

ALGOMA TOWNSHIP PLANNING COMMISSION MINUTES
Tuesday, June 17, 2008

A meeting of the Algoma Township Planning Commission was held on Tuesday, June 17, 2008, at 7:00 P.M. The meeting was held at the Algoma Township Hall located at 10531 Algoma Ave., Rockford, MI 49341.

Chairman Witham called the meeting to ORDER at 7:00 P.M. and led in the Pledge of Allegiance to the Flag.

PRESENT: Chairman Witham, Vice-Chairman Newberger, Members Bigney, Heminger, and Lecceadone.

Absent: Secretary Poolman and Member Ensley.

Also Present: Supervisor Hoemke, Site Plan Review Members Bates and Sjogren, Township Attorney Brown, and 8 citizens.

APPROVAL OF MINUTES:

Minutes of the May 20, 2008, Regular Meeting -

Vice-Chairman Newberger motioned to APPROVE the minutes of the May 20, 2008, meeting as presented, seconded by Member Bigney. The motion PASSED.

Minutes of the May 20, 2008, Special Meeting -

Member Bigney motioned to APPROVE the minutes of the May 20, 2008, Special meeting as presented, seconded by Vice-Chairman Newberger. The motion PASSED.

There was no Site Plan Review Committee report.

AGENDA APPROVAL:

Vice-Chairman Newberger motioned to APPROVE the agenda as presented, seconded by Member Heminger. The motion PASSED.

PUBLIC COMMENTS:

There were no public comments given.

CORRESPONDENCE SENT & RECEIVED:

Building Inspector's report - This was received and reviewed.

Any Other Correspondence - There was no other correspondence.

PUBLIC HEARINGS:

There were no Public Hearings.

TABLED BUSINESS:

There was no Tabled Business.

NEW BUSINESS:

**SITE PLAN #0708 (P.U.D.)
ENCORE DEVELOPMENT
3105 - 10 Mile Rd.
Rockford, MI 49341
Parcel #41-06-34-400-029**

**Mailing Address:
300 Ionia Ave. Suite 200
Grand Rapids, MI 49418**

Chairman Witham explained the applicant was requesting Master Plan amendments in regards to this property.

Member Lecceadone was concerned that the applicant was using terms for the amendments that didn't reflect the township's actual zoning definitions for this area.

David Ederer introduced himself as General Council for the applicant, Encore Development. He said he would speak about procedures, the statute, and the Enabling & Planning Act. Jay Barnes from Encore was present and would address the application request and they also had their traffic engineer present.

Chairman Witham started the discussion by stating the township adopted the Master Plan in 2002 for 10 years out and then in 2007 the Commission opened up the Master Plan and Zoning Map for a 5-Year review. He said they reviewed the Plan, looking at what they had available, and then considered if they needed to make any changes. The Commission held Public Hearing and after review it was decided to make no changes to the existing Zoning Map but there were some slight changes made to the Master Plan language. They went forward and unanimously accepted those changes to the Master Plan but kept the Zoning Map as it was. He stated at no

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point in time during the review of the existing Master Plan & existing Zoning Map was the Commission ever approached to change the Zoning Map during the 2007 5-Year review.

Mr. Ederer disagreed stating during that period of time they were here and requesting zoning changes while this was going on. He said this is not a new matter but they had been attempting to rezone the property and do this project. They went before the Board and before the Zoning Board of Appeals and now they are looking at an amendment. He said they are asking the Planning Commission to consider this request and to submit it to the Board of County Commissioners. He said they were not asking for a decision of the merits of the application but it is just the first step in the planning statute to submit it to the Board of Commissioners. He said at this point the Board submits it to the neighboring municipalities and they have 40 days to review it. He said at this time all they are asking for if they can't make a determination on the merits themselves that they hand it off to the Board of Commissioners to determine.

Mr. Ederer was questioned about his reference to "Board of County Commissioners".

Mr. Ederer apologized and said he was referring to the Township Board in those comments, not the County. He said the Township Board can decide to allow further discussions and send it out for comments to the neighboring communities or this Planning Commission can make the determination. He said the only decision to make is where these discussions will take place and if the Commission will not talk about this at this level, they will file a lawsuit. He said they think the Master Plan designation is not reasonable and he turned the discussion over to Jay Barnes.

