

**ADA TOWNSHIP PLANNING COMMISSION
MINUTES OF THE JANUARY 16, 2014 MEETING**

A meeting of the Ada Township Planning Commission was held on Thursday, January 16, 2014 at 7:00 p.m. at the Ada Township Offices, 7330 Thornapple River Dr., Ada, MI.

I. CALL TO ORDER

Meeting was called to order by Chairperson Korth at 7:00 p.m.

II. ROLL CALL

Present: Chairperson Korth, Commissioners Lunn, Leisman, Lowry and Easter.

Absent: Commissioners Jacobs and Butterfield.

Staff Present: Planning Director Ferro

III. APPROVAL OF AGENDA

Motion by Easter, supported by Lowry, to approve the Agenda as presented. Motion passed unanimously.

IV. APPROVAL OF MINUTES OF DECEMBER 19, 2013 MEETING

Motion by Easter, supported by Lunn, to approve the Minutes of December 19, 2013. Motion passed unanimously.

V. PUBLIC HEARING:

Request for Special Use Permit for a private use heliport and related accessory building, in the Rural Preservation-1 (RP-1) zoning district, 3050 Pettis Ave NE, Parcel No. 41-15-300-028, Christian E. Meyer, for Michael and Donna Bieker

Christian Meyer, representing the applicant, stated he was here with Mr. Bieker, the property owner, Steve Bartz, property manager, Tom Weatherbee, the project architect and Kevin Nelson, the owner's helicopter consultant. Meyer stated this is a 95 acre site on Pettis Ave. He described the location of the proposed heliport in relation to the distance and setback standards contained in the zoning ordinance. He stated the heliport would be designed and operated in compliance with all the regulations regarding fire suppression, hours of use, operation of helicopter while on the ground, contained in the zoning ordinance.

Meyer stated the applicant proposes to use the EC-120 Eurocopter at the site, which is one size smaller than the one Mr. DeVos operates out of the Fox Hollow private heliport on Ada Drive. He noted that this helicopter model has low noise emission levels that qualify it under FAA rules for operation in the vicinity of Grand Canyon National Park. He stated Mr. Ferro's suggested restrictions are entirely agreeable with them. In terms of frequency of flight operations, Meyer stated the proposal by Mr. Ferro, which is the same proposal as was adopted by the planning commission for Mr. DeVos, is entirely acceptable to them.

Meyer stated the proposed building size and height are less than the heliport building at the Fox Hollow site, and is in line with the size of other buildings in the area. Meyer added that Mr. Ferro's recommendations as to the lighting on the site are agreeable with them, which require that landing area approach and perimeter lighting be remotely activated, and only used when an aircraft approaches; access drive boundary lighting if installed shall only be activated only at the times the site is in use. In addition, as to the storage of the trailer that holds fuel, the building is designed to accommodate potential use and storage at the site of a mobile fuel transport and dispensing trailer, which would have a double-wall fuel tank which would comply with all applicable government regulations for airfield use and transport over public roads.

Jim Ferro stated that private use heliports are permitted in all of our zoning districts subject to special use permit approval by the planning commission. The ordinance sets forth standards that must be met in order for the use to be approved. The ordinance provisions themselves place limits on hours of operation, and state that a private heliport facility shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Also, as a condition of approval, the planning commission may impose limits on the size and type of rotorcraft permitted to use a facility and the frequency of operations, the location design, type, size and use of any exterior lighting, buildings, fuel storage or other equipment or facilities associated with a heliport. A special use permit application is subject to a public hearing, and this was advertised for public hearing, and the hearing notice was sent to 22 different property owners surrounding the 95 acre property. Ferro stated he did receive two pieces of written correspondence regarding the application.

Korth opened the public hearing.

Joan Roberts, 3350 Pettis, stated during what seemed to be helicopter lessons within this last year, there were a lot of touch-and-go landings flying over her property. She stated a helicopter is very loud and windy as it comes in; she had a lot of windows rattling. She stated she is a little concerned about what the usage is going to be, how often it's going to be, why we have to have a heliport out here instead of one out at the airport where it would be maintained, and since this does come directly over her property she is a little concerned about it.

