

DRAFT

Special Meeting Minutes of the Elberta Planning Commission
401 First Street Elberta, MI
Thursday, February 22, 2024
6:00 p.m.

Call to Order and Pledge of Allegiance: 6:01pm

Roll Call: Jon Ottinger, Chair-present, Ryan Fiebing, Michael Murphy- present, Mary Link-present, Megan Gray-present, Sara Kopriva (Beckett & Raeder) consultant-present

Audience: Stewart Grudzien, Jim Barnes, Bill Soper, Dan Carter, Joseph C. Sweet Jr., Kay Bond, John DeVine, Paul Renucci, Alicia Magas, Dave Caldon, Bill O’Dwyer, Katherine Ralston, Village of Elberta Clerk-Treasurer

Approval of Minutes-(Fiebing/Murphy) Motion to approve February 7th, 2024, regular meeting minutes.
- all Ayes. Motion carried.

Approval of Agenda-(Murphy/Fiebing) Motion to approve agenda as amended– all Ayes. Motion carried.

Public Comment: Dave Caldon (Varnum LLP), attorney for Elberta Land Holding Company (ELHC) said he is here with Paul Renucci and Alicia Magas, owners of ELHC. He said he and his clients have some questions about the master plan and that they would like to wait to make public comment until after the presentation. **Ottinger** said there is time built into the agenda at the end of the meeting for public comment. He said Kopriva is here as the consultant who has also been with the Elberta Planning Commission assisting with the update of the master plan. The draft plan is now available for review by the public. The next step for the commission will be to review and update the Village of Elberta Zoning Ordinance. Kopriva will be assisting with that process as well and this is why she is present at this meeting.

Fiebing commented that the Village Council approved the distribution of the draft plan for the legal 63-day review period.

Ottinger also introduced himself as the newly appointed Chair of the Elberta Planning Commission.

Fiebing stated that Kopriva provided a good overview of the rationale for the creation of a conservation overlay district. He said that many of these ideas have been well represented within the current and previous master plans for many years, but some have not been carried through to the adoption of zoning to achieve these aims. The Village Council moved that the planning commission should examine some of these recommendations for environmental protections, long represented within the Village master plan but that have not been carried over to zoning. The goals of the public to achieve environmental protection while balancing that with community development needs, are clearly laid out in the new draft plan. The planning commission, along with Kopriva, will be paying close attention to the goals of the community as they have been articulated as well as reviewing the zoning ordinances of other Michigan municipalities as examples of some best practices in zoning to achieve some of these protections.

Kopriva further summarized that the reason we are talking about an overlay district is that in the current ordinance, some of the critical areas, particularly along the shoreline, are in different zoning districts. The overlay would provide uniform protection for these areas, in addition to the zoning district that they fall into. She cited the map on p. 28 of the new draft master plan. The map shows the outlines of the Coastal Zone Management Jurisdiction. The high-risk erosion area is shown in red.

1 The critical dune area is shown in yellow.

2 **Fiebing** commented that the conservation overlay would likely correspond roughly to the critical due area but
3 would also include some wetlands, high erosion areas and areas along the shoreline.

4 **Kopriva** refenced the Critical Dunes map on p. 28 of the new draft master plan. The overlay will likely
5 correspond roughly to the critical dunes area with the areas as Fiebing outlined included and emphasizing the
6 Lake Michigan shoreline side more and the Betsie Lake shoreline side likely less so. Should Village Council and
7 Planning Commission decide that some of the overlay should extend more along the Betsie Lake shoreline
8 side, this can be taken into consideration as the draft of the overlay is worked out over the coming months.

9 **Murphy** commented that significant erosion and slides have occurred in the high-risk erosion areas depicted in
10 red on the map. He said that the planning commission wants to see that these protections take place in a
11 sensible sustainable way without encumbering or lessening anyone's property value.

12 **Murphy and Kopriva** discussed the current process of development in the critical dunes area. As it is, the land
13 use and building permit process in a critical dune area involves having to obtain a permit from the Michigan
14 Department of Environment, Great Lakes and Energy (EGLE).

