

MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION MEETING
HELD ON WEDNESDAY, JULY 23, 2003 IN THE CLAY TOWNSHIP BOARD
ROOM, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MI 48001.

1. Meeting called to order by Chairperson Mark Getman at 7:36 p.m.
2. Roll Call: Present: Chairman Mark Getman; Vice-Chair Dorothy DeBoyer, Secretary John Makuch, Pat Sharrow, Sandra O'Conner, Louis Cooper, Tony Antkowiak, Edward Keller II. Absent: None.
3. Communications: None.
4. PROPOSED WENDY'S NOOK ROAD/PTE. TREMBLE ROAD

Chairman Getman: Site plan consideration proposed Wendy's, Nook Road and Pte. Tremble Road adjacent to the strip mall/Farmer Jack. Reiterating the Planning Commission at an earlier date had approved a special approval for a drive-thru restaurant and an approved site plan submitted by the applicants, later date the applicants submitted a different site plan which was denied, applicants went to Circuit Court and per a Court Remand the Planning Commission is to review it once again. Applicant has submitted another plan, not the one denied. Major objection to the original plan approved with the condition traffic access through the strip mall and the drive thru restaurant via negotiation to obtain the right of way. Applicant prefers instead an access to M-29/Pte. Tremble Road directly. Several engineers and professional consultants experts in their fields will speak.

Carol Rosati, Attorney representing the Township in the lawsuit explained why this case is before the Planning Commission.

Lawrence Scott, Attorney, 12900 Hall Road, Suite 350, Sterling Heights: Representing the Petitioner in this lawsuit Nicholas Lavdas. Remand from the Circuit Court for a consideration of the petition. Briefed the Board on the previous site plans submitted to the Planning Commission starting with the site plan from the Wendy's applicant on April 24, 2002, denied by Board on June 12, 2002; Mr. Lavdos submitted on July 19, 2002 another application, granted with several conditions to the site plan and the special approval land use permit on July 31, 2002. A condition required access out to the Nook Road access road. Developer and Turn Key Mr. Metz met in July to discussion cost to use the access road. Mr. Lavdos met with Township Supervisor on September 25th to discuss the unsuccessful negotiation with Turn Key. October, 2002, Mr. Lavdos filed an application with an access to M-29, Planning Commission requested a traffic study; in November Commissioners denied request for a site plan. Applicant filed a lawsuit in Court; Court decision this matter be resubmitted to the Planning Commission. . Engineering issues regarding site plan will be addressed: curb cut on Pte. Tremble Road, retention drainage basis, parking and the access. Applicant owns five (5) residential lots proposing to combine all five and have one access 160' east of Nook Road onto M-29. Prior Ordinance requires a drive thru restaurant have access to a major street, curb cut at least 50' from the corner, if not granted, five parcels landlocked.

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Chairman Getman: At a previous meeting it was discussed the amount Turn-Key wanted for access, no counteroffer by your client or any negotiations with Turn Key, Twp. Attorney McNamee was to mediate, if negotiations could not be done in good faith between the two parties, Planning Commission's right to withdraw the special approval if Turn Key failed to negotiate; Planning Commission not notified of the result.

Lawrence Scott: Respectfully disagree; cannot impose an obligation on a landowner.

Chairman Getman: Per Township's attorney advise, special condition under the S.A.L.U. for Turn Key to allow your client access. Have you or your client negotiated at all with Turn Key and did you notify the Twp. of the negotiation.

Lawrence Scott: Not since the last meeting, Mr. Lavdos has advised me he spoke to Mr. Metz and he was firm on the \$125,000.

Chairman Getman: Important Planning Commission knows if you had notified Township/Planning Commission.

Lawrence Scott: Per approved site plan for Turn Key, the southwest corner is specifically excluded as future development area and noted "and shall provide access", no indication to negotiate, own five parcels, Township should not be able to impose an obligation upon us to negotiate for an access. Issue is the M-29 access and whether this makes sense from a traffic perspective.