Mr. Barnes stated the Michigan Supreme Court cannot promote regulations that are capricious or arbitrary but must be reasonable and what is reflected here they have strong disagreements that this is reasonable and he believes they can make compelling statements. He said the current Master Plan is listed as LDR and they are proposing a P.U.D. which would allow commercial with a buffer of office uses and a few acres of parks and recreation lands. He said they are looking for general commercial uses that will include retail and a buffer of office and parks and recreation. He said the rationale is very simple;

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the current Master Plan fails to advance the health, safety, and welfare of its citizens.

Member Heminger said he realizes that is their point of view but to say it is harming the safety of the citizens he asked them to say this was "their opinion".

Mr. Barnes stated that everything going forward was their opinion, whatever works, and everything stated is our opinion but they feel they have a compelling argument. He said to address the health and safety aspect is that the traffic currently is unsafe without anything happening. They propose, and have spent money for a civil engineer, to perform a traffic study. He said there are a number of reasons as to why the traffic is unsafe and people are not in disagreement of this. What they are proposing, by the time they bring infrastructure and expand 10 Mile Rd. and signalize various entrances or one main entrance, they can substantially make the corridor a much safer environment. He said the current Low-Density residential zoning cannot mitigate its own impact and would have to propose infrastructure that would need to sell for millions of dollars. Residential would be next to commercial, industrial, and a landfill. He said the speed of traffic is unsafe being on a two-lane road and through this course a traffic study can justify how to make this road safer for the well being of the citizens. There would be a shopping center, offices, and a park. He said courts have invalidated uses adjacent to incompatible uses and they have a good point here because the subject property is surrounded by industrial, a landfill, and they are contiguous to existing land which is commercial and that plays into their position for reasons making this a good argument. He said this residential zoning is a poor choice and runs counter with health and safety because residential development could not afford to bring in the infrastructure currently master planned. They have very strong supporting evidence that this subject property doesn't fit because of those reasons. They would be putting residential next to highway commercial, industrial, and a landfill and he asked how that advances the health and safety of the residents of the township. He further stated the subject property cannot be used as a farm because the E.P.A. says the owners cannot use the property as a farm. He said the property is unmarketable because of these reasons listed and anyone with a clear head and open mind looks at all of these points and the

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rational is that it is impossible to disagree and say it is Master Planned for residential zoning.

Mr. Barnes further stated, the fact is, that they would like to settle this here and try working with the township. He said the property owner has made substantial concessions of what has been proposed. There has been an open dialog with the township regarding this plan but the township would have more control over the site plan than they would should it go to court and the court rules in our favor. He said the original site plan submitted maximized the site and doubled the retail because as a developer their responsibility is to themselves but they feel they are making concessions to what they are putting on the property. He said they can substantiate it is much more valuable used as commercial and they know there are residents on three sides of the property but they will work together with the township and the planners on buffering. He said the last issue is the general welfare of the township in that they will expand the tax base and that might not be important to some but to others, with the economy, there will be jobs and construction jobs to keep a lot of people at work. He said there would be short term jobs for the expansion of 10 Mile Rd. and infrastructure and long term retail jobs and the company they work for takes good care of their employees and they live locally. There will be people from both the township and outside of the township for full time and part time jobs. He said there is a misconception that retail doesn't bring in full time jobs but these will be full time as well as part time. He said they are also creating a substantial amount of land for a new park and recreation for the township. He said they are aware the township has some park plans that have been on hold but they will propose to give the township something more favorable to look at and will give more details on this later. He said there is a little over 12 acres for a park and thanks in a large part to the current property owners, they have been very flexible with this and it affects the bottom line. He said he would like to avoid legal action but it is a harsh reality that their outcome might be better by virtue of litigation and they would probably get their site plan awarded. He said they don't want to spend the money and don't want things to get ugly between the township and they like to partner with a township and work things out. This plan is a clear example that they are making

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concession with this project to make it more appealing than what it was originally set out as. They cut the retail in half and simply cannot reduce any more than what they already have. He said they believe perhaps this is a flaw in the Master Plan and can point out some very compelling reasons why it is.

Member Heminger asked if they could explain the letter from the E.P.A. about the whole farm thing and it not being suitable because there are farms all over the place.

The applicant stated the current owners of the property are in receipt of a letter from the E.P.A. regarding the keeping of livestock on the property and it is outlined for the current uses it cannot be a farm.

Member Lecceadone stated there was a period of time where they had farm animals there regularly and asked if they stopped farming voluntarily.

The owners said they stopped farming on their own, they are not farmers.

