

MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION REGULAR MEETING HELD ON JULY 28, 2004 AT 7:30 P.M. IN THE CLAY TOWNSHIP ROOM, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MICHIGAN 48001.

1. Chairperson Dorothy DeBoyer called the regular meeting to order at 7:30 p.m.
2. Roll Call: PRESENT: Chair Dorothy DeBoyer, Vice-Chair Mark Getman, Secretary John Makuch, Patricia Sharrow, Tony Antkowiak, Edward Keller, George Lyle, Michael Watson, Chuck Michel.
ABSENT: None.

3. **AMENDMENTS TO AGENDA**

Chair DeBoyer informed the Planning Commission received information from Donna Horvath regarding the Silent Acres issue, too late for the packet.

Moved by Getman, supported by Michel, **MOTION CARRIED**, to include Silent Acres comments in position of #8-A. AYES: All. NAYS: None. ABSENT: None.

Not necessary to amend agenda for Item # 8 Public Hearing Re-Zoning 123-10 for Paul Paulus, public hearing was held last meeting.

4. **COMMUNICATIONS** – None.

5. **APPROVAL OF MINUTES:** July 14, 2004

Moved by Getman, supported by Watson, **MOTION CARRIED**, to approve the July 14, 2004 Planning Commission Minutes as submitted. AYES: All. NAYS: None. ABSENT: None.

6. **OLD BUSINESS.**

7. **N & N DEVELOPMENT (TACO BELL) 5460 PTE. TREMBLE ROAD**

Patricia Sharrow requested excused from the Taco Bell discussion at 7:33 p.m.

Commissioners have the Planner's comments.

MOTION BY MICHEL, SUPPORTED BY GETMAN, REFERRING TO THE PLANNER'S COMMENTS WOULD MAKE A MOTION TO TABLE ANY ACTION ON THE N & N DEVELOPMENT (TACO BELL), 5460 PTE. TREMBLE ROAD UNTIL THE ITEMS LISTED HAS BEEN ADDRESSED.

Discussion:

George Lyle: Has Applicant contacted Planner about these requirements

Patrick Meagher: Reported update when talked to the engineer re: future bike path, by the DDA, landscape plan does not meet the submission requirements; show how the fuel tankers and operators would operate on the site.

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Chairman DeBoyer: Sign not in the M-29 right-of-way, 3' off the right-of-way; dumpster gates have been repaired, no sagging, area cleaned up with no weeds.

John Makuch: Questioned the Planner's comments re: the landscaping.

Patrick Meagher: Identify all existing and proposed landscaping per Ordinance.

Chuck Michel: Stripping of the drive going around the building on the site plan?

Patrick Meagher: It is on the revised plan; meet the submission requirement for the sidewalk, Commission could waive if a bike path is part of the plan by the DDA.

Chuck Michel: Explained DDA plans for a bike path on the opposite of the road, a sidewalk to continue on the north side, hoping businesses will continue sidewalks adjacent to M-29

Engineer Representing Taco Bell - Frank Heno, Geno Engineering: Meet with Mr. Meagher, thought all requirements were covered, if any issue, hope it could be approved pending condition is completed; regarding sidewalk will take care of it, because of time constraints would like to complete the project; issue of the traffic flow, suggestion eliminate parking spaces near the underground fuel tank, move to the west side, no parking allowed in this area, would help the traffic flow.

Mark Getman: We can't alter the plans, you can make the change.

Tony Antkowiak: Questioned if we can approve the site plan tonight w/o the revisions on paper?

Chairperson DeBoyer: In the past can approve with conditions must be on final plan with the Zoning Adm. & Building Inspector to approve the conditions are met.

Engineer: Can get elements as requested prepared and put on the site plan in a few days.

Michael Watson: Traffic flow question why are we changing a parking lot?

Patrick Meagher: Commission could either accept applicant's explanation of the traffic flow or require some parking spaces moved.

Engineer: Drive-in window would be one-way traffic, arrows will indicate traffic will flow from the eastside north and then go to the west side of the building, driveway will secure more safety for customers.