Chairman Getman: Planning Commission will consider the entire site plan, failure of Turn Key to grant the access is very pertinent to the site plan.

Lawrence Scott: Presentations from Mr. Carlo Santia, Traffic Director and Mr. Larry Young, Resident Engineer with St. Clair County MDOT Division:

Larry Young: Transportation Service Manager, Port Huron, St. Clair County: Access to/ from M-29 under our jurisdiction, review permit, apply stipulations if needed.

Mike Szmch, Traffic & Maintenance Engineer for the Port Huron TSC with MDOT. Inquiry made regarding access, reviewed the site, our office has not been contacted regarding the road access.

MDOT guidelines an issue and was addressed.

Larry Young: MDOT engineer make decision, follow the permit process.

Chairman Getman: Reports indicate the MDOT guidelines. Development on a State Highway, when are you consulted?

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Larry Young: MDOT opinion no reason why one driveway constructed from restaurant to M-29, centered between road way and traffic light, safe entrance, per State Law must provide a reasonable access, combining five sites into one driveway is improving the situation.. Department would have no problem with providing one access point, permit process, require some road conditions .

Questions by Planning Commissioners:

Chairman Getman: MDOT allow a sidewalk on the road right of way directly adjacent to the right lane/turning lane or widening?

Discussion followed Chairman Getman's question.

Chairman Getman: Boat launch site, summer traffic, new strip mall, supermarket have all been taken into consideration when you give us your info.

Larry Young: Looked at the site using our engineering study, providing one egress/ingress is not unreasonable.

John Makuch: Mr. Young made is an official MDOT statement.

Chairman Getman: Obtaining information so we can make a decision.

Chuck Michel: Curb cut is acceptable, other traffic studies disagree, ridiculous cut.

Mr. Young: Reasonable provide one access point for four properties, asking the MDOT would we approve a permit to construct one drive-way, the answer would be yes.

Pat Sharrow: Questioned the right turn lane appears to be insufficient property.

Mr. Young: If needed would deed to MDOT the necessary shoulder.

Lawrence Scott: Introduced Carlo Santia.

Carlo Santia, Traffic Engineer, 35890 Monterey, Clinton Twp.: Reviewed site plan dated 7-22-02 with no access drive out to Pte. Tremble Road.

Opinion reasonable access could be provided out to Pte. Tremble Road, may need some modifications to accommodate the driveway location, stacking lane for the drive through and the parking.

Chairman Getman: The changes in the site plan were not significant, building a little larger, parking spaces a little smaller and angled.

Tony Antkowiak: Questioned report statement "proper cross access easement agreement", what does that mean?

Mr. Santia: Legal document entered into by owners of the strip mall to allow future adjoining sites to have access to parking area and driveways in the center, recordable with the property so future owners would be aware of it.

Dorothy DeBoyer: Questioned similar developments and the safety concerns.

Mr. Santia: Concerns are of interest, traffic reports are very factual and accurate, explore a mechanism to provide that access.

Sandy O'Conner: Comments regarding community development, alternative option.

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Chairman Getman: Advising us if access could be gained through the service drive of the supermarket would you find that to be preferable to direct access to M-29 that giving access to both M-29 and Nook Road with a traffic light?

Mr. Santia: Depends on the conditions placed by Mr. Metz, compromise where would allow access off of Pte. Tremble Road restrict that driveway to a right turn out only and than would have a lesser use access out to through to Nook Road, certainly explore some options.

Chairman Getman: If it weren't this particular development and no restrictions or same developer were doing the strip mall and this corner what would your recommendation be to us?

Mr. Santia: Probably would have went back to your original plan and had the driveway off of the access drive and another cross connection to the other property as well.

John Makuch: Might consider a direct access to M-29 with some restrictions, a no right turn how would this be enforced.

Mr. Santia: MDOT could issue a traffic controller to install the sign and that would make it an enforceable device.

