

CHIKAMING TOWNSHIP PLANNING COMMISSION
Minutes of the June 1, 2016 Regular Meeting
APPROVED

The June 1, 2016 regular meeting of the Planning Commission was called to order at 6:30 p.m. by Chairman Andrew Brown with members Joseph Reed, Mario Zaranenello, Richard Carlson, Gary Wood and Bill Marske in attendance. Grace Rappe was absent.

Also present was interim Building and Zoning Administrator Richard Kubsch.

Two requests were made to the proposed minutes of the April 13th Planning Commission meeting. Reed asked that a correction be made to the minutes to state that Rappe is not “outside Chikaming Township” but instead a “part-time resident of Chikaming Township.” Wood asked that the statement referring to him as having “many years on the planning commission” be removed from the minutes as this is not true. Marske moved to approve the minutes of the April regular meeting with revisions, supported by Wood.
Motion carried.

Brown asked that the representative for the site plan proposal present any revisions made to the plan since the previous meeting. Peter Oleszczuk of Midwest V LLC, the developer for the proposed Dollar General, came forth to present changes to the previous site plan. He introduced his general counsel and business partner, Scott Knowlton. He also introduced his engineer, Jim Milanowski. Oleszczuk reminded the board that the site plan location is on Red Arrow Highway south of the existing Fifth Third Bank. The proposed building size is 9,100 sq. ft. with the majority of the parking sitting between the building and Red Arrow Hwy. on the west side. Additionally, the loading area, dumpsters, and storm water enclosures will be situated on the north side of the building. Oleszczuk introduced new changes to include the addition of a bike rack. He continued that 26 pine trees, 5 sugar maples, and a hedgerow to divide the parking lot and Red Arrow Hwy. have been added to the plan. Oleszczuk stated that they did review the letter from Williams and Works and are eager to move ahead with the proposed development. Brown questioned if the additional landscaping and bike rack are the only changes from the original application and plan reviewed previously by the commission. Oleszczuk affirmed. He added that two parking spaces have been added to bring them to a total of 33 spaces. A total of 34 spaces are available with the relocation of the bike rack to the nearby sidewalk.

Reed questioned the date of the revision on the site plan. He stated that his plan is dated December 11, 2015. Oleszczuk clarified that the revision should be dated May 12, 2016.

Andy Moore and Nathan Mehmed of Williams and Works, the Grand Rapids Planning Firm hired by the township supervisor Wayne Warner to review the proposed site plan, came forth to present their findings after review of the proposed site plan. Mehmed explained that the memorandum to be read is a supplement to their original memorandum from April 29th. Mehmed began review of their findings with a discussion of the dimensional requirements. He stated that the applicant has a proposed dumpster enclosure. Their interpretation is that the dumpster enclosure is located within the 30 ft. (foot) setback. Brown clarified that Dollar General placed the dumpster using a 10 ft. accessory structure setback as their guideline while Williams and Works would suggest a 30 ft. distance to better comply with the ordinance in a commercial district.

Mehmed continued that the next item pertains to parking, loading, and parking lot landscaping. He stated that initially a variance was obtained from the Zoning Board of Appeals (ZBA) for a reduction of 5 parking spaces bringing the initial count down from 37 required to 32. After a review of the definition of “useable floor area,” Mehmed defined it as space which goes out to the external wall and includes the office staff space and lunch room. This would alter the original calculation and bring the initial parking space requirement up to 40 spaces required based on useable floor area.

Mehmed presented that the next item on the memorandum is the landscaping on the internal area of the parking lot. He expressed that the landscaping meets all requirements per the ordinance.

Brown reviewed the parking calculation once again. He observed that the sum of parking spaced the ZBA based their decision upon was erroneous. Mehmed stated that additionally regarding parking and loading that any loading space located closer than 50 ft. to a residential zoning district, as in this case, should be completely

screened by a solid fence or wall of at least 6 ft. in height. Mehmed concluded that the current site plan does not comply with this standard as the current use of the adjacent property is residential.

