

Minutes accepted as changed 1/9/06 See page 1 only, revised text in bold.

Bridgewater Township

Planning Commission - Minutes of Regular Meeting December 12, 2005

- 1. Call to Order** Chair Fish called the meeting to order at 7:31 PM
- 2. Roll Call** Present: Mike Bisco, Glenn Burkhardt, Glen Finkbeiner, Dave Faust, Jim Fish, Mark Iwanicki, Jim Tice and Dave Woods
Absent: Amy Riley
Also present: Wanda Fish, Adm. Asst., Gretchen Barr, Carol Peacock, Doug Frey, Gary Niethammer, Derek Niethammer and Krysten Palko.
- 3. Agenda** Chair had additions:
Gretchen Barr will present initial survey results; Carol Peacock has prepared a printed report on the Ad Hoc committee meeting; Chair passed out material relating to the ZBA application/decision for Bridgewater Commons on September 11, 2003. Comments on T-Mobile from Birchler Arroyo and OHM were distributed; and item 11.5, an application from Washtenaw County Parks and Recreation for rezoning was added and material was distributed. Also added information relating to the meeting of the Clinton Township and Manchester District Library Boards was added. No further additions were made.
- 4. Minutes** The minutes of November 14, 2005, were approved as prepared.
- 5. Public Comments** - None.
- 6. Master Plan**

A. Survey Results

Chair stated that Gretchen Barr and the Administrative Assistant had been inputting data from the surveys that have been returned to the Township. The analysis is preliminary only. Barr: 565 surveys have been returned to the Township and the analysis is based on data inputs from about 300. Distributed 12 page "Preliminary Survey Results," dated December 2005. Preliminary analysis concentrated on areas dealing with changes in attitudes, to help the Planning Commission gain an understanding of whether or not attitudes towards growth and development had changed since the surveys of 1990 and 2000. The document is attached to the record file.

Summary of results:

1. Attitudes towards the speed of residential growth show no significant change since the 1990 survey.
2. Lot size preference results are still inconclusive, but indicate a shift towards lots of two and five acres. **Change to read: but MAY indicate**
3. Attitudes towards requiring preservation of open space or farmland clearly demonstrate a preference for preservation, particularly if you sort by registered voters or non-residents. **Change to read: registered voters VS non-residents.**
Non-resident property owners indicate they have less interest in preservation of open space or farmland, but it is still high at 54% for single family development.

4. The chart on page 4 shows that most residents live on lot sizes of between two to five acres and prefer parcels in that range of size. People who live on parcels of 20 or more acres, however, prefer smaller lot sizes.
5. Sampling of remarks about "other" lot sizes.
6. Preferences regarding location of new residential lots appears to change slightly towards the Hamlet, 2000 - 2005. May reflect that people are aware of the availability of sewer.
7. Remarks about "other" locations. Burkardt: Shows continuation of the trend to believe that additional residential development should be near other already developed areas.
8. Attitudes towards commercial growth indicates minor changes from 1990 through 2005, fewer extreme views.
9. Attitudes towards industrial growth, shows a shift towards support for more industrial growth.
10. Preferences towards the location of commercial and industrial indicate a shift from 2000 to 2005 to supporting existing available areas. Supported by the text of the remarks shown on page 11. Indications of concerns about vacant industrial buildings in Manchester.
11. Preference for how single family development occurs. Clearly shows the least preferred is single family homes on small lots in a typical suburb style. Most preferred are homes on lots of five or more acres or on one acre lots in developments that preserve open space. Overall, many of the trends appear to be similar to what has been indicated in the past surveys in 1990 and 2000.

Chair: Suggests that as we continue to input and analyze the data, need to concentrate on what other questions we need to ask of the data. This allows us to keep looking at other facets of the same questions. Barr: Allows us to look at anomalies and try to figure out what is happening. Looking at page 3, for example, maybe it reflects that people who simply own property here are more interested in how they can sell it most effectively, while residents are looking more at what they value in where they live.

Bisco: Comments that the data and analysis is impressive.

B. Agricultural Land Preservation Ad-hoc Committee

Written report provided with the record file. Carol Peacock led the discussion.

Criteria for selection of land that will be designated as eligible for preservation.

Land owners will only participate if they want to. Discussions of what land should be included yielded:

Active or inactive land

Prime agricultural land in the Township

Land should be contiguous, create a block rather than islands

Land should be outside of any water or sewer district

Looked at the current master plan map and determined which parcels are being actively farmed. Some areas in the master plan that are currently farmed are designated for low density residential, not agriculture. The committee is considering requesting that some of those areas be changed in the master plan to agriculture, because designation for low density residential would disqualify them for the program. May want to consider a basic overlay map designating prime agricultural land.