Chuck Michel: Your report states the proposed development would generate 1210 on a one-way trip and 58 during peak hours, would you explain.

Mr. Santia: Not taken into consideration is ½ of those trips are vehicles already on Pte. Tremble Road.

Michel: Safety situation and the number of trips generated just by the development.

Pat Sharrow: Correction noted letter speaks of the southerly lots, should be the westerly lots. Questioned the distance discrepancy required from the intersection.

Mr. Santia: Explanation regarding why the conditions are different in this area.

Lawrence Scott: Mr. Lavdos is willing to work with the Township, redo the parking, right turn only lane, moving the driveway, engineering issues.

June MacLala, Real Estate Representative for Wendy's International: Absolutely necessary Wendy's has an access to M-29.

Chairman Getman: Consider accessing through the strip mall with access to M-29 and Nook Road and a traffic light.

June MacLala: Direct access on M-29 going into the Wendy's location, provide something that makes sense to the average customer on the road. Other Wendy locations that have access to strip malls have multiple access points and never have to pay for our access, sharing in the cost is acceptable i.e. snowplowing, road repair, etc.

Chairman Getman: Our position is there are other accesses, not land locked.

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John Makuch: Did not have access to a direct access to M-29 but would have access to Nook Road, would you build and whose decision would it be.

June McLala: Do need the direct access.

Discussion as to turning left into restaurant and those people leaving and need to go west. Negotiate something out to Nook Road would go that route.

Multiple accesses are necessary.

Discussed several “what if” scenarios as to the traffic patterns into Wendy’s.

Sandra O’Conner: No room on the road for a middle lane when turning left.

Chuck Michel: Questioned the final decision to build a Wendy’s is determined by whom.

Lawrence Scott: Comment regarding Mr. Metz contacted June McLala if she were interested in taking the Wendy’s down to the abandoned Farmer Jack site.

Carol Rosati: Introduced consultants reviewed the matter and have comments.

Richard Carlisle, President, Carlisle/Wortman Assoc.Inc. Consulting firm based in Ann Arbor and an office in Oakland County: Property is not landlocked, Commission has discretion over approving or disapproving if in your judgment the approval of the use is detrimental to surrounding land use or conditions existing on the site. Another consideration and concern is pedestrian crossing from the Boat launch to the fast food restaurant would create a safety issue. Comment as to MDOT responsibility is road access and control of public highways; they are not over land use. Local responsibility to consider the relationship of land use to traffic and access and if it creates a detrimental impact to public health, safety and welfare.

Summation: denial of a site plan allowing a direct access to M-29 would be our recommendation.

Chairman Getman called for a recess at 8:56 p.m.

Reconvened the meeting at 9:07 p.m.

Thomas Biehl, Hubbell, Roth & Clark, Inc.: Reviewed site from an engineering prospective regarding the storm drainage issue. Site plan reviewed indicated storm drainage for the Wendy’s site (catch basin and storm sewer)to outlet into a stub provided on the adjacent property. No agreement, site would not have an outlet for storm drainage and on site detention, would require an onsite retention basin. Retention basin affects the parking spaces, impact landscaping. Addressed at the site plan review stage. Cross access and access to the storm sewer system and detention are issues considered by the developer to pay for.

Summary: Concern is if agreement is not neg. between Turn Key and the developer as to the storm drainage issue, may result in an on site retention basin required. .

MDOT question re: a restricted outlet into the M-29 right of way, agricultural runoff from a commercial site.

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Questions from the Board:

John Makuch: If negotiations cannot be reached with Turn Key re: storm drainage issue their alternatives are limited.

Tom Biehl: There is a catch basin and a storm sewer in the M-29 right of way that may be available, probably restricted by MDOT to agricultural runoff, required to provide their own onsite detention.