Dorothy Hamilton, 3145 Pettis Ave NE, stated she lives directly across Pettis Ave. from the Bieker property. She stated the helicopter has been active for over eight months or more, producing quite a bit of noise, in addition to other noise created on the property. She stated that having that much property and mowing the entire property creates noise pollution all week long, and it's kind of sad because we want to preserve Ada and the rural area that we do have, and all the wildlife. Hamilton stated something should have been sent out before the helicopter has been landing all this time. She stated when you have a lot of money you can do just about anything, and it's the smaller people, the smaller families in the surrounding area that don't seem to have enough voice.

Bob Roberts, 3350 Pettis, asked if there is going to be fuel storage, and if so, what provisions have been made to make sure if there's a spill it will be taken care of properly. He stated he does not want to have his well polluted. He asked if this would be used strictly for business use or for training purposes, which means a lot more over-flights, a lot of hovering close to the ground, which will increase noise quite a bit. Also, what provisions are made to make sure that the heliport meets the FAA and Township building requirements after this is approved?

Robert Kintz, 6025 Three Mile, stated he has 47 acres, and actually supports the application. He stated he is concerned that last summer there were a lot of fly-overs, much closer to the ground than any of the other helicopters or airplanes that are circling over our property numerous times, and he thinks this should have been discussed prior to doing that. He stated he would like to know if there are specific approaches that are going to be used consistently. There are specific take off and landing requirements during the year, but does that mean those are touch-downs, can they fly around for an hour circling properties. He stated he is in full support of the application but thinks it has to take into account the courtesy to the neighbors and what he is going to be doing with that aircraft, particularly when you're directly next to it.

Ferro read the two pieces of written correspondence he had received:

(1) William Shurlow, 3333 Egypt Valley Avenue, stated as a property owner whose property abuts the subject property, I have no objections to this special use request. I have observed Mr. Bieker flying over my property at numerous times, and the noise factor at all. As a pilot myself, I am not concerned with any safety issues since he has adequate space in all directions to maneuver this aircraft. From what I know of Mr. Bieker he is a very responsible and considerate citizen of this community.

(2) Barry and Karen Andrus, 3300 Pettis, stated as a neighbor, we have examined the information at the Township offices, and approve of a private use heliport at the 3350 Pettis location. We have looked at the plans and they seem to be satisfactory. We are also happy with the Township's regulations concerning heliport use.

Korth closed the public hearing. He stated that hearing about activity at the property is news to him, and asked if someone could give a history of what's been going on out there.

Kevin Nelson, consultant for the applicant, stated he instructed Mr. Bieker in obtaining his pilot's license through his training in June of last year. He stated the flight activity prior to him getting his license was a higher use at that point. He stated they did evaluate the property with respect to the best plan for approach, landing and takeoff. He stated they did land on the property as part of this evaluation. Nelson stated that their training flight takeoffs were made from the Grand Rapids airport, and that they did not train at the Bieker property. Nelson stated their flying activity at the Bieker site was for evaluating where he could land on his property, with the idea of putting in a heliport under the ordinance.

Korth asked technically if they should have been doing that.

Ferro stated as far as using the site for landing and take-off location, he thinks that technically violates the zoning rules; He stated he doesn't believe our rules regulate flight activity that's in the air space. He stated he wasn't aware that there was activity out there, and that it hasn't generated any complaints that he is aware of. He stated that for an isolated landing and take-off on a very isolated occasion it is arguable whether that's a zoning violation or not, but that it's definitely borderline.

Lunn asked Nelson if there is a certain approach pattern that has less of an impact on the surrounding neighbors.

