

**MINUTES OF THE CLAY TOWNSHIP PLANNING COMMISSION REGULAR MEETING HELD  
WEDNESDAY, JULY 22, 2009 IN THE CLAY TOWNSHIP MEETING HALL, 4710 PTE. TREMBLE  
ROAD, CLAY TOWNSHIP, MICHIGAN 48001**

**1. CALL TO ORDER:**

Chairperson DeBoyer called the meeting to Order at 7:30 p.m.

**2. ROLL CALL:**

PRESENT: Whitey Simon; Edward Sharrow; Anthony Antkowiak; Thomas Krueger; George Lyle; Kathie Schweikart; Chairperson Dorothy DeBoyer

ABSENT AND EXCUSED: John Blair; Edward Keller, II

A quorum was established.

Also Present: Patrick Meagher, Community Planning and Management

**3. AMENDMENTS TO AGENDA:**

None.

**4. APPROVAL OF MINUTES OF JULY 8, 2009:**

**Motion by Antkowiak, supported by Schweikart to approve the Minutes of July 8, 2009 as presented.**

**AYES: All                      NAYS: None                      ABSENT & EXCUSED: Keller; Blair**

**MOTION CARRIED.**

**5. OLD BUSINESS:**

**Special Approval Land Use/Site Plan Consideration: Kroger Gas Station – 2696 Pte. Tremble Road – JGD Associates, Inc.**

Chairperson DeBoyer: Stated that there was a public hearing held on this matter at the last Planning Commission meeting on July 8, 2009. The public had an opportunity to speak at that meeting and tonight is strictly for Planning Commissioners discussion based on the Township Ordinance and applicable law.

Simon: Stated that he looked at Article 20.08 and feels that it appears that the requirements of that article are met. He also reviewed 19.05 as to the objectives of the Master Plan and it appears to fall within those requirements. The only clarification he would like to have is regarding 19.03(g) of the Ordinance which relates to data such as a market study, which would determine the demand, use, and saturation. In driving the 9 mile stretch from the Algonac State Park to St. John's Marsh, there are 5 gas stations, 3 of which are operational. If he ignored Algonac, there would be approximately 5-1/2 miles within which there are 2 operating gas stations. He then questioned Mr. Meagher as to when there would be saturation or how one would arrive at saturation?

Meagher: Stated that a market study is going to be based on the particular use in question. You would have to question whether it was comparing apples and apples when you look at other gas stations. When you look at a market study that might be produced by Kroger Company, it may very well show that there is a market for it because they're going to be able to sell their gas at lesser price to their customers. Because of that, they are able to offer a product that is not otherwise offered in this market. You can construe market saturation and market availability in many different ways. At what point does this new product pull market away from the old products is something that the Planning Commissioners have to judge on their own.

Simon: Stated that he was more interested in the matter of saturation. He questioned whether 3 gas stations within 5-1/2 miles created saturation?

Meagher: Stated that he doesn't think there is a sound answer to that. You have to question what saturation means. Are they selling they same product, and does the new business have something to offer that the other places don't?

Simon: Stated that his other thoughts were that the request seems to satisfy what we have in our Ordinance.

Lyle: Stated that one of his concerns is the traffic flow in and out of the gas station. He feels the traffic will get backed up and create a problem.

Antkowiak: Stated that there are 3 gas stations in the community. He feels the Speedway in Algonac has their niche of people that come; the Marathon has their rentals, propane, repairs, and their niche of people that come; and the Sunoco has pizza, beer, pop and has their niche of people that go there. When he considered Kroger's, they will just provide gas and at a cheaper price. In considering the economic impact on this community, he feels it would be a good thing. We are in a capitalistic society and look to have competition which helps to lower prices and give us better services. His opinion is that the comparison of the gas stations in operation and the two that are closed is a comparison between apples and oranges.

Chairperson DeBoyer: Stated in looking at it and the information that was provided, she requested the Planning Commissioners think about the gas stations that are closed and not make any assumptions as to why they were closed. Also, the stations that are closed are in the City of Algonac. Although we consider Algonac to be a part of our community, we are the Clay Township Planning Commission and have to think about Clay Township.

Antkowiak: Stated that the 4 gas stations were very viable in this community for quite some time. If they approved this gas station, there would once again be 4 gas stations in this community. It is his opinion that he doesn't feel that we have lost that many in this community that it wouldn't be supportable.