Mehmed clarified that the ordinance also states where any commercial or light industrial district directly abuts a residential district there must be a buffer of 50 ft. on the district boundary. In this instance the standard does not apply as the neighboring property is zoned commercial. He furthered that properties to the east are used as residences though zoned commercial. The ordinance distinguishes between use and zoning.

Mehmed continued that access is the next item discussed in the memorandum. The applicant has proposed one point of ingress and egress along Red Arrow Hwy. The ordinance states that ingress and egress driveways shall be a width of 24 ft. to 30 ft. The proposed distance is currently 32 ft. Mehmed observed that lighting was included on the site plan but without specifications. The current count of (6) 400 watt cut off wall packs on the building does meet the standards of the ordinance.

Mehmed introduced signage as the next point reviewed. He explained that the applicant proposed two signs on the subject property. Mehmed continued that the ordinance does require 200 ft. of road frontage per sign and the applicant has less than 400 linear feet of frontage. Thus, the signage proposal is not compliant. He summarized that the literal interpretation of the ordinance is one sign is permitted.

Andy Moore, also of Williams and Works, then came forth to address the Master Plan portion of the report. Moore stated that the most important purpose of their report is to assist the Planning Commission in making a decision consistent with their zoning ordinance. Moore furthered that where things become more difficult is in the "site plan approval standards." He explained that the very first standard is, "the site plan must comply with the goals and objectives of the township master plan." He continued that this plan outlines a very broad vision plan. Moore stated that the Michigan Zoning and Enabling Act clearly explains that if a project meets the standards of the zoning ordinance it must be approved. He continued that he would not advise denying site plan approval based on the plan not complying with the township master plan. He observed that there are several points where this plan is deficient. Moore stated that the most conservative course of action would be to have the applicant reapply to the Zoning Board of Appeals, who would then be acting with the most accurate information based on correctly calculated parking numbers. He mentioned that the other areas of the site plan that are not in alignment with the ordinance could be addressed with conditions, but he would not advise approving the plan as it is. He concluded that the conditions would help make the project be in more compliance with goals and objectives outlined in the master plan. Brown asked if the applicant received a copy of the Williams and Works report. Moore responded that they did on May 25th. Knowlton stated that at the time the report was received, the resubmission date had already passed for a revised plan. Moore clarified that an original report was sent to the applicant back in late April, the applicant then revised the plan, and that is what is being reviewed at present. The new findings presented by Williams and Works are based upon the review of the revised plan.

Reed questioned why the parking space counts were incorrectly represented to the Zoning Board of Appeals. Oleszczuk stated that he worked with the township Zoning Administrator, at the time, who reviewed the submission and agreed that the application for the variance was correct. Brown questioned if 40 parking spaces would be achievable on the plan. Project Engineer, Jim Milanowski, answered that the spots would not fit. Oleszczuk furthered that the original variance allowed lessened parking so that the plan could accommodate more space for storm water retention requirements. Milanowski added that they work closely with the county drain commissioner who was concerned with the adequacy of percolation. The plan as shown has been approved by the county drain commissioner's office. Milanowski continued that they may be able to get up to 35 parking spaces by adding a spot closer to the driveway and still meet the drainage requirements. Reed questioned the existence of an outstanding maintenance plan. Milanowski affirmed the existence of the plan. He continued that it is in the possession of the drain commission but cannot be signed until the property transfers ownership. Reed requested a copy of the plan. Milanowski stated that it may already be in the possession of the township and if not he would happily share it with the commission.