Nelson stated yes, definitely as shown on the drawing by the dotted lines. Nelson stated the intention of going in there was to determine where it was best to operate, and they did not fly over anybody's home lower than 500 feet. He stated they have operated within the federal aviation regulations. He stated that based on the proposed approach and departure paths, before they even leave the applicant's property the aircraft is nearing 300 to 400 feet, and neither of the approach and departure pads are immediately over anybody else's home. He stated the aircraft is at greater than 500 feet altitude over anybody's home.

Leisman stated he is just trying to understand egress and ingress, coming in and out of the property versus flying around.

Nelson stated I think I understand your question. The helicopter is used both for point "a" to "b" transportation as well as sightseeing, like airplanes are used. It is flown within the aviation regulations, general operating rules, to fly around at a safe altitude for anywhere on the face of the U.S. territory.

Leisman asked if by putting in a heliport it's going to increase hover activity around Ada Township.

Nelson stated, when you say hover do you mean over flight.

Leisman stated just hanging around. The neighbors were talking that it's a concern of the residents that they were having more activity in the space above them, other than coming and going.

Nelson stated, hover flight is typically denoting something close to the ground where you're stable or still; you're talking about circling or operating it?

Leisman stated anything other than coming and going.

Nelson stated that will continue with any private owned aircraft in the state of Michigan as the FFA regulations dictate and manage the public safety in that aspect.

Lunn stated the question is is the helicopter going to take off and circle the neighborhood or is the helicopter coming in, landing, and going back out.

Nelson stated yes, any circling around there in the past may have been in the process of evaluating where is it best to be, there's no view better than being able to look at it from the air, so what's going to be the most effective; and those approaching departure corridors take into consideration the wind, the trees, the power lines, the neighbors, the air traffic coming in and out of Grand Rapids because it does come in and over that area, as well.

Leisman stated that's my concern, two minutes after you're up and out, where does the helicopter go.

Nelson stated wherever that mission takes it, it might be Chicago, it might be the Grand Rapids airport, it might be Zeeland, MI, it might be to fly over a house in the northern township, or it could go up to Traverse City, or it could go on a mountain biking trip in Alpena. So, it's for private use, and it varies, it's not a scheduled airline process where it goes any determined place. I would say that it's going to be used significantly less in the tight perimeter area around there because now we have an established place to land, we know it's safe and secure, we don't have to look at it before we go in; we know it's there, it's clear of snow, it's lit, etc.

Lowry stated, well, the flying around I can understand looking for a spot, but just how much that occurred I guess we need to find out from some of the people that are here.

Meyer stated, Kevin you were circling the neighborhood this summer while you were looking for good places to land as you assessed this 95 acre parcel; once the heliport is established you will be flying in on an arrival corridor, flying out on a departure corridor, neither one of which takes you over anybody else's house at less than 500 feet, and leaving the vicinity to go to Chicago or Detroit or Traverse City, or something like that, correct.

Nelson stated, yes, the intent is not to have a heliport in order to circle the neighborhood.

Meyer stated that is exactly like Mr. DeVos', he came in over his own property on the Thornapple River, and then he left to the northwest. So it is exactly the same type of thing; Mr. DeVos wasn't over anybody's house at less than 500 feet; and Mr. Bieker won't be over anybody's house at less than 500 feet either. When we came and talked to Mr. Ferro he indicated there have been no complaints about Mr. DeVos' heliport whatsoever, and that's a more built-up neighborhood than this one is.

Ferro stated our zoning rules state for private use heliports that the facility shall be limited to private, not for hire, personal use, and shall not be used for any commercial or business use. In addition, the proposal here would have the restriction if this facility is approved that would state that "the frequency of flight activity shall be no more than 125 take-off and landing cycles per year," and that's about one take-off and landing every third day, "and no more than three take-off landing cycles on any one day, except for five days per year when there may be five take-off/landing cycles." He stated if there was some training exercise that the owner is doing with Mr. Nelson that involved coming in and leaving three times in a day that would count toward the 125 landings per year. Although there's no one at the Township who's going to be out there counting how many take-offs and landings there are, if there was some concern that the use was excessive we could request flight log information that the FAA requires be maintained by the operator to document the use of the aircraft. So that 125 per year is about once every three days out of the year.

