

MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION MEETING HELD
SEPTEMBER 25, 2002 IN THE CLAY TOWNSHIP BOARD ROOM, 4710 PTE.
TREMBLE ROAD, CLAY TOWNSHIP, MI 48001.

1. Meeting called to order by Chairperson Mark Getman at 7:35 p.m.
2. **Roll Call:** Present: Chairperson Mark Getman, Vice-Chair Dorothy DeBoyer, Secretary John Makuch, Pat Sharrow, Sandra O’Conner, Chuck Michel, Louise Cooper, Edward Keller II, Anthony Antkowiak.
Absent: None.

Also present were Township Attorney John McNamee, Wade-Trim Planner Linda Anderson, Zoning Enforcement Officer Tim Wiggle and Building Inspector Michael Kras.

3. **Communications:** Board members were given copies of letter written to Turn-Key Builders and Nicholas Lavadas and letter from Attorney and Fintly.
4. **APPROVAL OF MINUTES OF:** August 28, 2002

Moved by DeBoyer, supported by Michel, to approve the August 28, 2002 Planning Commission Minutes with the following corrections:

Page 1, under Review of Board Concerns: comment from Pat Sharrow, 4th sentence down, change the word “exiting” to “existing lots”.

Page 5, under Public Comments: 1st comment by Michael Kras to read “State statute takes preference over an ordinance”.

AYES: All. NAYS: None. ABSENT: None.

MOTION CARRIED.

5. **OLD BUSINESS:**

Discussion/Review of Special Approval Land Use Conditions:

TURN-KEY/ALGONAC PLAZA – 2600 PTE. TREMBLE ROAD

Chairman Getman introduced Township Attorney John McNamee.

Chairman Getman: Previously approved site plan for property adjacent to Turn-Key for a Wendy’s, owners/representatives of property have complained via Township Supervisor and Linda Anderson: Turn-Key is not negotiating in good faith and not meeting the request, creating a landlocked situation, cannot access their property; Wendy’s want access to Pte. Tremble Road.

Mr. Getman stated a traffic study on M-29 indicated a safety hazard; Planning Commission not involved in negotiating a price to have access to the drive; per discussion with Mr. McNamee decided to bring the parties together to see if everything we are hearing is true and if so legitimate.

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Larry Scot, Attorney from the O'Reily Law Firm, 12900 Hall Road, Suite 35, Sterling Heights representing Nicholas Lavada, owner of the Wendy's site: met with Linda Anderson and Nicholas Lavada last week; inform you Mr. Lavada had spoke with Mr. Mentz and a cost of \$125,000 for use of the access road was presented; Wendy's has indicated will not take the site unless can get the curb cut on M-29; would the Township consider having a revised traffic study done for traffic flow between the new strip mall and an access road on M-29 just west of Nook Road? If traffic study permits, like to consolidate the five existing parcels west to Nook Road and put in a one curb cut, one access to all five parcels.

Chairman Getman: Pointed out strip mall service drive will give you access to both Nook Road and M-29.

Attorney Scott: Approved site plan for Wendy's site, did not include an access through the strip mall.

Chairman Getman: Explained site plan referred to future access; strip mall has access on M-29, two ways to get to the service drive M-29 and Nook Road, service drive services the entire mall, Wendy's clients would have access from both roads.

Turn-Key aware condition of their site plan approval was they agree to give access.

Attorney Scott: Can't justify the amount of money to pay for the land development, it is clearly an issue.

Chairman Getman: Contacted by Supervisor about the issue, did not require they allow it for free, asked Turn-Key to come here tonight to justify to us the amount of money.

Attorney Scott: Understand the accesses available for Wendy's.

Chairman Getman: 2nd approved site plan clients had for that property, Burger King had no objections to not having an access to M-29, properties purchased with the assumption would not have access out to M-29, problem has only come up since Wendy's started to negotiate for the access.

A traffic study would not be unreasonable, new site plan could generate a study or this letter from Wendy's.

Attorney Scott: Wade-Trim has all the data from a traffic study done a year ago, fine with Wade-Trim doing it.

Chairman Getman: Policy Planning Commission selects the engineer and applicant pays for it; financial cost for the access appears to be out of line, discussion followed.

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Attorney Scott: Explained economics of the cost to purchase the five lots, then pay another \$125,000 on top to do a land lease with Wendy's to obtain access to an access road, explained why an access onto M-29 is important: vehicles not finding the entrance from Nook Road, slowing down for the drive will create a traffic problem, backing out of parking spaces, etc.

