1c. Section 1701-02 in existing ordinance	No concerns expressed
2a. Amendments, 1703	Yes to increased guidance in new Ordinance.
2b. 1703	No concerns
3a. Zoning Board of Appeals (ZBA)	Change to "may" rather than required
3b. ZBA	The ZBA "shall" adopt bylaws for itself

## Document 2, Page 4

3c. ZBA Public hearing notification	Keep present practices
3d. ZBA Issue Use Variance Permits	No
3e. Section 1704 as it exists now	Yes, copy was made, given to Mark
4a. Who is approving body for site plans?	Planning Commission. PC asks "should we build thinking time into the approval process?" Mark recommends putting it into the bylaws.
4b. Plot plan vs. Site Plan to review	Yes, for the first review.
4c. 1705(2)(A) Site Plan Review	To be submitted 30 days prior (not 7 days)
4d. 1705(2)(B) Number of copies submitted	Mark to suggest an appropriate number
4e. 1705(5) Deviations from Site Plan	Define minor or major deviations the Zoning Admin. is limited by.

## Document 2, Page 5

4f. Optional prelim. Site plan?	Majority voted to make a preliminary site plan a requirement especially for industry or a business.
4g. Section 1705	Request that Mark improve this section.
5a. Final approving body; special land uses	Planning Commission should be the final approving body for a special land use/special use permit
5b. Should appeals go to ZBA or circuit court?	The appeals should go to the circuit court

5c. Chapter 16 provisions concerns	None raised
6a. Admin/procedural issues overall?	None raised

The next regular meeting of the joint bodies is scheduled for July 21, 2003, 7:00 pm.  
 Another meeting was scheduled for August 20, 2003, 7:00 pm.

Motion to Adjourn at 11:00pm by Jerry Cook supported by Wyn Wilson.

Submitted: Diane Timmons, Secretary

Approved: \_\_\_\_\_

## 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