Easter stated I think some of the problem was that at the beginning there was an inordinate amount of traffic which caused a lot of concern. I think what we've heard is that that's not moving forward the kind of activity that will occur.

Nelson stated that's correct, yes.

Korth asked on these days where you would be able to make five take-off and landings, isn't it conceivable to have a house party for 30 people and they're giving helicopter rides. So they do five take-offs and landings, they zip around the township for 30 minutes and they go right back in again, so they spend a whole June afternoon of noise and chaos for the neighbors.

Nelson stated when we went through the process with the first one, I think that was the intention of having the ability to have, for instance, a family wedding, a family reunion, something like that; it was very limited, it was capped, intended to be usually more in the summer months. I think it was wise to put some sort of very reasonable limit on that kind of activity; that it would be a larger social function that would be a very rare circumstance.

Easter asked if it is part of our purview or just reasonable to ask that if a wedding were to occur and it was going to happen on this day, that maybe the applicant could notify the neighbors and let them know that this is going to be.

Korth asked if that is something we ever could ever make a condition of approval.

Ferro stated it possibly could be. I think some language could be crafted that would require that.

Easter asked if it is reasonable to ask for that.

Leisman stated I think it's reasonable just to restrict that; for example, what if someone else's daughter is getting married this summer and they decide to do five cycles of party rides off the property, and now you have ten events, you have five little tours around the township disturbing somebody else's wedding.

Nelson stated it is my understanding there would only be five, it wouldn't be 10.

Easter stated you have the commotion of the takeoff, then the commotion of the landing.

Leisman stated he doesn't have a problem with the concept of a heliport at this location, overall it seems like a good location, it seems like it complies with the standards. But we just got this and haven't had a chance to look at the property, and he doesn't know what this helicopter sounds like as far as the compatibility issue.

Korth stated we haven't scratched the surface on that, and given the interest of the neighbors, we should get in to more of the technical conversation that we went through the last time that we did this so that there's a much better understanding for these folks. So I'm not sure if you'd like to spend a little bit of time going through some of that, the issues of decibels and sound and comparing them to other sounds, things you did the last time for us.

Leisman stated the third issue seems like the number of events and ingress and egress need to be flushed out a little bit. He stated since Butterfield and Jacobs are not here, can we table it for a month, and give us a chance to look at the site.

Lowry stated one of the things they did when we okayed the one for DeVos was they brought in a medical helicopter to hear what you thought would be extreme noise, and the medical helicopter was a lot noisier

than this, it was very quiet when you got a chance to be there when they took off and landed, so that was a good thing to do. That might be worthwhile.

Korth stated ~~these folks~~ neighboring residents seem to already have a pretty good knowledge ~~of what the~~ regarding the sound and impact of helicopter operations at the site, based on their comments this evening.

Nelson stated to address your point, when he's going to do a tour of the neighborhood it's really to areas such as downtown and Bostwick Lake, it's not circling his 95 acre property. So, the tour rides that we have done have been departing the immediate area. Nelson stated he concedes that there were times when they circled the property in the process of evaluating the site for safe operations. Nelson stated he will not be involved with an operation that is insulting to the general public. He stated he represents a very small industry, and I won't be part of something that's hazardous. He stated he is very concerned about making sure that no one is injured or negatively impacted by this.

Nelson stated that for comparison purposes, the heliport at Fox Hollow Ave. has had between 57 landing/takeoff cycles per year and the low 90's per year since it was approved, with an annual cap of 125 landing/takeoff cycles per year. He stated there have been two or three instances where there were above four landings in a day, and, as Mr. Ferro stated, there have not been any complaints about that facility. He noted that the DeVos helicopter is 847 shaft horsepower, while the one proposed here is 496 hp, it is a few decibels lower in sound, and it weighs a maximum of 3,780 pounds, as opposed to the 5,351 pounds of the DeVos helicopter; so it is smaller, lighter, with less sound.