Also looked at the Southwest Washtenaw County Council of Governments master plan. Under that plan, there is a category called light density agriculture/residential which covers some of the same areas. May want to look at that kind of designation. Chair: Explained the reasoning behind the SWWCOG designation. Question about how the program might rank various properties in terms of how likely they would be developed, how productive they were, etc. Peacock said the Township/County would rank purchase priorities but wasn't yet sure of the criteria. Chair said he thought there would be some "critical mass" priorities because the intention was to preserve larger areas rather than islands of preservation. Maybe the Planning Commission should look again at some of the "yellow" areas on the master plan map.

Question to Peacock if tiering would be appropriate. She thought it would be difficult because they wanted to facilitate land owners' applications. Looking more for an overlay, we can include agricultural designations as well as natural features area.

Glenn Burkardt: Indicates the need to get a good handle on determining what is prime agricultural land. Maybe the Township should think more creatively, requiring that developers who want more dense development should agree to acquire and preserve farmland as part of the agreement. Need to be sure we try to establish ways to level the playing field. We're hearing from our citizens that they want to concentrate future development near existing development while preserving farm land and open space. Need to look carefully at this in the master plan. Chair: You are describing a transfer of development rights program. Burkardt: Need to plug in additional factors, such as transportation corridors, long term maintenance expense and who will pay for maintenance. Discussion of prime soils map. Burkardt suggested that perhaps we should look at crop yield data. Discussion of where the data might be. Tice: Companies that insure crops might have some data. Glen Finkbeiner: Farm lands on Braun Road, which are not designated by the USDA as prime farm land have had very high yields. Discussion about how to get crop data.

Burkhart: Maybe we could get a rough idea by talking to a few active farmers in the Township. Tice: Mentioned that need to have some caution because farming practices varied from farmer to farmer. Chair: May want to examine yield in terms of investment in the crops. Bisco: Asks how yield data would impact inclusion of inactive farm or horse farm or timber? Is yield the most appropriate? Chair: Good to have as part of the documentation, but may want to be among the items.

Carol Peacock said that Ron Ellison was selected to Chair the group and would run the January 12 meeting.

7. Bridgewater Farms

A. Private Road

Chair: At the last meeting, we said we needed to have the letter from the Road Commission stating approval. Derek Niethammer provided that, two days after the meeting. Date on the plans that the letter dealt with is different than the plans that we have. The other question had to do with an issue of right of way documentation. Believe the requirements have been met.

Motion: Bisco, second by Iwanicki: Recommend to the Township Board their approval of the private road for Bridgewater Farms (Woodlands Trail), as depicted on the November 7, 2005 site plan. Passed unanimously.

Chair requested the applicant to provide copies for the Township Board's review.

Dave Woods: Asked if the requirements by the Drain Commission have been met. Derek Niethammer stated that the Drain Commission was fully involved and that he expected to move forward with them. Chair said that hopefully they would be able to return for final approval soon. Glenn Burkhardt reminded them that well test results, as required by the County, needed to be provided for final site plan review.

8. Bridgewater Commons

A. Pond Changes

Chair: Stated an issue had been raised regarding the size of the pond. Distributed a copy of the site plan that was reviewed at the Zoning Board of Appeals meeting of September 11, 2003, as accepted by the ZBA, which granted a variance to the setback requirements for the pond, with the condition there be no additional modification will be made to the pond. Glen Finkbeiner noted that Doug Parr had urged the condition. The minutes of the Zoning Board of Appeals of September 11, 2003 are attached to the record. Glenn Burkhardt: Then no further modification can be made unless it is within the applicable setback requirement. Discussion of how the pond could be moved/altered to bring it within full compliance with the setback requirements.

Gary Niethammer: Stated that the pond has not changed since the variance was granted. Chair: The point is that the pond as approved by the Zoning Board and depicted in the drawing on file for the Zoning Board of Appeals meeting appears to be different from that being presented now for Bridgewater Commons. Glen Finkbeiner: Stated that at the ZBA meeting on September 11, 2003, the members had two different plans and that the applicant, Ron Finkbeiner, designated the one that has been distributed as reflecting the correct size and placement of the pond. Dave Woods: Stated that County soil erosion had been involved in 2002 when Ron Finkbeiner was digging the pond and had alerted the Township that it was taking place without a building permit. Woods also said the pond as shown in the current drawings does not appear adequate to deal with the runoff the project will generate. Asks if the Drain Commission has looked at and approved the runoff calculations. Gary Niethammer: Stated that the pond size does meet the Drain Commission's requirements and has "substantially more storage" than what is needed. Chair: In the last communication from the Drain Commission B a copy of which was provided to the Planning Commission B there was a statement that a lot more calculation was required. Gary Niethammer: "That's not true. The biggest change he had was that the name of the project had changed." Niethammer stated that John Everett from the Drain Commission had told him that everything was in order and that they only had to finalize the project with the Township. Woods: Are you stating that Everett approved the pond for storage prior to the calculations for the condos? Niethammer: Yes, at a factor of less than 35% impervious. Woods: Stated he had not seen a copy of such approval or calculations. Chair: There was one letter that gave approval for the road, but with nothing on the site. The July 28, 2005 letter from John Everett states the project does not meet standards for construction plan approval, and that letter of June 30, 2004, covered only a private road with no improvements. Copies of the July 28, 2005, letter were made and distributed to members of the Planning Commission and to Gary Niethammer.