MOTION IS ON THE FLOOR TO TABLE N & N DEVELOPMENT FOR TACO BELL UNTIL THE FOLLOWING ITEMS HAVE BEEN ADDRESSED:

- **Sidewalk 5' wide requirement installed adjacent to M-29**
- **Traffic flow addressed, move parking spaces to the west.**
- **Landscaping identify on the site plan the names of shrubs and trees.**

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R/C VOTE: AYES: Lyle, Keller, Michel, Antkowiak, Getman, DeBoyer. NAYS: Watson, Machuch. EXCUSED: Sharrow. ABSENT: None. MOTION CARRIED.

Commissioner Pat Sharrow returned at 7:51 p.m.

8. RE-ZONING 123-10 PAUL PAULUS 6052 & 6060 PTE. TREMBLE RD.

Chairperson DeBoyer: Property zoned industrial and then re-zoned at the passing of Zoning Ordinance 123 to C-2, applicant is requesting it be rezoned back to the original industrial zoning.

MOVED BY GETMAN, SUPPORTED BY WATSON, TO RECOMMEND TO THE TOWNSHIP BOARD THE PARCELS 6052 AND 6060 PTE. TREMBLE ROAD BE REZONED FROM COMMERCIAL C-2 TO LIGHT INDUSTRIAL I-1 THE REASON BEING IT WAS RE-ZONED IN ERROR IT HAS ALWAYS BEEN ZONED I-1 SINCE ZONING BEGAN IN CLAY TOWNSHIP.

R/C VOTE: AYES: Sharrow, Watson, Makuch, Lyle, Getman, Michel, Antkowiak, Keller. NAYS: None. ABSENT: None.

Chairperson DeBoyer: Explained to the applicant the legal procedures to follow for the completion of the rezoning.

8-A. SILENT ACRES, 2040 GOLF COURSE ROAD – JOHN/DONNA HORVATH

Chairperson DeBoyer: Met with Planner Patrick Meagher regarding guidelines that needed to be addressed and the responses.

Pat Sharrow: Change the 2nd one; noted Zoning Ordinance required the slope.

Chuck Michel: Zoning Ordinance requires more of a soil removal plan, refinishing plan, etc.

Chairperson DeBoyer: Plan submitted earlier with the comment not a true soil removal operation.

Chuck Michel: Stated limit the soil removal to 40 truckloads a month is a soil removal operation, Ordinance requirements is much more extensive than this plan, questioned the final clean up, there is no plan.

Planner Patrick Meagher: They are claiming the only soil to be removed will be from the existing pond, finished as it looks on the plan, soil from the stockpiling, all they are going to do is finish cutting down to the 18' depth with the 4-1 slope.

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Patrick Sharrow: Will there be additional ponds in the years to come?

Chairperson DeBoyer: Applicant had said no plans for additional ponds for soil removal at this time.

Pat Sharrow: Soil will be used from the ponds where they have permits, since Silent Acres is classified as a farm, can they continually get a permit for additional ponds for wherever they want?

Patrick Meagher: Only plan is the one submitted, if new ponds are dug and soil removed will be going beyond your approval process and end up going to the Township Board for the yearly permits.

Pat Sharrow: Pond in back was started w/o permission only had one for the front, claimed are a farm allowing as many ponds as needed.

Chairperson DeBoyer: Reiterated to the Commissioner according to the law cannot base decision on what happened in the past.

Chuck Michel: Disagree, no permit to haul it out have a right to discuss.

Chairperson DeBoyer: Request for a special approval land use.

Mark Getman: Should submit a new plan with specifics on it.

Pat Sharrow: Possible to make conditions of a special approval land use for Silent Acres, legally can that be done?

Planner Meagher: Attorney opinion if ponds are exempt under the right to farm act.

Pat Sharrow: Impossible to limit it to truck loads, limit the dirt removal only to the pond and the stockpiling, if more would be required to apply for another permit.

Planner Meagher: Concur with your idea motion can state to approve the soil removal operation not exceeding the stockpiling and excavation as shown on the site.

Pat Sharrow: One more concern is if in the future topsoil completely removed.

Chairperson DeBoyer: Applicant has said would only strip the area where the horses eat and the manure and mud build up.

Tony Antkowiak: Concerned about the 45 truckloads a month, under the impression applicant was only removing a small amount of dirt, have some apprehension what he is requesting.