Easter questioned if precedent plays a role in this decision, where you have a smaller, lighter, quieter helicopter proposed in a less dense area than the last one that we approved.

Korth stated I would think so, but he does think we have a responsibility to assess this application on an individual basis, and we left room in the ordinance on the landing and the take-off issue.

Meyer stated to answer a couple of questions, in terms of the fuel trailer it's double-walled and meets all airfield and on-the-road requirements, furthermore, the floor drain will have an oil separator, and it will not get into the well water, and that's in our plans we submitted.

Joan Roberts asked for clarification that the Bieker's announced they are doing a Forest Hills fund-raising event in the spring, and asked if there will be helicopter rides during that.

Korth stated that's what we're trying to assess. Their request is to have no more than five take-offs and landings on any given day, no more than five times a year.

Joan Roberts asked who was going to enforce that.

Korth stated the way it would be enforced would be, one, obviously them living by what the rules are, two if there's an overt violation the reporting of that violation would be required.

Roberts stated she left a phone message in June with Mr. Ferro's office asking what the helicopter was, with her contact information.

Mike Bieker, property owner, stated they have had Forest Hills fund-raising events at their property, and at one event there were way more people in attendance than he was not happy with. He stated he has made changes in what will happen at these events in the future. In response to Mr. Kintz' concerns he stated there have been a number of occasions where he has taken off directly south, taking him on more of a path over the Kintz property, and that the proposed approach/departure path, took into consideration tree height, common wind direction, and the location of the Kintz residence. If this is approved, he stated they

will be obligated to only approach within the defined corridors, and neither of them will be over the Robert's property to the north.

With regard to recreational trips, Bieker stated a typical one would be to Holland and back, not circling the immediate or local area in the Township. Bieker also stated that an area east of Rockford is commonly used in the aviation community as a training area, since it is mostly farmland. Bieker stated that this is a hobby for him, and his usage of the helicopter is pretty light. He stated he has logged 68 hours of flight time in the last year, which included his pre-license test training time and including a 14-hour single trip.

Nelson stated he wanted to clarify that it is not improper to circle the landing area twice before landing during practice, to simulate landing at an unfamiliar landing area. The beauty of having an established facility with established approach and departure corridors does away with that, since the pilot knows that the facility is safe and controlled. Nelson stated he also wished to point out it is not their intention to come in and say this is the way we're going to do it, but through this process hear from the public and take that feedback and that input and with our expertise be able to make some tweaks and suggestions, if that is necessary. The feedback is very valuable.

Mr. Roberts stated the International Helicopter Association has published general noise abatement guidelines that I would hope and assume that some of these corridors have been used to establish that. But they also have individual noise abatement guidelines for each model of many helicopters, so I just wonder if you've been trained in that and plan to follow those guidelines.

Nelson stated yes.

Ms. Hamilton stated it's a little bit offensive that you can just come in and start operating a helicopter. She stated there must be something there already built for this helicopter to land on, so I almost think this is after the fact. She stated she believes that helicopters belong at an airport and not in the country where there are a lot of residents. She stated because of the weather, and in the middle of winter, she is not sure that we're getting a fair turnout for people that might oppose the noise; and it is noisy on every landing and takeoff, and noisy while it sits. She stated she lives in the country and wish she could still have the country and not a helicopter landing across the street.

Korth stated, as I recall, did we not have a table that was presented to us that compared the sound of these helicopters in relation to other things that we live with every day like garbage trucks and lawnmowers, etc.

Nelson stated yes, we did an extensive noise study as you recall. He stated he recalls that the level of the noise of the helicopter tested and confirmed at the nearest private residence to the DeVos property, with their windows open, with the leaves off the trees, in their yard, was a lower decibel level than having their range fan running; it was certainly lower than a vacuum cleaner, a lawnmower, and a Harley-Davidson motorcycle. As per the ordinance there is a limit to how long a helicopter can be operated on the ground and idled, and it's a cap of five minutes, and I think we're usually less than two on that. It just burns fuel to leave it sitting there. So, the decibel of this helicopter up at a close listening range or an over-flight where it's tested is still less than driving down the road at 35 mph with your windows open.