Chair summarized there is inconsistency from one plan drawing to another regarding the pond and there must be reconciliation. Gary Niethammer: Will get a survey. Woods: States concern that the pond is encroaching onto neighboring property with a 25' freeboard. Points out that if the current drawing is correct, then the pond is different and must meet setbacks required in the Zoning Ordinance. Chair: Believe that we already discussed the need for documentation of easement for the freeboard. Gary Niethammer: They use the pond. Chair: We cannot approve a site plan that encroaches on other people's property without a documented easement.

Glenn Burkhardt: Need to know where the normal and high water levels are, how they relate to the setback requirements or what was granted as a variance by the ZBA. What is the normal operating level and what is the 100 year flood level? We need to know if the pond has been enlarged or will be enlarged over what was approved by the ZBA as a variance. Looking at the northern end of the pond, it does not seem to comply with setback requirements.

Gary Niethammer: Asked what the Zoning Board of Appeals approved. Chair: They approved what was on a plan they were told represented the pond as it had been dug.

Gary Niethammer: Didn't you visit the site? Chair: The ZBA looked at the plan sheet that Ron Finkbeiner told us was correct. Glen Finkbeiner: I visited the pond with Ron Finkbeiner but the pond we visited and for which the ZBA granted a variance is not the same as the pond reflected on the recent plan sheets. The variance we approved was for zero setback, the maximum we could give.

Glenn Burkhardt: The pond level in the plan sheet the ZBA approved is indicated at 897, the recent plan sheets show 896, so it seems that if there had been no physical changes

Chair: The ZBA was given a drawing that was represented as being correct by the owner. The drawing of the pond being proposed now appears to reflect a considerably different pond. We need to reconcile what we are dealing with. Gary Niethammer: The pond was completed in 2002, no pond is being proposed. Dave Faust: Then why is it drawn like that? When was the pond completed? What was approved? Gary Niethammer: The pond was dug in 2002. Mike Bisco: Which drawing is correct then? Gary Niethammer: Neither is correct. Bisco: Then we need a drawing that is. Gary Niethammer: Ron's position is that the plan should not be critical to this group or the ZBA. Dave Faust: Why did you draw the pond this way when it wasn't accurate. Gary Niethammer: This was prepared before he dug. Before he started digging in 2002, there was a small body of water. Dave Woods: At the ZBA meeting he said there was a slight depression that he was enlarging. Chair: Summarized that the pond issue has to be solved.

Glenn Burkhardt: What will that be? Chair: Not sure, but need to have an accurate drawing. Dave Woods: Must be sure the calculations for runoff are accurate and will work. Glenn Burkhardt: There seemed to be concern the pond is larger than what was approved by the ZBA. Chair: If the pond has to be enlarged to meet drainage requirements for the project, then perhaps it should go back to the Zoning Board of Appeals for redetermination. The question should be run by the planner as well. Glenn Burkhardt: Part of the problem is that we're not sure now what the ZBA in fact was looking at when they approved the variance. Chair: What the ZBA was trying to

deal with was a pond that had been dug without a permit and did not meet the setback requirements. When they asked what drawing was accurate, this is the drawing they were told represented the pond. They accepted what was said at face value, on the plan they were told was accurate. If the position of the applicant is that the plan is meaningless, then we need to think about what good the Zoning Ordinance is if there is no enforcement. Glenn Burkhardt: That was the question I was raising. If I were the applicant, then I would apply to the ZBA, because otherwise we won't be able to act on it. Glen Finkbeiner: If they need easements for that process, then they should be obtained. Gary Niethammer: Adjacent property owners want the pond. Chair: We are looking for a way to get this resolved in some way, to move forward. Jim Tice: So, we will get a plan that is an accurate drawing of the pond? Gary Niethammer: Yes. Burkhardt: In relation to the adjacent properties? Gary Niethammer: Yes. Woods: How will you submit that? Will you have a survey done? Gary Niethammer: Yes. Woods: Be sure the survey has a seal on it. Gary Niethammer: We will do that and will also stake it so you can come out and view it.