15 **Murphy** asked then, given that these areas are protected by state law in this way, what would change with the
16 addition of the overlay district at the Village zoning level?

17 **Kopriva** replied that this is what will be discussed in the process of drafting the district over the coming weeks.
18 She cited the Village zoning ordinance Article 15, DD Waterfront and Lakebluffs Development District, p. 34. In
19 the current ordinance, within this district all uses allowed under the R-1 (Residential) district are allowed,
20 which is most housing development types. All uses allowed in C-1 (Commercial) are also allowed, including
21 various retail and office development. Depending on what the final product is for the overlay district, it could
22 provide some additional restrictions in some of these more sensitive areas that currently have wide latitudes
23 for development.

24 **Fiebing** commented that some of these additional protections are also meant to protect the investment of
25 property owners. For example, there can be disastrous consequences for property owners and the
26 environment if structures are built too close to the edge of a bluff, so that it could potentially erode into Lake
27 Michigan. The overlay is a vehicle to allow flexibility to allow for development where the landscape allows for
28 it but still provides needed protections against development projects that would be unsustainable.
29 There was discussion on the possibility of limiting clear-cutting as part of the overlay district.

30 **Kopriva** explained that Council and the PC can decide to allow for an appeal process that can be built into the
31 overlay district, that would allow for possible exceptions. There can be allowances for proposals, to enable
32 owners or potential developers to be able to advance additional information, studies or documentation, to
33 make the case for exceptions to the written ordinance as it is and potentially allow for that project to move
34 forward.

35 There was discussion on the possibility of building in requirements for certain licensed professionals such as
36 engineers or architects to design development appropriately for more environmentally sensitive areas. This
37 would allow for development in many cases, done well and responsibly, to prevent further environmental and
38 economic destruction to property.

39
40 **Fiebing and Kopriva** discussed examples of other communities' zoning in areas like the proposed overlay
41 district areas. For example, the Village of Suttons Bay has different building requirements for different grades
42 of slope. Kopriva spoke in general on several examples of this that she has seen, where building is allowed in
43 areas of quite steep slope, but with additional requirements, that would likely make that project more
44 expensive and less feasible as the sloped area increases.

DRAFT

1 **Kopriva** said that she will provide variations of draft ordinance language so that PC can get a good idea of their
2 options for language and see what is out there currently in use by some other communities, that can
3 potentially be included.

4 **Murphy** commented that he has often seen examples of building projects that are carried out where the
5 necessary protective infrastructure is not built prior to the main project, causing further environmental
6 destruction later along with additional cost to the property owner due to the expense of putting the necessary
7 protective features in. An example of this is where a retaining wall is needed and not built prior to the main
8 project. A well thought out overlay zoning district can prevent this scenario while still allowing projects to go
9 forward.

10 **Ottinger** expressed preference to have sections of draft language forwarded to him by Kopriva so that the
11 planning commission can discuss during their regular monthly meetings over the next coming months.

12 **Kopriva** agreed and said she is happy to attend meetings wherever needed to clarify any of the draft language
13 as the review process moves along.

14
15 **Public Comment:**

16 **Ottinger** said public comment is limited to three minutes in order to give all a chance to speak who wish to.

17 **Dan Carter:** "I thought 99% of the dunes were already protected because they are critical dunes. Are they
18 really up for development?"

19 **Fiebing** answered that there are methods to get developments in critical dune areas approved through the
20 State of Michigan.

21 **Carter:** Referred to an individual who proposed a development, about two years ago from Chicago. He asked if
22 the proposed overlay district would affect that project.

23 **Fiebing** answered that that proposed project was in an area that, according to the current zoning ordinance,
24 current and draft master plan, that Elberta would prefer to occur as it was proposed on the existing
25 remediated Brownfield area. That development would be in line with the goal of encouraging development to
26 occur in these areas instead of the more environmentally sensitive areas.