Meyer stated that the sound study was conducted for Mr. DeVos at the time the zoning regulations were developed, not as part of the special use permit application. He stated those noise studies went into the drafting of the ordinance, and that, in essence, the noise issue has already been resolved through what you established as setback requirements in the original ordinance.

Korth stated given the absence of a couple of planning commission members, the weather, and the fact that the Commission is seeing this for the first time, he suggests we postpone the action for a month,

allowing us to digest what was said here, but also allow our other commission members to be able to make a sound decision.

Moved by Leisman, supported by Lunn, to postpone action for a month. Motion passed unanimously.

Korth stated he does believe that this application conforms with our ordinance at this point.

Leisman stated it would be helpful to have the ordinance restrictions repeated in the conditions of approval.

Meyer stated, for the record, he believes Ms. Hamilton suggested there were improvements made on the property, but there are no site improvements for helicopter use on the site at this time.

Ferro asked if he should arrange site visits for commission members.

Korth stated his opinion is that given the size of the property it would be nice to do a site visit; as was done at the DeVos property, which proved to be useful.

Leisman stated he would like to see a flight demonstration.

VI. UNFINISHED BUSINESS

None.

VII. NEW BUSINESS

Site Plan Review, revision to site plan for Skyevale Site Condominium, to permit access through the site condominium to 1 single family home site located outside the condominium boundary, Scott Lancaster

Scott Lancaster and Margaret Lancaster, 6838 Skyevale Court, stated we're interested in purchasing a 10 acre piece of property from Eric VanderVeen, and would like to access that property through Skyevale, across an easement we grant ourselves on the north side of our current parcel.

Ferro stated the Lancasters live at the end of the existing Skyevale Court, which is a 20 foot wide paved surface with a turnaround area at the end on a 30 foot easement. They are proposing to establish an access easement across their unit to access a new proposed home site that they would build a new home on a lot split from the adjacent VanderVeen property, which is located to the east. He stated Mr. Lancaster is proposing to also acquire from the adjacent VanderVeen property a triangular piece of land that he is interested in combining with the existing vacant unit 13 on the Skyevale property to, in essence, expand the building site to provide more flexibility for home location on that unit.

Korth asked if the two requests are together on one application.

Ferro stated he didn't address that aspect of the request in his staff report, and if it modified the setback requirements from the original site plan approval he thinks it is subject to approval of a revised site plan. He stated there are some neighborhood concerns about that proposed change to the setbacks for unit 13 that have been expressed. The history of Skyevale is that it was approved as a site plan approval by the planning commission. It was not a PUD plan, even though you will see from the minutes of 2003, it was mistakenly referred to as a PUD in the approval minutes, which he believes was a mistake in his drafting of the recommended approval conditions. But, it was a site plan approval given the fact that all of the lots in the development conform with the lot size and dimension requirements for the zoning district that the property is in.

Ferro stated a site plan approval is basically a non-discretionary approval; if the layout meets the standards of the zoning rules then it must be approved. He stated this is somewhat of an unusual circumstance in having a site plan for a site condominium modified to access property that's located outside of the condominium. There is no technical expansion of the legal condominium proposed here; the property that would be accessed to the east for the new home site would not be a condominium unit; it would be a "metes-and-bounds"- described parcel that would have access through the condominium, and that's somewhat of an unusual situation that he hasn't seen before.

Ferro stated in the condominium master deed there is easement language that grants to the developer the right to access, in the future, through the condominium, land located outside of the condominium. However, given that was not provided for in the original site plan approval, he believes it requires a revised site plan approval by the Planning Commission to make that change to the site plan, with respect to both accessing a new buildable lot outside the condominium, as well as using the triangular parcel to combine with unit 12 from a zoning standpoint to, in essence, expand the buildable area of the building site.

Leisman questioned whether we have the right party in front of us requesting an amendment to the site plan.

