

Rochester Township Planning and Zoning Commission

Meeting Minutes

June 14, 2022

Members Present: Chair Arthur Handelman, Colin Patterson and Nathan Clark (representing the Town Board). Members absent: Laura Laudon and Brad Lewis.

TCPA Staff: Roger Ihrke

Township Attorney: Peter Tiede

Township Engineer: Brandon Theobald

Applicant: Bill Tointon and Dan Hoyle representing International Properties

Chair Handelman called the meeting to order at 7:00 PM.

The meeting minutes from May 10, 2022 were reviewed. Patterson made a motion, seconded by Clark to approve minutes. Motion carried unanimously.

Variance Resolution for Woodland Valley Estates which had been approved with recommended changes was presented to the board for signature. The Resolution included the recommended changes which were requested at the May 10, 2022 meeting. Motion by Patterson to approve, the resolution, seconded by Handelman. Motion carried with 2 yes votes and 1 no vote.

Public Hearing:

Text amendment Rochester Township Zoning Ordinance to Section 10.23
Swimming Pools, Private:

The amendment and text language had been initiated by the Rochester Town Board in response to the public's interest in having pool covers in lieu of fences.

Staff presented the language and stated that comments received dealt with an additional safety measure of adding pool alarms made by Chair Handelman.

Chair Handelman discussed his suggestion and when an alarm should be required.

Chair Handelman opened the public hearing:

Comments were about pools, their use and the costs associated with pools and how the increase in pools may be associated with the Covid-19 pandemic and more people working from home.

Alarms in general are an additional safety measure.

Chair Handelman closed public hearing.

The Commission discussed the pool ordinance text and supported adding pool alarms. Motion by Clark, seconded by Patterson to recommend the text amendment to the Board including language requiring pool alarms. Motion carried unanimously.

Written request by GGG, Inc. on behalf of Paul Adamson regarding an easement off of the proposed private road shown on the Pavilion Estates Preliminary Plat. Mr. Adamson owns an adjoin piece of property to the west of the proposed Pavilion Estates Preliminary Plat.

Peter Tiede, Town Attorney addressed this issue indicating that since it was a private roadway any easement would need to be obtained from the owner of Pavilion Estates and could not be granted by the Township. If the road were a public roadway then it could be considered.

Mr. Ihrke spoke on the proposed Preliminary Plat for Pavilion Estates as outlined in the TCPA documents dated March 30, 2022 and updated on May 2, 2022 and June 6, 2022.

The plat includes 10 single family residential lots over 28.79 acres. The lots will be served by individual septic systems and two shared wells. The wells will be interconnected to allow continuous water supply if one well is take out of service for maintenance or upgrades.

The plat includes an extension of a public roadway called Boulder Creek Lane SW and then turns into a private road. Mr. Ihrke gave a brief history of the application. He also discussed private roadways within the township and how this was one of the items used to lessen environmental impacts as noted in the Environmental Assessment Worksheet. A public roadway is normally 66 feet in width and in this instance the private roadway is proposed at 45 feet terminating in a cul-de-sac which is less than the public roadways 120 feet requirement. Private roadways are maintained by the homeowners. Mailboxes for the development must be clustered in one location per USPS policy. Typically school busses do not travel down private roads so students will most likely need to be picked up at the end of the public cul-de-sac.

When a development only has homes on one side of the roadway because of the costs of public maintenance, it is more economical for the township to have them as private roadways.

The Rochester Fire Department has provided a letter stating they support the plan.

Each lot will contain individual rain gardens that have plants which will uptake water rather than having all of the run off contained in retention ponds. Raingardens will be outline in the deed restrictions.

Mr Ihrke stated that variance will be required for this development to move forward. As noted earlier in the meeting other plats within the township have also needed variances to be approved. Lots 9 and 10 would require variances if

the proposal is approved. These lots are at the north end of the development. Most of the lot area consists of bluff, shoreland and floodplain. If lots 9 and 10 were reduced in size then the residual could become an "outlot". Mr. Ihrke stated that past experiences with outlots have not been favorable. The outlots can be a burden to the entire county, attract nuisance, etc. Then eventually the township ends up with them land when taxes aren't paid.