B. Private Road

Chair: We have not received a reconciliation of the Township's attorney's comments that were made August 6, 2005, and represented to the applicant in November. Gary Niethammer: Have never seen those. Chair: I don't know if you have them or not. The comments were presented at the August meeting, a copy was provided to the applicant then, and I gave them to the applicant again in November. Glen Finkbeiner: The applicant was given a large file at the November meeting. Gary Niethammer: I thought the attorneys were handling. Chair: I asked the Township attorney if he had heard anything further and was told he had not. This is simply an outstanding issue.

Parking

Chair: At the November meeting, the applicant was asked to have his consultant work out a parking solution with the Township's planner and engineer. The plan sheets show a 24' roadway with 2' run up curbs, 28' back to back. My conversations with the planner and the engineer for the Township indicate that is acceptable with parking on one side. It is effectively an 8' parking lane and two 10' travel lanes. The last drawings we have indicate 24' "e to e" which I am told is edge of iron to edge of iron. The other side of the street would be designated with no parking signs. Would be less expensive construction and might also slow traffic, which the applicant has stated is a concern. Also provides continuity of sidewalks, easier to maintain. Asked Gary Niethammer if this is acceptable to the applicant? Gary Niethammer: Asks where it would be posted? Chair: There should be some limitations where there might be visibility issues, such as on the curve. This will also avoid the problems inherent in perpendicular parking, with cars backing into the travel lane. Glenn Burkhardt: Asks about keeping parking a distance from Austin Road and Boettner Road intersections. Gary Niethammer: Agrees. Chair: Would be posted. Iwanicki: Will assure safe visibility. Chair: You could also consider some "bumped" areas that would encourage parking in specific areas. Glen Finkbeiner: Best thing is to plan well and control it with some signage. Gary Niethammer: Will submit new pond drawings and new road drawings. Dave Woods: Will also need a road cross section. Chair: Believe we have the grounds to move this forward.

Gary Niethammer: Applicant has a building permit for construction of units 3 and 4.
Chair: The Zoning Administrator has advised us that if that is built prior to the project being approved, then that building occupies the site. By his own initiative, this would terminate the application for the remainder of the project. Gary Niethammer: States it would just be a beginning, not true. Chair: According to the Township Attorney, the Planner and Engineer that is the case. Once that step is taken, unless there is approval of the entire project, the unit occupies the entire site. Gary Niethammer: States that is untrue but that he doubts the applicant will do that. Chair: That's why we'd like to move forward with approval, need to have all the loose ends tied down. We have to rely on the consultants we have. We're trying to move this forward as best we can. Chair and Glen Finkbeiner: Reminded Gary Niethammer that they need to have the road cross section. None has been submitted. Need to have that.

9. Special Land Use 05-001 - Krause, ID #Q-17-34-300-003

Chair: No change in status. No additional materials submitted and no confirmation that supplemental fees have been submitted.

10. T-Mobile Co-Location Site Plan

Chair: Reports from Birchler Arroyo and OHM have been received. New material responding to the requests made at the November meeting was provided.

Glenn Burkhardt: Asked if there was any movement on the rent issue that was raised at the last meeting. Chair said he had sent a memo to the planner and the attorney and that both had advised the Township could not appropriately be involved unless T Mobile or another carrier used that reason to seek a new cell tower site.

Chair: Consultants have suggested minor changes to the site plan: a)removal security agreement 2) a statement there would be no outdoor storage on site and 3) a minor problem with the legal description. At a point where we can leave that determination to the Zoning Administrator so he can issue a certificate of compliance.

Motion: Glenn Burkhardt, second by Dave Faust: Approve the application for co-location, with the Zoning Administrator to issue a Certificate of Zoning Compliance when the requested changes have been made. The motion was approved unanimously.

11. Zoning Administrator Report

The report is attached to the record.