27 **Fiebing:** The goal is that development is more clustered rather than sprawled out throughout the protected
28 areas.

29 **Bill O'Dwyer:** Asked when the last time the zoning ordinance was rewritten.

30 **Fiebing:** Answered that the current issue is that much of what has been in the current, proposed and previous
31 master plans have not been reflected in the zoning ordinance. The proposed conservation ordinance and the
32 overall zoning update to follow, is an effort to align the ordinance with the master plan.

33 **Kopriva** further commented that the next phase for the contract with Beckett & Raeder, following the overlay
34 district, will be an update of the whole ordinance, following the adoption of the new master plan. The
35 estimated timeline for the completion of that is 12 to 18 months. This component (the overlay district) is
36 reflected in the current master plan and has been carried over to the draft master plan as well.

37 **Ottinger** reiterated that the draft master plan is available for review and comment for 63 days. Following that
38 period, there will be a public hearing scheduled.

39
40 **Dave Caldron** (Varnum LLP), attorney for Elberta Land Holding Company (ELHC): Said that ELHC owns a good bit
41 of this property that will be within the proposed conservation overlay district. He commented that it was
42 expanded in the future land use map within the draft master plan. He said he heard Fiebing's comments that
43 the goal of Council and the PC is to make the zoning ordinance consistent with the master plan. Our clients
44 bought the Koch Fuel property and took the large oil tanks off the hill with the intent of developing the

DRAFT

1 property in the future. That is their families' legacy. He said he wants those new to the PC to understand that
2 "there is a long history of ELHC working with the Village" with the ultimate hope to be able to develop the
3 property in the future. He asked that they keep in mind the investment backed objectives of the ELHC owners
4 as well, as they deliberate the most extreme and restrictive language in the proposed overlay district. He said
5 that reasonable sort of language is fine but where building is restricted outright due to a slope being too steep,
6 that could be problematic.

7 He then referred to the future land use map in the draft master plan on p.63. The area in green is marked as
8 'Conservation.' He said there is ELHC property within the area and Sand Products Corporation property. What
9 can happen is important to the landowners. He reiterated that there is nothing wrong with smart development
10 but that there is a problem with excessively limited development. He said the Conservation area has been
11 expanded compared to the current existing master plan and that this is surprising. He cited a response from
12 the community survey with the result that 20% of respondents said that the amount of business in the village
13 was about right, 80% said there was not enough and 0% said there was too much. 70% of respondents said
14 that residential development should be encouraged and that 80% said that this should be accomplished
15 through reasonable restrictions on development. He said he is not sure that having that much of the corporate
16 land in the village, designated as Conservation, "if what Conservation means is extreme sorts of regulations."
17 Speaking to the PC, he asked that they keep this in mind as they move through this process. He said that they
18 will be forwarding comments to Council on the draft master plan.

19 **Jim Barnes:** Commented on Caldon's remarks saying that the theme of those comments was to be reasonable.
20 If the Village is willing to craft language in the ordinance to ensure that the product is marketable and sellable,
21 the owners can also be reasonable with the pricing of the property and have that be proportional to what is
22 practical within our community. Historically, the proposed sale and development of ELHC land has been
23 disproportionate to what is reasonable and within our community, to maintain the quality of life that is the
24 reason we live here. Due to how high the current asking price is, it is attainable only to those living outside the
25 area who therefore do not have the same vested interest as residents in ensuring that it is protected, and that
26 the quality of life is preserved. He asked the PC to keep in mind that it is also important that ELHC be
27 reasonable in marketing the product to make it available to those already connected to the community.

28 **Ottinger** thanked the public for attending and for submitting comments. He said the PC will be thoroughly
29 reviewing draft language and carefully thinking this through over the coming months.
30

31 **Next Meeting:** Regular Meeting of the Planning Commission, Thursday March 14th 5:30pm, 401 First Street,
32 Elberta.

33 (Fiebing/Murphy) Motion to adjourn.

34 Meeting Adjourned at 6:50pm
35
36