Vice-Chairman Newberger stated he appreciated the presentation and asked to address the different issues. He said he talked with Tim Haagsma of the Kent County Road Commission regarding 10 Mile Rd. in the area of the subject property. Mr. Haagsma said because there are few road cuts in this area, this section is a "poster child" for a two-lane road.

The applicant stated that was his opinion unless you are the one going to Rockford.

Vice-Chairman Newberger said there has been residential development in Rockford the last couple of years where they were required to put in deceleration and acceleration lanes to accommodate it so when he hears there is heavy traffic he doesn't agree with the developers that residential development can't be accomplished safely.

Member Lecceadone asked if they have any traffic study counts.

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The applicants said they didn't have counts for 10 Mile Rd. but the US131 ramp is being worked on so when the ramp is open the counts will be done then.

Vice-Chairman Newberger said when he discussed this proposal with the County Road Commission it was noted that this development would be considered a destination spot, not just passing traffic, but adding traffic and requiring traffic signals.

The applicant said you can always come up with counterpoints and he would agree with this in part.

Vice-Chairman Newberger gave his concerns regarding the wording they used in their opinions that the township's Master Plan was "unconstitutional" or "unreasonable" so as to render it "useless". He addressed their comments that the surrounding uses were incompatible by saying that there is residential uses to the north and east, Wellington Ridge is a residential P.U.D., and there is a church and residential to the east, and the Meijer residential P.U.D. is to the west. He said when he looked at their proposal it appeared like a tooth or key on a piano sticking out into residential property. He said the landfill or "dump" as they addressed it was closed and now a transfer station. He didn't see the landfill as a strong argument for them because there is no odor, trash, or heavy traffic there associated with the transfer station. He said he sees this proposal as being incompatible with adjacent uses because the property is surrounded by residential property.

Member Heminger agreed saying the old landfill was going to be turned into a Plainfield Township park someday. He said he works at 10 Mile Rd. and Graphic Drive in the industrial section and that use is far from this property. He said he cannot see this property from his work.

Chairman Witham said that there are scores of people already living in this area and what is proposed would actually isolate the residential properties. Regarding the transfer station, he said the people currently living here knew the station was there when they moved in.

Member Lecceadone said if you look at the current zoning map, the township's zoning is more restrictive that what the Master Plan

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Corridor Study shows. Currently, the township has Rural-Residential zoning that is more restrictive than LDR zoning because R-R is one house per one acre.

Vice-Chairman Newberger agreed saying that the applicant argues this property cannot be used as LDR but you can see more yellow coloring than anything on the zoning map and when the Meijer P.U.D. was proposed, (adjacent to the US131 on-ramp) Meijer purchased the entire parcel and the Commission felt this would fly because they kept the east portion of this property as a residential P.U.D. He said the Commission also approved residential Wellington Ridge P.U.D. to the north, and just recently Scarlet Glenn P.U.D. was approved directly to the northeast of this property. He said, as close to the US131 expressway as this is, some people find residential very favorable near a highway because they can get home faster.

Member Bigney asked how many houses could be put on this property and what the number of vehicle trips it would generate from homes for residential uses or commercial uses.

The applicants stated it was not comparable to make that guess and no one would put a traffic entrance in or expand the lanes for residential. He said the Commission makes some nice points but the applicant is trying to take a course of least resistant and if they are at an impasse that is fine, but they are trying to exhaust every issue.

Member Bigney asked how much have they put into highway improvements.

The applicants said, dollar wise, they have done three quarters of a million on one place and a million-five on another road plus traffic signals. They don't just put in acceleration or deceleration lanes like residential so when you compare traffic flows for residential verses retail, it is not a fair comparison. He said you wouldn't have the same safety measures and it is a silly comparison.

Member Lecceadone said their proposal would bring more traffic into the township, that doesn't pay township taxes for fire and police.

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The applicant's traffic engineer agreed there would be new trips on this segment of the highway that come from elsewhere but said not as many as you would think. He said bypass traffic is already on their way to home or work and some trips would not be added because they are considered internal or multiple trips.

Vice-Chairman Newberger addressed the economy consideration by stating there are other commercial properties in Algoma Township on 14 Mile Rd. and he gave the amounts of acreage available. He said he also talked with Solon Township and they have commercial property available on 17 Mile Rd. He talked with Plainfield Township and they told him there were a lot of commercial opportunities and plenty of vacant commercial buildings in their township. He said that when the Commission looked at the Master Plan in January they considered what they still had available in the township, felt it was sufficient, and then provided the neighboring communities an opportunity to comment on the update. He said these things were considered when they updated the plan in January.