Another scenario would be to combine lots 9 and 10 into one lot and reducing the number of lots in the development down to 9. If that were considered two of the variances required could go away.

Construction and grading plans have been approved by the Town Engineer.

Additionally staff made the following recommendation besides approval of the variances. Lot 2 although it has access to the public cul-de-sac, must access from the private roadway; site grading plans must include the building envelope which cannot exceed 3,500 square feet, and the traffic report accepted by the town board (which it has already done).

Comments received after 4:30 today were not posted on the TCPA website but have been provided to the Commission Chair. End of Mr. Ihrke's comments.

Peter Tiede, spoke briefly on the litigation and how it could affect the outcome of what happens but that the task before the township is to deal with the application as presented this evening. He went on to state that updated to the ordinance could happen in the future but we needed to apply our current ordinances to these applications.

Chair Handelman stated this process could resolve some of the concerns with the Pavilion Estates proposal. However, he noted, we can't go backwards on previous decisions.

Bill Tointon from WSE representing the applicants spoke. He stated that he has been working on this project for 10 years. He stated the Land Use Plans are a guideline and there's no mandatory requirement. He explained the reasoning behind the proposed variances and the long history of Rochester Township approving variances.

He stated that there are misconceptions with the cul-de-sac and that the Rochester Fire Department is OK with the turnaround easement. He explained the use of private roadways minimizes tree removal and that several subdivisions in Rochester Township have private roads. All the land will be divided into privately owned lots. This eliminated outlots that can become nuisance properties. There will be individual septic systems, stormwater treatment systems (rain gardens) on each lot that are consistent with land use plans.

Mr. Tointon also addressed Mr. Adamson's request for an easement and agreed with Mr. Tiede.

Chair Handelman opened the public hearing.

Comments were made by several people and were consistent with the written comments received. Summary of comments are as follows:

Rookery is a special thing to preserve.

Ordinances are laws. Township should not grant the variances.

There are 36,000 hits on Rookery website and 1,500 people are associated with the Save the Rookery Facebook page. This reflects what the public wants vs what the developers want.

Rochester Township is changing and needs to listen more to what the residents want.

Rochester Township hired experts they wanted to listen too; Save the Rookery hired a Herring expert.

The Rookery could have been turned into a park of some sort for scientific and natural discovery. The park could have been managed by the State. This is not possible anymore. There is a huge bias in this process.

Citizen petition was presented to deny the development.

Public Comments closed by Chair Handelman.

The Commission members entered into discussion on the proposed development. The Commission reached a consensus to ask Mr. Ihrke to draft a resolution to approve 9 lots. However, Township Counsel stated the Commission may lack the authority to vote on anything other than for or against the Developers submitted plan, which was for ten. Council and staff advised the Commission that unless the petitioner voluntarily agreed to continue the matter to submit a revised proposal the Commission would need to vote because of the statutory time requirements.

The petitioner refused.

Motion by Nathen Clark to adopt resolution to deny said variances thus denying the plat; seconded by Arthur Handelman. Motion carried with 2 votes in favor and 1 vote against.

Council and staff indicated that the petitioner could still choose to present a revised plan to the Town Board for consideration, but the Board's only obligation was to consider the application and commission recommendation.

Chair Handelman related that prior to the zoning change the parcel could have been developed into three lots without any approval and that no Federal, State, County or Township law, rule or regulations existed that would prevent the owners from clear-cutting the entire lot other than the Federal Migratory Bird Act which only operates when birds are present.

Chair Handelman went on to say that absent variances, lots could still be developed utilizing a public road that would be wider and necessitate cutting more trees to accommodate a wider road. That the only means the Township had to influence the development of land was via a developer's agreement wherein the limitations could be placed on development/construction on each individual lot to minimize impact to remaining Rookery and other trees.

Chair Handelman expressed the opinion that a nine-lot configuration would have both minimized the variances necessary and would have resulted in one large lot across the entire ridge lot of the development, which presumably would have been more environmentally friendly and reduced the potential impact on the Rookery.

Meeting adjourned.

Next meeting will be on July 12, 2022 at 7:00 PM.

Respectfully submitted,

Laura Laudon.