Brown then opened the floor for public comment. Richard Sullivan came forth with a question for Moore. He questioned if the parking would be an issue if the applicant purchased a larger piece of property. Sullivan also asked if Moore's opinion on the role of the master plan was based on any legal expertise. Moore answered that if the parcel was larger, parking would likely not matter. Sullivan answered that there is a vacant lot nearby. Moore furthered that the ZBA decision would be based on this site and it would not be proper for the ZBA to refer the applicant to a neighboring property for expansion. Sullivan then asked if this would be considered a self inflicted problem. Moore answered that he would not call it "self inflicted." He added no variance would

probably ever be granted if the suggestion of buying more property was the answer. Sullivan stated that because the applicant does not yet own the property he feels they have other options. Moore answered that the firm he works for has no advocacy for or against anything. Its role is to ensure that the Planning Commission is using the most accurate and factual information to make their decision using the correct process. He added that ensuring the standards of the ordinance are applied correctly and consistently is one of their main objectives. Sullivan asked that by consistently he means all businesses are being treated equally. Sullivan asked if it is mathematically possible to build a smaller structure and meet the parking requirements. Moore answered that their firm has not considered alterations to the building. Sullivan then asked if Williams and Works consulted an attorney. Moore answered that the determination is his opinion and he did not consult an attorney.

Scott Sullivan, a local business owner, came forth to express that he owns a building in downtown Sawyer and rents three others in the vicinity. Sullivan continued that parking has always been a major issue for his business and he feels he has been held to an unequal standard as he has been held to comply with all parking requirements. Business owner, Drew Ytterberg, added that he had to meet all parking requirements at his own expense. Sullivan stated that he feels the coaching by the previous Building and Zoning Administrator has put the commission in a tough situation.

Tom Hackley, former Planning Commission member for 12 years, came forth to share that he sat on the 2002-2004 Master Plan Committee, he participated when a revision was made to the Master Plan in 2008 addressing this specific property, and he was Chairman of the Planning Commission. Hackley added that he was hired as a consultant to write the latest version of the master plan. He mentioned that he has heard over the past year that the master plan has no relevance which is disturbing to him. He continued that he made an inquiry to the Michigan State Extension Service regarding when a Master Plan has the legal strength as a zoning ordinance. Hackley added that he also shared the specific criteria outlined by our township for granting site plan approvals. Hackley stated that the answer from the Extension Service came from a Ryan C. and was that if the planning commission has documented reasonable, rational justifications for their decision the township should be in good position to defend their decision in court. Hackley furthered that the Planning Commission has the power to approve or deny an application based on the Master Plan. He continued that he emailed Marcy Colclough Hamilton from the Southwest Michigan Planning Commission. She agreed with what the MSU Extension expert said. She also reviewed the Section 21.05 Site Plan requirements. She furthered that each member of the commission should document how they feel each standard is or is not met by the site plan. Hackley summarized that planning experts agree that the Master Plan does carry the weight of the Zoning Ordinance in this case and there are past cases where a site plan was denied based on the Master Plan. Hackley continued that in many places in the Master Plan a green corridor is mentioned as it was historically developed. He described that in many instances businesses are intermixed with residences, they are offset from the highway, and use minimal paving. Hackley added that in the 2008 amendments changes a very specific Sawyer community center was described to describe the new density of commercial zoning. He shared maps that show the community center ends at the Fifth Third bank. He summarized that the proposed site plan falls within the Chikaming green corridor. Based on the Master Plan he added that the green corridor is described as an area with reduced building and pavement coverage and increased setback from the highway for new buildings and parking areas. Gail Grosse asked if Hackley shared with the experts that the zoning did not match the Master Plan. She also asked why conflict was not resolved between the two in 2008.

Brown then asked township attorney, Charles Hilmer, to comment on the application following the review by Williams and Works. Hilmer came forth to say that the biggest issue is the first standard needing to be satisfied regarding goals and objectives of the Master Plan. Hilmer furthered that most ordinances do not have standards such as this. The township's current issue is that they have not yet updated their ordinance to match the Master Plan. He continued the purpose of the standard was to ensure site plans are compliant with the Master Plan for better implementation of the plan. Hilmer mentioned that it is up to the Planning Commission to determine if the goals and objectives of the Master Plan are satisfied by this propose site plan. He continued that every article of Section 21.05 must be reviewed individually and each must be an affirmative finding with the facts upon which these decisions are made to be stated in the record.