Chair: The issue regarding the gazebo is that it was built very close to the property line without a certificate of zoning compliance or a building permit and the adjacent property owner has complained. Notes it is not a temporary structure and has a concrete foundation. Burkhardt: Asks if the Township has talked with the attorney about what our rights are or are not when there is a flagrant violation such as this? Chair: Since the structure has been built, we could probably ultimately require it torn down. Burkhardt: Asks about the nature of the decision, noting the Zoning Administrator makes reports to the Planning Commission. Chair: Also prepares reports to the Board, but ultimately, he or she is an independent administrator hired by the Board to enforce the Zoning Ordinance. The only hindrance to the Zoning Administrator's enforcement is whether the Board will support legal action necessary to achieve compliance. Burkhardt: So this body will not need to take action to initiate legal remedies in a case like this? Chair: No. The Zoning Administrator can independently "red tag" a project, a stop work order. Burkhardt: I find it appalling that someone can build something without going through the process that everyone is supposed to go through without any consequences. Chair: A lot of people believe they should be able to move to a rural area and do whatever they

want. This is reflected in the comments on the returned surveys. There's a "rural myth" that permits aren't needed. The Township needs to do some education of our residents, especially the new ones. Dave Faust: Part of the problem is also in the cost structure. People don't get permits to build a pond, they go ahead and skip the \$200 in fees, and then pay the \$200 only if they get caught. The guy who built the gazebo – if he had applied, he wouldn't have gotten a permit to build it where he wanted it. He builds it and then applies for a variance. He pays a little money, but he has the gazebo where he wants it and his neighbor, who made a legitimate complaint, is stuck by the Township. Is that right? The guy who follows the rules can't do what he wants, but the guy who ignores the rules gets his way. Glenn Burkhardt: That sends the question right back to the Township Board. Is the Board ready to commitment funds for legal actions to bring these issues to an effective close for enforcement? Woods: Look at what is happening in Ypsilanti. There's a developer who refuses to follow codes, he's constantly in court but just does whatever he wants. Chair: Violations of the zoning ordinance are misdemeanors. The only way you can kick it up is for a judge to make a decision and then have it brought back for contempt, which is a felony. Woods: The Building Department should step in with the gazebo. They don't know if it was properly constructed. It may fall down and kill someone. Faust: We're having the same problem with the junk ordinance. We can't seem to arrive at any conclusions as to how we can enforce. Iwanicki: Talked a lot to John Ball about it. There are a lot of legal issues about how the Township may be liable. The Board hasn't been willing to step forward to deal with what happens if someone shoots him. Chair: Sometimes you just have to try, at least write a letter. Iwanicki: It's the 30% that are the problem. Most people will work with you. Observation that the Township is just as liable for a failure to enforce as it is when it tries to enforce. People should have a reasonable expectation their Township will enforce its ordinances equally, providing protection for their property investment. If there's no enforcement, people can sue for that failure. It's why we're called "A Zoned Community." Faust: As citizens, we spend a lot of time and money trying to come up with good zoning ordinances and good planning. If we don't enforce why should we bother? Burkhardt: Maybe we should ask the Township Board if they wish us to continue to approve, improve and refine ordinances, we will do that provided there is enforcement action taken under ordinances that are in place. Otherwise, you're right, it's a waste of time. Jim Tice: There is also an educational problem. We need to make residents more aware of the need for adherence to the ordinances that we have in place. Chair: Yes. Gretchen Barr: Maybe if you moved to enforce in some higher profile cases, people will understand that you are serious. Dave Woods: Asks how long it should take. People have stalled for years on enforcement. Discussion there should be a resolution to the Board. Burkhardt: Will draft it for the January meeting.

B. Pond Report

The Zoning Administrator requested guidance regarding the construction of a large pond on a 57 acre parcel, Q-17-22-400-010. A complaint was filed by a nearby resident. The pond is located too close to property lines. Burkhardt: Dirt was removed from the pond and used to fill a wetland. Was that a regulated wetland? Chair: Understand from the report that DEQ was not contacted. Burkhardt: Must contact the DEQ. Discussion of the several areas of enforcement. Dave Faust: Asked if the Zoning Administrator had the authority to go onto the land involved? Chair: I understand that he asked permission. Discussion of the performance \$1 bond amount set by the Board for pond completion.

Consensus decision the Zoning Administrator should contact the DEQ, County Soil Erosion and should request the Board to seek legal action.

11.5 Application for Rezoning – Agricultural to Conservation Preservation

Applicant: Washtenaw County Parks and Recreation Commission

Former Ervin Farmland Preserve

Property ID #Q-17-17-200-007 - 71.89 acres

Property ID #Q-17-17-200-008 and Q-17-17-100-014 (partials) 2.81 acres for 66' easement.

Chair: The application appears complete and the fee has been paid.

Motion: Woods, second by Finkbeiner: Move to proceed with a public hearing in January if possible to do the notifications in time or in February. Motion passed unanimously.

12. Member Reports

Discussion of El Elsie

13. Other Business

Discussion of library funding

14. Public Comments - None

Motion to adjourn: Glen Finkbeiner, second by Faust: The meeting was adjourned at 10:10 PM.