Chairperson DeBoyer: Came about since he was asked to put a limit on the dirt, can specify in motion dirt removed from only approved pond.

Tony Antkowiak: Stockpile dirt is the one in the back part of the property.

Michael Watson: Think the two manure piles are part of it too.

Planner Meagher: Applicant has differentiated those two piles, when a truckload of manure is taken off the site, neighbors report it is soil.

Do not need a soil removal permit to remove manure.

Chuck Michel: If you have a farm do not need a soil removal permit, is that what we are saying?

Chairperson DeBoyer: If taking soil off your property do need a soil removal permit, if you have a farm and dig a pond, have that right, permit is needed only when taking soil off your land, Twp. Board has said approve a soil removal pending the Planning Commission's approval.

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Tony Antkowiak: Reiterated if a permit were given would stipulate the pond and the stockpiling and/or the existing dirt from the back pond, that would be the limitation.

Chairperson DeBoyer: If in the future going to dig another pond he would have to come back to the Township Board for approval.

Pat Sharrow: Two concerns: permission given was done several years ago for the soil removal, if approved here it should go back to the Township Board since it was not renewed last year or the year before; other soil removal operations if dug a 2nd pond or enlarged, this would be an amendment to the special approval land use and had to come back to the Planning Commission.

Chairperson DeBoyer: That is what will happen, as long as the pond was being dug and soil removed.

MOTION BY WATSON, SUPPORTED BY LYLE TO APPROVE THE SPECIAL APPROVAL LAND USE SOIL REMOVAL FOR THE STOCK PILED DIRT AND THE EXISTING BACK POND AS LAID OUT ON HIS BLUEPRINT.

Discussion:

Sharrow: Condition if any other ponds are dug.

SHARROW AMENDMENT TO THE MOTION: ANY CHANGE TO THE SOIL REMOVAL OTHER THAN THIS POND OR STOCKPILING WILL REQUIRE RETURNING TO THE PLANNING COMMISSION TO AMEND THE SPECIAL APPROVAL LAND USE.

WATSON, SUPPORTED BY LYLE, APPROVES AMENDMENT TO THE MOTION.

CHAIRPERSON DEBOYER DECLARED CLEAR THE FLOOR OF THE MOTIONS.

MOTION BY SHARROW, SUPPORTED BY LYLE, TO APPROVE THE SPECIAL APPROVAL LAND USE FOR THE REMOVAL OF THE STOCKPILE SOIL AND THE CONTINUED EXCAVATION OF THE EXISTING POND NEAR COTTAGE LANE ON THE SILENT ACRES PROPERTY AND THE HAUL ROUTES HAS BEEN STATED, THE SLOPE HAS BEEN DEALT WITH, THERE WILL BE NO PUMPING ONTO ANY NEIGHBOR'S PROPERTY AND ANY CHANGE OR ADDITIONAL PONDS AND REMOVAL OF SOIL WILL REQUIRE THE APPLICANT TO RETURN TO THE PLANNING COMMISSION TO AMEND THE SPECIAL APPROVAL LAND USE PLAN.

R/C VOTE: AYES: LYLE, MICHEL, GETMAN, ANTKOWIAK, SHARROW, WATSON, KELLER, MAKUCH, DEBOYER. NAYS: NONE. ABSENT: NONE. MOTION CARRIED.

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Chairperson DeBoyer called for a short recess to make the Commissioners a copy of the By-Laws to discuss.

Reconvened the meeting at 8:29 p.m.

9. DISCUSSION OF BY-LAWS

Chairperson DeBoyer: These do not cover every article since not changing everyone.

Article 4: Changing it to “chairperson”.

Article 5: Nonformal new business – question is “nonformal” a word.

Should the replacement be “informal” – suggestion was to use the phrase “or business that cannot be postponed to a regular meeting”. Discussion if appropriate.

Chairperson DeBoyer: For now will insert the phrase, ready to reconsider when it comes back.

Section II: Special meetings may be called by the Chairperson or by two or more members, this is in the Zoning Ordinance and the recommended procedure, discussed with attorney and he agrees should match the Zoning Ordinance.