Sharrow: Stated that he thinks you would find that major companies do traffic studies and will build their image on that. He feels that you don't see major companies rushing into this

community to open business because they know that it's saturated to the point that there are not enough customers in the area.

Antkowiak: Questioned whether it is the Planning Commission's duty to consider whether opening another business will close an existing business? The Planning Commission recently approved another car repair facility under a Special Land Use while there are already two other car repair facilities in this community. So, does that mean that one of the existing facilities will now close? He doesn't know, it may or may not.

Sharrow: Stated that he feels there isn't enough traffic to warrant another gas station to be opened in the community. He feels all it will do is cause someone else to eventually close. He believes the traffic study would be able to tell them that.

Chairperson DeBoyer: Questioned the Kroger representative as to whether Kroger looked at whether this community could withstand another gas station?

Tom Frank: Stated that they performed a study in November of 2007, shortly after the acquisition of the Kroger store, as to whether or not they could do fuel at this location. Their analysis shows that the traffic count going by that location is 18,000 cars a day. The store has about 12,000 customers a week. What they do on their model is anticipate 2% business from the street and 10% business from the store customers. That information justified a fuel center at this location to give them a return. They would not make a million dollar investment without getting back a return for their shareholders. The very first step that they always take is a market study. The cost to them just to draw the plans is approximately \$25,000.00.

Lyle: Questioned why the study was not provided to the Planning Commissioners prior to their deliberations?

Frank: Stated it is an internal document. There are certain assumptions that they make in it, certain pricing assumptions that they have, recommendations as to numbers of dispensers, the size of the kiosk, estimates on inside sales, etc. If he were to share it with the Planning Commission, it would become a public document.

Simon: Stated that he appreciated that they did the market study.

Krueger: Stated that he thinks there is a reason why we require applicants to go through the Special Approval process. He also thinks there's a reason why they send out notices to all of the adjacent property owners. And, unlike a regular approved use in a C-3 zone, he thinks they have to carefully consider that it is Special Approval. If there are any of the reasons that they might be thinking of under the guidelines of the Special Approval Ordinance and the opinions of the people that have to live with this development in the adjacent area, he feels they have to look closely at those.

Chairperson DeBoyer: Stated that the law states that the whole point of a public hearing is not only for the public to come and express an opinion, but if they feel there is anything that we have missed or are not aware of, that is their opportunity to make us aware of it. The law also makes it clear that as a Planning Commission, we cannot deny or approve an application on

notions that it's not a good idea or it's not good for the neighbors. There have to specific facts or reasons why we make the decision that we make.

Krueger: Stated that Section 19.05 of the Ordinance provides the standards of approval. We cannot frivolously say no or yes but have to carefully scrutinize the affects that all of this will have.

Antkowiak: Stated that they have heard a number of concerns from the public such as increased traffic. However, that is a commercial area and he feels that whatever would be put in there would increase traffic. They also had a question as to whether or not it would be detrimental to the economic welfare of the community. His point of view is if they're going to provide gas at a cheaper rate, he doesn't see that as a detriment to the community. He further stated that he understands that people live in the immediate area.

Schweikart: Stated that she reviewed the comments that were made at the public hearing. She definitely understands the concern over the added traffic, but feels that anything that is put in on that corner is going to create additional traffic. She had also done some checking and found that the first occupancy permit for the condos on Nook Road was issued in 2003, and Farmer Jack was already located in the shopping center at that time. It appears that they've tried to put up landscaping to try and shield the condos as best they can. She further stated that she believes this is the commercial area for Clay Township and something will go in on that corner. Also, as Commissioners they have to look at the Ordinance and determine whether this is an allowable use. She acknowledged that this may not be a popular decision, no matter what is decided.

Chairperson DeBoyer: Stated that this has been zoned commercial C-3 for a period of time and has not been recently re-zoned. She advised the Planning Commissioners that they had three options as to the requested Special Approval Land Use, which are to approve, deny, or approve with the conditions. She further stated that it is her personal opinion that she does not want to see any businesses in Clay Township close. This is her home, her community, and where she does business. However, she is not of the opinion that government is placed to say how many businesses of each type this community will have. That is not the job of government.