Rodney Arroyo, Vice President of Birchler Arroyo Assoc., traffic and planning consultants and William Stimpson, Senior Traffic Engineer:

MDOT earlier comment re: reasonable access can also be indirect access as quoted from the MDOT Access Management Guide, as Commissioners looking at it from roadway access standpoint, appropriate use at this location for traffic impact, internal circulation, etc., all these factors in considering this site plan and S.A.L.U.

Report submitted considered Wade-Trim reports and analysis based on the fact of having a fast food restaurant on this site.

Conclusion providing sole access to M-29 would result in significant traffic congestion, explained this conclusion, i.e. traffic impact assessment, internal circulation is not going to work well in this particular drive off of M-29, problem with the near curb to near curb spacing is only 134', does not meet the standards of the required 170', corner clearance standards not met; ability to look at the appropriateness of this use since it is a special land use and the internal circulation issues.

Pedestrian maneuvers: future sidewalk along M-29 will be blocked at certain points due to the traffic backup.

Questions from the Board:

Pat Sharrow: Internal circulation problems, northeast corner it shows an enclosure for trash, appears not to be enough room for a truck to back up to the trash bin.

Mr. Arroyo: Several issues as to the truck if it could actually make the circulation, angle parking issues.

Township Attorney John McNamee: Advice to the Planning Commission what your legal responsibilities are. Listened from consultants for both parties re: the ingress/egress, drainage, safety factor, etc. Issues need to be kept in mind for your consideration: Turn Key required to provide easement access to any development on five lots, the pro-rated share to Wendy's was \$125,000, parties were to enter into negotiation, if failed, Township would require Turn Key to negotiate in good faith. Referred to statements from Mr. Santia, Ms. Maclala and Mr. Carlisle re: the road access. The policy of Wendy's Restaurant is variable from the original request when internal access was acceptable. Mr. Carlisle made a good point, property is not landlocked, it can be used for other reasons. If used as a fast food restaurant it would need a special use and the Board has the discretion to take the information and make the decision as to whether or not you have concerns for the community about the safety, hazards to the roadway and traffic.

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I have authority from the Board to resolve this issue between Turn Key and the developer on the access issue. My concern is Mr. Scott's client is not interested in the alternative access. I will be making contact with Mr. Scott and Mr. Metz of Turn Key to pursue ingress/egress settlement. If no resolve, will ask a Circuit Judge decide the matter what is a reasonable prorate share.

Legal basis tonight on the record articulate the reasons why you vote in favor of granting the new site plan or the reasons for denial. Exercise discretion please articulate on the record the basis upon which you are making the decision. Any judge in reviewing the record tonight will want to know the basis for your decision.

Chuck Michel: Approved site plan, are we abrogating that in place of this?

Carol Risota: This is an application to grant an amended site plan approval, an amended step. Application before you was voted on November, 2002 to amend the prior site plan approval, original site plan still in affect, can still build under this site plan, asking you to amend, if granted the amended, permitted to develop under the amended site plan.

John Makuch: Amended site plan what about the S.A.L.U. consideration.

Carol Risota: The original special use approval was granted in conjunction with the original site plan approval, when you decided whether or not to grant the special use you were considering the specifics of that site plan, to the extent this site plan differs from that you would also have to review the special use standards to determine the special use approval should be grant as well in conjunction with this amendment.

Chairman Getman: In order to grant the special approval we had to have a public hearing, notification in paper and property owners, would that have to be done again if amending the special approval.

Carol Risota: Going back when they originally applied for the amendment, did you hold a public hearing at that time. Yes, you would have to hold a public hearing on the amendment. The original S.A.L.U. that was granted was conditioned upon the access to the North through the shopping center, really asking for a change in that as well.

Chairman Getman: Cannot approve it until we have held a public hearing, can reject it would not change the special approval. Suggest to the Planning Commission that we do not take action due to the lateness of the hour, if postpone it until our next meeting. If wanted to approve the site plan or modify it than we would call for a public hearing for the special approval.