Chairman Witham agreed there would obviously be jobs, construction jobs, and a lot of people like to work but this is not the only property available out there to just change existing residential into commercial, there is plenty of commercial property available.

The applicant said there is plenty of commercial land available but when you drive along, places like Walgreens need to be at major locations and when people that don't do developing every day for a living, we will be sitting here with vacant land to deal with and we respect this is your opinion and you make good points but if there are no further questions, we need to figure out what we need to do from here.

Vice-Chairman Newberger stated his general observation is that the Commission recently dealt with a Master Plan update as early as January 2008 and involved the surrounding communities and saw no provisions for changes for this overlay district. He said the Commission has been fairly consistent with this area and deciding not to expand the commercial zoning but to maintain the residential uses towards the City of Rockford. What the applicant is proposing seems contrary to the plan and he doesn't see any conditions that would warrant opening the Master Plan back up for any further amendments.

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Member Lecceadone stated the Commission held a Public Hearing on the Master Plan update and no one showed up and the surrounding communities had requested no changes.

The owners of the property asked why they were not notified of the Master Plan hearing.

Attorney Brown explained the legal notification process stating the Public Hearing was published according to the law in the local paper of general circulation, The Advance Newspaper. He said to the Commission there was only one decision before them at this time and that was to decide to commence the process or not to commence the process to open the Master Plan for further consideration.

Member Bigney motioned to start the process to consider further review of the Master Plan.

The motion DIED for lack of a second.

Vice-Chairman Newberger motioned that the Planning Commission WILL NOT commence the Master Plan amendment process for Site Plan #0708 for property at 3105 - 10 Mile Rd. based on the following:

1. The Algoma Township Master Plan was amended in January 2008 based on careful consideration and research by the township's Planning Commission and Township Board and an opportunity was given for comments by neighboring communities and township residences. As a result of this process, no changes, planned or anticipated, regarding commercial development along the 10 Mile Road Corridor from US131 to the City of Rockford were incorporated in the amended Master Plan. No changes have occurred since January 2008 that warrants the requested amendment.

2. The proposed Master Plan amendment is not consistent with, nor supports the 10 Mile Road Corridor Overlay District Plan adopted by Plainfield Township, City of Rockford, and Algoma Township in 2004. The 10 Mile Road Corridor Plan does not designate this property for P.U.D. commercial, office, or public use, and there would be no substantial grounds to amend the Township Master Plan to accommodate this request.

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3. The June 9, 2006, memorandum from Algoma Township Supervisor Hoemke, Chairman of the 10 Mile Road Corridor Committee, notes that the 10 Mile Road Corridor Committee, by unanimous vote of all members present, to recommend denial of a zoning change to commercial for the property at 3105 - 10 Mile Rd. This recommendation, based on the request not being consistent with the intent of the 10 Mile Road Corridor Plan and the desires of the three communities and their citizens, does not support the proposed amendment to the Algoma Township Master Plan.

4. There has not been a change in conditions in the area since updating the Township Master Plan in January 2008 or development of the 10 Mile Road Corridor District in 2004 that supports the proposed Master Plan amendment.

5. There are other sites currently available in the township and surrounding communities that are currently zoned or master planned for commercial AND office use, precluding the need for the proposed Master Plan amendment.

6. There are no substantial reasons why the property cannot be reasonably used as it is currently zoned.

7. The proposed amendment to the Master Plan is incompatible with existing and planned uses on adjacent properties, and is not logical from a Master Planning point of view.

8. The proposed amendment could be detrimental to the residences on the surrounding properties, located to the north and east of the subject property and to the future residences on the property located to the west of this subject property.

9. The proposed amendment to a PUD commercial/office/public would result in a major commercial destination and will draw and increased traffic on 10 Mile Rd.

The motion was seconded by Member Lecceadone.