**Motion by Simon, supported by Antkowiak to approve the Special Approval Land Use / Site Plan Consideration – Kroger Gas Station – 2696 Pte. Tremble Road – JGD Associates, Inc. with the provisos that a special island be installed and that the builder determine the turning radius for ingress and egress and assurance confirmation that the tankers that will be coming into the station can make the turns.**

Antkowiak and Schweikart questioned what Mr. Simon was referring to as the "special island" in his motion?

Simon: Stated that he was referring to the 10 foot strip and an assurance confirmation that the tankers will be able to have proper ingress and egress due to their length.

Chairperson DeBoyer: Stated that the Township Engineer will review this site, and we can request that he review and verify these concerns.

Krueger: Questioned whether the lighting and hours of operation should also be stipulated to or if they exceeded their stated hours of operation whether there would be any recourse?

Chairperson DeBoyer: Stated that what the applicant has stated on their application is similar to other stations in the area in addition to their store. Further, if they exceeded their stated hours of operation of 6:00 a.m. until 11:00 p.m., the Zoning Administrator would have the right to address the issue. Also, the Zoning Ordinance does address the lighting concerns.

Schweikart: Questioned the landscaping on Nook Road?

A discussion then occurred regarding the landscaping on Nook Road.

Chairperson DeBoyer then requested the motion be re-read.

Recording Secretary: **Motion by Simon, supported by Antkowiak to approve the Special Approval Land Use / Site Plan Consideration – Kroger Gas Station – 2696 Pte. Tremble Road – JGD Associates, Inc. with the provisos that a special island be installed and that the builder determine the turning radius for ingress and egress and assurance confirmation that the tankers that will be coming into the station can make the turns.**

**R/C VOTE:**

**AYES: Antkowiak; Schweikart; Simon; Chairperson DeBoyer**

**NAYS: Sharrow; Krueger; Lyle**

**ABSENT & EXCUSED: Blair; Keller, II**

**MOTION CARRIED.**

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

Meagher: Stated that the Master Plan Committee meeting is coming up on July 23, 2009.

Schweikart: Requested rescheduling this meeting.

Meagher: Suggested rescheduling this meeting until July 30, 2009 at 2:00 p.m. as it would also be more convenient for him.

Chairperson DeBoyer: Requested scheduling a date for the Visioning Session at the Township Hall.

Meagher: Suggested scheduling same for the end of August or beginning of September.

A discussion then occurred regarding the scheduling of this Visioning Session and the procedures for the meeting.

It was agreed that the next Master Plan Committee meeting will be held on July 30, 2009 at 2:00 p.m. at the Township Hall, and the next Visioning Session will be held on August 26, 2009 at 7:00 p.m. at the Township Hall.

Simon: Suggested that the August 26, 2009 7:00 p.m. Visioning Session at the Township Hall be mentioned during the Township Board meeting as they are televised and would assist in getting the information out to the public.

Chairperson DeBoyer: Stated that notice of the Visioning Session would also be posted at the Township Offices, on the sign in front of the Township Offices, on the Township television station, and possibly on the Township web site.

**7. Z.B.A. REPRESENTATIVE'S REPORT:**

Antkowiak: Stated he had nothing to report.

**8. CHAIRPERSON'S REPORT:**

Chairperson DeBoyer: Stated she had nothing further to report.

**9. PLANNING COMMISSION MEMBER'S COMMENTS:**

Krueger: Stated that he wanted to advise Mr. Antkowiak that the ZBA will probably be getting a request for an interpretation of a fence issue on Flamingo.

**10. PUBLIC COMMENTS:**

Cindy Kirkpatrick, 9641 Wright Drive: Stated that she would like to compliment Mr. Krueger for bringing up the fact that the Special Land Use Approval, as she always thought that when she was a Board member and on the ZBA, that the public comments were supposed to very important on making a decision. That was always her understanding on that and if the laws have changed since then, maybe she didn't keep up with it. She thought that was the whole point of the public meeting. She believes there were some health and safety issues addressed because of the traffic, noise, light, diesel smells and that there could possibly be an explosion. She further stated Ms. Schweikart and Mr. Simon don't care because they live on the island, so they don't have to deal with it. She hopes the public remembers this at the next election time. She thanked Mr. Lyle, Mr. Sharrow, and Mr. Krueger for their no votes. She further stated to Mr. Antkowiak that he lost a lot in her eyes.

Richard Szefer, 4757 Pte. Tremble: Stated that he does believe in free enterprise and thinks that competition is good, but feels that somebody sold Kroger a bill of goods. There is no way that they did a study in Clay Township in the wintertime. In the summertime, we could support another gas station very easy, but not in the wintertime. He further stated that he hopes they make somebody's job because they sold them a bill of goods.