Mike Mentz, Turn-Key Developer: Explained all the costs incurred to create the drives that were approved, orally listed all the expenditures, total cost \$455,2000, took 27% of that total to recoup some of the cost that Wendy's would use, they are getting all the improvements considerably less than what the lot cost.

Chuck Michel: Doesn't seem reasonable, recouping the cost of M-29, everybody is going to use, would have to do those improvements anyway, Turn-Key had to make access according to S.A.L.U.

Pat Sharrow: Thought the cost would be more of a maintenance agreement; the costs you listed you would have to spend if no one bought that corner, should be something calculated on a 10 or 15 year plan on a traffic share/maintenance share.

Chuck Michel: If negotiations gets down to a reasonable cost, your saying Wendy's would not accept it?

Attorney Scott: At this moment that is correct, Wendy's has sent a letter rejecting the deal and asking for reconsideration to have a curb cut on M-29.

Pat Sharrow: Is one curb sufficient w/o the access to the back entrance , something the traffic engineers will need to look at.

Chairperson Getman: Concerns over different stories each time we have a meeting, business opens in the future and want another curb cut; nobody objected to the use of the access road until there was a figure.

Attorney Scott: Explained if allowed to go forward with the five parcels, curb cut in the center of those parcels to service the three parcels, restrictions given cannot build on the last two parcels, shopping center has about 70,000 sq. ft. of rental space, Wendy's building is only 2,400 sq. feet, 27% to charge is too high based on the footage comparison, this is why this economics does not work and why we came back.

Tony Antkowiak: Questioned why didn't the planner design the plan with the curb cut prior to buying the property, talk to Wendy's and find out what they want?

Chuck Michel: the site plan we saw was approved by the developer, Wendy's must have been in favor.

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Attorney Scott: When they went to sign the lease, options on the property, Wendy's came out here and saw the layout, letter you received from owners was than sent correspondence.

Chuck Michel: Your client agreed to site plan it was agreed Wendy's was on board.

Dorothy DeBoyer: Fairly new policy for Wendy's re: direct access to main highway?

Attorney Scott: Do not represent Wendy's; explained the series of events, ground lease negotiated, site plan approved, franchisee came out to the site, Turn-Key negotiations did not go good, apologize for the chain of events.

Dorothy DeBoyer: Pointed out other Wendy's do not have direct access to a highway.

Chairman Getman: General opinion from Planning Commission members: request a traffic study , process would start over, submit a new site plan, public hearing, amendment, etc.

Dorothy DeBoyer: Ordinance requires 75' between driveways, 60' from the nearest intersection and "motor vehicle oriented businesses adjacent to or integrated in a shopping center or a cluster of commercial facilities should use a common access with other businesses establishments in that center."

Pat Sharrow: They would have another 100' of property, there is enough room.

Attorney John McNamee: Suggest the Planning Commission not give a pre opinion what you may or may not do in regards to a new application that may be submitted; basically new ordinance and a new application and have to make your determination.

Pat Sharrow: New ordinance takes affect 10/11/02, site plan submitted immediately would have to consider it under the old ordinance.

John Makuch: Everything has been approved, now we have to have something different; agree 27% is a little high, \$75,000 to \$80,00 bill is better.

Attorney John McNamee: Reviewed all the documents, Turn-Key has an obligation to share the expense of that easement should be a reasonable amount of money, if no agreement, would need a third person to decide, a reasonably sharing of that cost; consider lot size and not the building size, take the area of those five lots and put a ratio to them, need to share in the costs, asphalt repair, etc. They have a right to be reimbursed for the use of the easement and a reasonable agreement.

Chairperson Getman: Doesn't appear the other side has not tried to negotiate.

Linda Anderson: Advised Wendy's they would have to have a letter or start a new site plan to initiate the Planning Commission to ask for a traffic study.

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Chairperson Getman: Would always review a new site plan, obligated as long as fees are paid, at that time can always make it a condition for a new traffic study.

Attorney Scott: Understand need to bring a letter from Wendy's requesting a new site plan be considered and make application.

John Makuch: Per a business standpoint, the ideal situation would be access from both sides.

Chairperson Getman: Question to Attorney McNamee if applicant does submit and is granted new site plan approval and does not want to use the right-of-way access, would Turn-Key be required to still have this as a condition of the S.A.L.U.?

John McNamee: Yes, won't be in violation but the access would still have to remain available to those lower lots.

Pat Sharrow: If a new traffic study is done, engineers consider the following issues: one cut is safe off of M-29 for Wendy's or the back entrance should still be a necessary exit and considering those two side lots, don't want the owners returning and asking for a curb cut onto Nook Road. If two lots are sold to another person then he may be in a position to allow access through his property.