Korth asked if there was an association in Skyevale, and if Lancaster was a member of the association board, are you a representative of the association legally here tonight.

Lancaster stated yes, although he believes there might be a conflict of interest in that respect, but yes.

Ferro stated Mr. Lancaster owns a unit, and he was also the developer.

Korth asked Lancaster if he was representing the association.

Lancaster stated no, he is representing himself.

Ferro stated for a site plan approval there's no public hearing required. He stated there was also a zoning variance application that was already considered and approved by the Zoning Board of Appeals.

Easter asked if it was recently.

Ferro stated yes, within the last month, and that was a variance from our private road standards to allow a fourth lot to be accessed from this private road cul-de-sac. It potentially provides access to three units - unit 15 and 14 which already have access from it, as well as potentially unit 16 in the future. Our private road standards say that a private road that accesses four or more homes must have access that's at least 66 feet in legal width with a 22 foot surface width, rather than the existing 20 that we have on that existing Skyevale Court, and that variance was approved.

Ferro stated another complication that he didn't realize until this week is that not long after the Skyevale site plan was first approved with 27 units, we amended our private road standards to place limits on the total number of lots that may be accessed from a private road, and that limit for a private road that has only one access to a public road is no more than 20 lots, and here we have 27 already, 28 counting this home located to the north that already had an access easement through the property before the condominium was established. So there are 28 home sites that have legal access to the legal use of the private road currently, and this is an existing non-conforming situation. He stated adding another lot is not permitted. He stated he has informed the Lancasters that there is another conflict with the zoning standards here that needs to be resolved, potentially through another variance request.

Easter asked how that could happen; did we change the rules after they approved this?

Ferro stated sometime after Skyevale was originally approved we amended the private road standards. He stated he believes it was also in 2003.

Leisman stated the idea behind that was for the larger developments the access roads would be publicly maintained and designed, and taken care of by the county, and private roads would be permitted only for smaller developments.

Lowry stated don't they have to go before the zoning board to get that variance.

Ferro stated yes.

Easter asked if that has to happen before we approve this.

Ferro stated this could be approved contingent on zoning board favorable action on another variance request, which he believes Mr. Lancaster has already for. Ferro stated there is an adjoining property owner who is concerned about this potential lot location of the building site on unit 13 by addition of that triangular area to the defined building zoning lot for those two pieces combined who may wish to address the commission.

Mark Zylstra, 1436 Cramton Ave., stated he and his wife own lots 11 and 12 in Skyevale, and previously owned 10. He stated he is here to discuss what he believes to be a hidden agenda on Mr. Lancaster's request for a variance and site plan approval. He stated on the aerial map it is suggested that the triangle is a part of lot 13; it is not. On the map there is no mention of a purpose or potential use of that triangle or exactly how Mr. Lancaster intends to utilize the triangle. He stated he and his wife plan to vigorously contest any access or attempted combination between the triangle and lot 13 since our lot is contiguous to lot 13 and to the triangle. Other than the notice we received from the Township concerning Lancaster's application as a result of the proximity of lot 12 to the properties on the map, we have received no communication concerning the request or description related to Mr. Lancaster's intended use of the triangle.

Zylstra cited language in the Skyevale Master Deed which states "no co-owner shall use his or her unit in any manner, a) inconsistent with the purposes of the condominium project, or b) which will unreasonably interfere or impair the rights of any other co-owner of the use and enjoyment of his or her unit or the common elements." Zylstra stated they purchased Units 12 with the understanding that there would be no obstructions to unreasonably interfere with or impair their view in the use and enjoyment of lot 12 on any direction of the compass. He stated approval of this condominium subdivision plan by the Township, including setbacks, did not contemplate that the future boundaries would be changed in such a way to unreasonably interfere with or impair the rights of any other co-owner in the use or enjoyment of his or her unit. Approving the new condominium site plan, which includes the triangle, particularly the way it has been presented by Lancaster, constitutes ignoring these two sections of the master deed. Zylstra stated that inclusion of the triangle as part of the building site of Unit 13 constitutes a type of expansion of the condominium project, which would be contrary to the 6-year limit on expansion contained in the state condominium law. Zylstra cited provisions of the condominium bylaws that reference minimum building setbacks shown on the condominium subdivision plan, and stated that inclusion of the triangle as part of the building envelope for Unit 13 would violate the setbacks. For all of the aforementioned reasons, they are requesting that the committee reject Lancaster's request for approval of the site plan.