Article 6: Elections – Attorney McNamee the wording to solve a tie “should two or more candidates receive an equal number of votes for a Planning Commission Office or position, a Planning Commission Clerk, at a regularly scheduled Planning Commission meeting should choose by lot the person who is declared elected to the Office.

Discussion regarding who the person named to choose by lot should be: consensus was to use “Recording Secretary” as the person to choose by lot the person who is declared elected to the Office.

Attorney McNamee recommended a detailed explanation of a “Quorum”, five (5) members necessary to conduct business, an affirmative vote of the majority of the members present shall be necessary to pass any motion with an exception of the Master Plan which requires a majority of the membership, voting shall be by voice vote, a roll call vote shall be required if requested by any Commission member or directed by the chairperson, all Commission members shall vote and chairperson shall vote last.

Defined when is a “conflict of interest” proper.

Michael Watson: Questioned the notifying radius.

300’ is required; we notify 500’ for a special approval land use or re-zoning where a public hearing is required.

Section II: Suggestion on Agenda, same as we have now except it includes a report from committees.

Discussion re: approval of minutes on the agenda, why it does not come after “Roll Call”.

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Absent for three (3) consecutive meetings for lack of interest: necessary to notify Chairperson, recording secretary, and another Board member. “The individual shall be notified and reported to the Township Board.....”

Planner Meagher: State specifically states only the Township Board is the only one that can remove a Planning Commission member.

Modified Roberts Rules of Order should govern all Commission meetings.

Chairperson DeBoyer: Will redo the By-Laws and make copies for all.

10. PLANNING CONSULTANT’S REPORT:

Planner Meagher: Submitted a copy of the different uses in the different zoning district, Committee can have a chance to start reviewing some of the terminologies vs. the definition, lot of discussion whether the uses are broken down correctly, hope this will be a guide to help the committee to get those thoughts organized.

Revised site plan submission section, Article 21 for review submitted to the Committee, sit down and discuss with the Building Department the procedure.

Chuck Michel: Asked Planner if any problem with progressive zoning?

Planner Meagher: Remarks.

11. ZONING ADMINISTRATOR COMMENTS

Tim Wiggle: Update as to the status of the property down by the Ferry, scheduled for Court on Monday, site is clean.

Chairperson DeBoyer: Site review committee did meet with Mr. Bryson tonight, review records before brought to the Commission.

12. CHAIRMAN’S REPORT

Chair DeBoyer: Article 11 – RM - Multi Family Residential District from current Zoning Ordinance, under Ord. 89 someone could have a single family residence, not allowable in current Zoning Ord., was that intended.

Could be under Item 6 allowed if approved by the Planning Commission.

Planner Meagher: Give his interpretation of mixing single-family dwellings with multi family according to Item 6; have to be careful, stated why, cautions, etc.

Lengthy discussion followed.

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13. PLANNING COMMISSION COMMENTS

Chuck Michel: Questioned the legality of Cheers Restaurant opening and not coming before the Planning Commission, concerned about parking spaces, not abiding by the Ordinance.

Tim Wiggle: Falls under a continuing nonconformance use.

Planner Meagher: Existing nonconforming uses, work with legal.
Lengthy discussion followed.

George Lyle: Referred to the Colony Drive ZBA case re: a boathouse not allowed to be enclosed, consider a special zoning district for areas as Anchor Bay Drive.

Pat Sharrow: Rumor is concrete being hauled out to Wes Simons property and a composting area for leaves.

Tim Wiggle: No specific knowledge of either.

14. PUBLIC COMMENTS

Dr. L. Kasperowicz, 6693 Dyke Road: Own property on Pte. Tremble Road and would like to build a single dwelling on my property.

Chairperson DeBoyer: Cannot put a single residential on multi zoned property, ordinance would have to be amended, decision of Planning Commission if were to rezone this property.

Robert Butters, 5485 Pte. Tremble Road: Agenda recommendation for two public comment sections. Taco Bell concerns regarding the 3rd lane to be installed, who would he contact. MDOT would have the plan.

15. ADJOURNMENT

Moved by Watson, supported by Getman, **MOTION CARRIED**, to adjourn at 9:32 p.m.
AYES: All. NAYS: None. ABSENT: None.

Valerie J. Kulba
Recording Secretary