Chairperson Getman: Site plan approved to allow access to those other two lots.

Pat Sharrow: Sorry Wendy's does not send a representative.

Attorney Scott: Will do his best to have a representative here next time.

Chuck Michel: Questioned ownership of Wendy's.

Attorney Scott: Ground lease where Wendy's takes the site, builds it, pays so much for the rent and then Wendy's puts a Franchisee at that spot, we don't operate it.

Chuck Michel: Franchisee is the person who decided they wanted a direct access to M-29, not Wendy's but the Franchisee.

Chairperson Getman: Submit a new site plan certainly would review it, reiterated what triggered this to be revisited, it was never suggested a new site plan.

Pat Sharrow: Like John McNamee's idea of the reasonableness of the square feet, get to that point again can work out a ratio.

Attorney Scott: Report back to the client and have them submit a new amended site plan.

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6. **MASTER PLAN AMENDMENTS:**

Only amendments proposed to the Master Plan are those essentially required, demographic information from the 2000 census and the addition of the new RS-2 zoning classification. No significant changes to the Plan, not a new Master Plan, lot of the language is the same. Time limit on it with the new legislation, adopt by the end of December, advertise 30 days before public hearing and 8 days, appears need to approve this now so can have our notice in the paper.

Pat Sharrow: Errors like to go over, don't know if can be approved tonight.

Chairman Getman: Set the public hearing, after the public hearing make our changes.

Linda Anderson: As long as those changes don't change assumptions.

Pat Sharrow:

Land use map, center of Harsens Island zoned RS-1, why is it colored green, future use.

Linda Anderson: suppose to be the yellow color and indicated RS Zoning.

Page 59: DDA is established, statement from the 1990's when about to establish.

Page 54: Linda Anderson please check the map, need to correct the interior zoning of Harsens Island, not RS2, it is now RS1.

Page 53: Residential Suburban 99% on the Mainland has public water and 3rd sentence says ".....without public water...", this needs to be updated.

Page 53: Same paragraph ".....our purpose is to maintain and preserve semi rural character of the township.....", wonder if we could add to the statement "to preserve open-space and woodlands."

Table 19 per Linda Anderson will have to be redone.

Page 52: "Township plan takes us into the next century....", it already has.

Page 49: No. 8 Goal, the Shuttle Bus, has not existed for about 8 years; think should delete it, could change it to read "promote", for a future endeavor, could possibly work, as private business venture.

Linda Anderson: Need the utility information for Harsens Island from Barbara Schutt.

Page 36: Phelps Road is going to be paved next year. Change it to read ".....planned for paving next year....".

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Linda Anderson will make those amendments.

Public Hearing to be held the first meeting of the month in November; consensus was to hold the public hearing in the Township Board Room. Where do you want copies of the Master Plans available? Copy at the Harsen's Island Post Office, Township Office and at the Algonac/Clay Library.

Moved by Michel, supported by Cooper, **MOTION CARRIED**, to adopt the Preliminary Master Plan with the amendments per discussion and set the date for the Public Hearing, Wednesday, November 13, 2002 at 7:30 p.m. AYES: All. NAYS: None. ABSENT: None.

Chairman Getman: Explained the steps in the processing after the adoption.

1. Upon the public hearing, Planning Commission makes their final decision.
2. Send courtesy copy to the County Planning Commission and the Township Board.

Dorothy DeBoyer: Should it be sent to the adjoining municipalities?

Linda Anderson: Under the new law starting in January, are required, this one we are not.

Chairperson Getman: Matter of courtesy did send it to Cottrellville and Ira.

7. **CHAIRMAN'S REPORT** None.

8. **PLANNING CONSULTANT'S REPORT:**

Linda Anderson: Request from the St. Clair County Metropolitan Planning Commission for the Township's new ordinance on disk; Township owns it, need your permission.

Moved by Sharrow, supported DeBoyer, **MOTION CARRIED**, to send the amended Zoning Ordinance to the St. Clair County Metropolitan Planning Commission. AYES: All. NAYS: None.

9. **PLANNING COMMISSION COMMENT:** None.

10. **PUBLIC COMMENTS:**

Building Inspector Mike Kras and Zoning Official Tim Wiggle request clarification to two sections of the new Zoning Ordinance.

11. **ADJOURNMENT:**

Moved by Michel, supported by Makuch, **MOTION CARRIED**, to adjourn at 9:15 p.m. AYES: All. NAYS: None. ABSENT: None.

Valerie J. Kulba

Recording Secretary