Korth asked, as complicated as this sounds like it's becoming, if Ferro believes it would be advisable to talk to the Township attorney a little bit about it.

Ferro stated he could do this. It is complicated in the fact that it's intermingling land that is owned under condominium law with land that is outside the condominium that is simply described by a legal

description rather than through a condominium, and that's a complication here. Ferro stated we do have other situations in the Township where we have two separate described permanent parcel descriptions that are considered as one lot for zoning purposes. He stated in this case, you have a "metes and bounds" parcel potentially being combined with a condo unit to make up one building site. Ferro stated he believes it is possible for us to grant zoning approval to that as a modification to the site plan, but there remains a separate question as to whether the act of doing that violates some of the provisions of the bylaws that Mr. Zylstra cited. He also stated he is not sure we have the right to enforce the bylaws or to consider that in the zoning decision.

Korth stated having an answer from our own counsel whether we should be concerned with that or not is very important for us as we try to make a decision.

Leisman stated he doesn't think there's any prohibition from those lot owners buying additional land, but to change lot 13 and now make it a different lot, it's kind of a backhanded approval because you're changing the whole condominium site plan. Leisman also stated he believed there should be a revised overall plan for the entire development submitted.

Easter asked if that would still be an issue if lot 13 with the addition of the triangle were not part of this application.

Leisman stated I'm not prepared to move to approve it without getting further clarification of where we are as a Township.

Korth stated what also will come out of that exercise will be whether these should be considered as two different things or not.

Ferro stated he believes they could be considered separately. Ferro stated we do have an easement drawing and legal description prepared by a surveyor for this proposed easement across unit 15, but it hasn't been put on a revised overall site plan for the entire development.

Leisman asked if one owner could come in and change the site plan.

Ferro asked as far as who can be the applicant; well, it's a reserved right that the developer has that enters into it as well, and that's a legal question that I'm not prepared to answer.

Korth suggested talking to George about it tomorrow but we should probably get some outside counsel to clarify the logical steps on how to get through this.

Motion by Easter, supported by Lunn, to postpone for one month in order to obtain legal input. Motion passed unanimously.

VIII. STAFF/COMMITTEE/COMMISSION MEMBER REPORTS

Draft Zoning Ordinance Amendment to Permit "Caretaker" Residential Unit in Industrial District

Ferro stated he placed this item on the agenda in anticipation of having a draft prepared for the commission to review, but has not completed it yet.

Korth noted that Ferro has presented a proposed meeting schedule for the next fiscal year for approval. Ferro stated that all of the proposed meeting dates are on the third Thursday.

Motion by Leisman, supported by Easter, to approve the proposed meeting schedule for FY 14-15.

Motion passed unanimously.

X. PUBLIC COMMENT

Richard Marmion, Kent County Water Conservation, stated he was wondering where the board is at with the subject of hydraulic fracturing. He stated Cannon Township last week took an extension on their moratorium to continue working on the ordinances.

Ferro stated there is no change from last month. He stated he spent some time on the Cannon Township web site looking at minutes, but he has not found any documents yet in terms of proposed ordinance language. He stated he hadn't contacted anyone there yet.

Marmion asked if he could assist the board with anything.

Ferro stated he has the resources and information, including resources from FLOW that are being used by Cannon Township.

X. ADJOURNMENT

Motion by Easter, second by Lowry, to adjourn the meeting at 8:50 p.m. Motion passed unanimously.

Respectfully Submitted,

Susan Burton, Township Clerk
SB/dr