Discussion: Member Heminger said he could see both sides and this has been a hard decision and he came tonight not deciding either way and he can see advantages with commercial development but as

*CORRECTIONS PER 7/15/08 MINUTES

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pointed out by Vice-Chairman Newberger there is plenty of room for commercial opportunities with surrounding townships and Cedar Springs. He said he has a heart for small businesses and they ARE THE LIFE BLOOD OF AMERICA AND THEY provide jobs for local people but he agrees this would be splitting residential into two pieces and homes would be cut off from the rest of the community. He said the Commission planned this all to be residential and when you go down 10 Mile Rd. it is PROBABLY not going to change from residential on both sides BECAUSE OF THE WAY IT IS ALREADY FILLED IN AND PRESENTLY ZONED. He said they closed the landfill across the street and it will be a park someday and there is also a church down from there. He said HE DID NOT BELIEVE THE TOWNSHIP WANTS the added traffic congestion and with Meijer next to the US131 expressway, they were already zoned commercial and they kept the residential portion zoned that way.

8:22 P.M. Member Ensley arrived at the meeting and joined the Commission.

Member Lecceadone agreed stating that Meijer didn't ask for any zoning to be changed but asked for a commercial/residential P.U.D. and they put the store in the commercial zone and kept the residential portion of the P.U.D. in residential zoning.

Member Ensley asked that the motion be repeated.

The motion to NOT commence a Master Plan amendment process PASSED with five in favor and one opposed.

SITE PLAN #0116 (P.U.D. - RESIDENTIAL)

**QUALITY HOME CONSTRUCTION
c/o Dykema Excavating
1730 - 3 Mile Rd.
Grand Rapids, MI 49505**

**Mailing Address:
Focus Engineering /Matt Cole
2890 Wilson Ave.
Grandville, MI 49418**

Review Member Sjogren stated she had sent a letter dated May 20, 2008, that due to the lack of action over the course of time, the Planning Commission would take action on this site plan at the next meeting on June 17, 2008. She stated that there has been no contact from them since that letter was sent.

*CORRECTIONS PER THE 7/15/08 MINUTES

It was noted that the P.U.D. ordinance has been amended a couple of times since this application was received.

Vice-Chairman Newberger motioned to TERMINATE all consideration of Site Plan #0116 and the township will refund what Escrow monies are still being held, seconded by Member Bigney. The motion PASSED unanimously.

ON-GOING BUSINESS:

Tickler File -

#9710(R) SABLE DEVELOPING, Removal of Natural Resources, Clouse (5/16/00 - 5/16/2010, 1 Year Renewal:

Review Committee Member Sjogren reported that Mr. Powell had asked not to attend the meeting due to his work and asked if there were any problems, that this would be tabled until next month. She also noted that all fees and Letter of Intended Use dated June 12, 2008, had been submitted as required prior to the meeting.

The township engineer submitted a report and photos dated June 9, 2008, stating there were no concerns and recommended approval of the one year permit renewal.

Vice-Chairman Newberger motioned to RENEW the #9710 Sable Developing, Special Land Use Permit for the Removal of Natural Resources, for one year, seconded by Member Heminger. The motion PASSED unanimously.

1-Year Tickler File -

Is attached to and made a part of these minutes.

Ordinance Amendments -

Chairman Witham stated he had a list of items for review so the sub-committee will meet on Wednesdays once they get verbiage from Attorney Brown, early evenings at 5:00 P.M. so Member Heminger will have time to give input before he has to leave for work. They set the first meeting for July 9th.

Representative's Reports -

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Township Board: Member Bigney reported the Board amended the Junk Yard license fee to \$25.00, the paid the first installment for Memorial Park, the approved the C.D.B.G. funds for Arbor Circle, Hope Network and the Sparta Senior Neighbors, they approved a gaming license for the Rockford Community Center, and adopted a political sign policy for this campaign.

Board of Appeals: It was reported that there were no appeals filed for the month of June.

Any Other On-Going Business -

Site Plan #0704, Daniel Brodowski, Review Committee Member Sjogren stated that during an inspection of the site Building Inspector Bates found 20 - 25 apple crates were being constructed on site and he had not yet complied with his site plan approval. This was not part of the Special Land Use Permit granted to this site but Mr. Brodowski said he felt it should be able to fall under his permit.

After a short discussion the Commission agreed this was not approved for under his Special Land Use Permit and he would need to take care of the items outstanding and then he would need to come back before the Commission to discuss the manufacturing of apple crates on his property.

NEXT MONTH'S MEETING: Tuesday, July 15, 2008.

ADJOURNMENT:

Member Bigney motioned to ADJOURN the meeting at 8:49 P.M. The meeting was ADJOURNED.

Jack Witham, Chairman

Julie M. Sjogren, Recording Secretary