Danny Jacob, 5400 Pte. Tremble (Marathon gas station): Stated that they did a measurement of the tanker trucks. The average tanker truck is 44 to 48 feet long. The tanker and the tractor trailer together often exceed 62 to 64 feet. There was mention of three loads per week and on a study, that's roughly 160,000 gallons of fuel a month. He doesn't feel this town supports that kind of volume with two stores. He can definitely see that the patrons are supporting their local community. He doesn't feel that a corporate shareholder needs to profit from this and the business should be kept in the community.

Dr. Leonard Kasperowicz, 6603 Dyke Road: Stated that at the public meeting the people gave the Planning Commission their opinions as to what should be done with that piece of property. He questioned who was going to pay for their devaluations with the gas station there. He stated that the tanker trucks hold like 100 napalm bombs. If one of the tankers goes off, the gas will run into the swale ditch and go out to the North Channel and be burning. He questioned who will control the fires. He stated this is a democratic society. The people who own the property in that area came here and told the Commissioners they did not want it. They are the bosses and told you they did not want the gas station there. That is their right and you should abide by that.

Chairperson DeBoyer: Stated that it could also be looked at it as there are only 15 to 20 people present compared to the population of Clay Township. The notice was published in the newspaper. She stated you have to look at it as a whole. We are a government run by rules and laws.

Kasperowicz: Stated that the Commission is run by the people. We are your boss, and rules change. You had the public opinion. Stated that he is aware that this is an appointed board and that they are supposed to listen to the people and how the people wanted the Commission to react on the situation. He further stated that people who own the current gas stations have invested their hard-earned money and if they can't make it they will go out of business. You can't fight a corporation. He further stated that the study was done in 2007 and it's 2009.

Mary Jane Hardy, 5244 Pte. Tremble: Stated that she understood under the Special Land Use that you can place restrictions. Restrictions had been placed on Ultimate two doors from her and they have never, ever been enforced. She requested the Commission keep that in mind. If you put restrictions on, enforce them.

Sandy Mondello, 2653 Pte. Tremble: Stated she appreciated the decision that the Planning Commission had to make and most of all appreciated those that voted no. As a few wiser people have told her, this is America and they do have property rights, and you can't tell someone else what to do with their property. She further stated she can do her part by saying she's not going to use Kroger gas. She again thanked the Board for going by the law.

Patricia Florence, 187 Butterfield Lane: Stated that it is the Planning Commission's job to put in a best plan, not a failed plan, and feels what they are doing is putting in a failed plan. You don't have to have evidence; you can use your brain and past history. You have experts who have already been in this position. You can listen to them. You do have information, you're just not listening to it, and it's a shame. This used to be a great community town and she doesn't know what it's turned into. The plan was dated in 2007, and she feels that's an

outdated plan. Also, it's a corporate plan and not a community plan. She questioned why they didn't do an open plan and share it with the community to show what the numbers are. This is a seasonal town. The reason Wendy's didn't make it is because a lot of people didn't go to Wendy's because of the lighting that they wouldn't do anything about. She stated she will not go to Kroger anymore and will shop at VG's. She further stated the people should be given a chance to rebuttal before their decision. The Commission stated that it needed information to be brought to them that might have been overlooked. She feels they have overlooked a lot. They've overlooked the people, and that's their job. She pays taxes and her property has already gone down 30% and now it will go down more.

Hannelore Sproviera, 2701 Pte. Tremble: Stated she has been a licensed real estate agent for 20 years. Selling houses in the area is very hard as well as losing businesses. She feels they are putting people out of business because they're trying to save a couple bucks. She questioned whether this was progress and whether it helped our people. Half of the homes in Clay Township and Algonac are empty because the people are gone. She is directly across from where the gas station will be located. Right now, she is sometimes blocked in her driveway for 10 to 15 minutes because of the light and the public access. She further stated if you're going to put another thing across from her, what is she supposed to do?

**11. ADJOURNMENT:**

**Motion by Simon, supported by Lyle to adjourn the meeting at 8:28 p.m.**

**AYES: All                      NAYS: None                      ABSENT & EXCUSED: Keller; Blair**

**MOTION CARRIED.**

Respectfully Submitted,

Christine Holcomb  
Recording Secretary