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MOTION BY SHARROW, SUPPORTED BY ANTKOWIAK TO POSTPONE A DECISION ON THE PROPOSED WENDY'S SITE PLAN CONSIDERATION UNTIL THE NEXT PLANNING COMMISSION MEETING DUE TO FACT THERE ARE TOO MANY DEFICIENCIES, PROBLEMS AND SO FORTH AND MANY OF THEM HAVE BEEN BROUGHT TO LIGHT TONIGHT, NEED THE TIME TO ORGANIZE WHAT WAS PRESENTED.

Discussion:

Chairman Getman: Want to make sure not binding ourselves into having to make a decision on the site plan at the next meeting.

AMENDED MOTION BY SHARROW, SUPPORTED BY ANTKOWIAK: TO POSTPONE FURTHER ACTION OR DISCUSSION OF THE SITE PLAN UNTIL THE NEXT MEETING.

Discussion: None.

ALL IN FAVOR: AYES: Sharrow, O'Conner, Antkowiak, Makuch, DeBoyer, Cooper, Keller, Getman. NAYS: Michel. ABSENT: None.

MOTION CARRIED.

August 13th is the next regular Planning Commission meeting.

Lawrence Scott: Would I be allowed to present my response to the presentations made at this meeting on that day? Received the reports on Monday and listened to them tonight and have some comments like to make them on the 13th.

Chairman Getman: Yes, normally have a presentation from the applicant and their representatives and then listen to our own advisors, nothing where one side challenges the other.

Carol Risato: Out of town on the 13th.

Motion was to postpone to the next meeting if the date was not said, will this be acceptable.

Carol Risato: Any problem in reviewing the site plan knowing it is contingent upon also obtain special use approval?

AUGUST 6, 2003 WILL BE THE A SPECIAL PLANNING COMMISSION MEETING.

Pat Sharrow: Legal Counsel for the Petitioner to present his reply in writing for our review.

Attorney Scott will submit to Ms. Risato and she will transmit to the Planning Commission.

John Makuch: Directed a question to Ms. MacLala, as to entering the Wendy's between the road and Blockbuster.

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Chairman Getman called for a recess at 9:55 p.m.

Reconvened at 10:02 p.m.

7. **CHAIRMAN'S REPORT**

Timothy Wiggle, Planning & Zoning Administrator and Code Enforcement Officer submitted a memo for an interoperations: Will not address it this evening due to the lateness of the hour, will look at it, come up with some thoughts and refer it to Mr. Meagher for his review and opinion as well.

Two letters from the DDA regarding a variety of issues. Will respond to the letter at a later date. Do not think it was appropriate for the DDA to approach the Attorney representing people who are suing us with some ideas with what they can do for the project. One of the conditions of approval that the Planning Commission imposed was putting in a sidewalk, the old plan has one. Not appropriate for other bodies in the Township government to approach the attorney on the other side of the litigation. Jurisdiction of the Planning Commission and not the DDA.

Richard Wagner: Met with MDOT with reference to putting a three lane improvements along M-29 for the sidewalk and the bike path. Mr. Young brought up the issue, did not know there was a lawsuit. Did not take a position with reference to anything, did not know there was a lawsuit.

8. **PLANNING CONSULTANT'S REPORT** - None.

9. **ZONING ADMINISTRATOR COMMENTS** None. Patrick Meagher, Community Planning is present.

10. **PLANNING COMMISSION COMMENTS** - None.

11. **PUBLIC COMMENTS**

Sandra Mondello, 2653 Pte. Tremble Road: Live across the street from the site; feel an additional drive would not be an asset to this area, very hazardous condition to traffic and pedestrians.

Pam Michel, 2431 Pte. Tremble Road: Concern is the foot traffic from the boat ramp, concerned about the cars and traffic, direct access onto M-29 will cause an accident.

12. **ADJOURNMENT**

Moved by Michel, supported by DeBoyer, **MOTION CARRIED**, to adjourn the meeting at 10:15 p.m. AYES: All. NAYS: None. ABSENT: None.