Catherine Doll came forth to say that she feels going forward and approving the proposed site plan would set a bad precedent for the Master Plan.

Aaron Mannion, resident of Harbert, asked who will ultimately own the property. Oleszczuk answered that he is a development partner with a home base in Spring Lake, Michigan. His task is to find property for Dollar General and then build and develop the store for Dollar General to use. They are a separate and distinct entity from Dollar General. Oleszczuk continued that Dollar General then leases the store from them. Mannion stated

that you have a multi-million dollar company that will come into the community. He continued that they do not own real-estate and instead have a lease. He stated that there is a possibility that the dollar store would leave and a massive building without a tenant would remain. Brown asked if Oleszczuk has any say in the operations. Oleszczuk answered that he has no say in operations. Scott Sullivan asked how many store sites Oleszczuk has and how many have failed. He also asked why they care so much about Sawyer, MI. Oleszczuk answered that he has been tasked by Dollar General, his client, to find real-estate in Sawyer, MI. Oleszczuk answered that they have developed over 140 Dollar since 2002. He added that they have not had a store fail so he is unsure of the process for if one does.

Amy Mader, a resident of Sawyer, came forth to state that Section 21.05 requires this Planning Commission to consider ten factors, the first being the Master Plan. Mader added that Michigan law has a very clear section that says a Master Plan must be adopted to guide decisions. Mader continued that she feels the plan is unambiguous. She cited a portion of the text stating goal number eight which is, "to preserve and enhance the Red Arrow Corridor as a safe, efficient, and visually attractive thoroughfare for motorized and unmotorized travel." She questioned if a 9,000 sq. ft. building with 20,000 sq. ft. of parking would be considered visually attractive. Mader continued that dismissing the Master Plan and subsequently the ordinance could put the township back in legal peril similar to what they just went through in Berrien County trial court where the decision of the previous Zoning Administrator and Board of Appeals was reversed. Mader continued that Section 21.05 B requires the following of zoning ordinances. She questioned why the plan violates so many very literal ordinances such as the sign ordinance which very clearly states one sign for 200 ft. She added that in this instance sign is very clearly defined. Another point Mader brought up was that she has yet to find an officially signed zoning map that shows the correct zoning of this and surrounding property. She stated that she has found a map that represents the property as being residential. Mader's final point was in regards to Section 14.02 regarding the minimum yard setback. She questioned why the storm water retention pond, garbage enclosure, and wooden posts are proposed in the setback.

Chikaming resident Scott Rappe came forth to state that one of the criteria for granting a site plan is that it be found to be harmonious with the surrounding community. Rappe furthered that lot coverage and paving of the proposed project far exceeds any of that calculated on other green corridor properties. Rappe stated that his calculation of lot coverage for similar properties came to an average of 10% while the proposed site plan shows a lot coverage of 52%. Rappe expressed that he feels this is not harmonious. He observed that the building materials used and design of surrounding buildings are very different than what is being proposed. Existing buildings have lap siding and gabled roofs. Rappe added that 39 mature trees would be removed for the proposed development which totals a 10,000 sq. in. stump area. The proposed replacement stump area of the trees would total 25 sq. in. Rappe continued that the proposed structure would be the largest structure in a quarter of a mile and he does not feel it is harmonious.

Jill Underhill, local Harbert resident, provided a picture board representing the design aesthetic of current businesses on Red Arrow. She then presented images of Dollar General stores. Underhill explained that she spent hours researching the lack of maintenance overtime and accumulation of garbage that collects near Dollar General's stores. She then showed a photo of an abandoned Dollar General store that she described as a, "empty ugly building that has been abandoned and no one will rent." She expressed that she does not feel the Dollar General fits in with the surrounding neighborhood. Resident, Claudia Parish, added that she is concerned about the maintenance of the proposed retention pond. She added that they easily collect garbage and can be difficult to maintain.

Mike Wright of Harbert came forth to say that Family Dollar and Dollar General follow each other. He continued that a Family Dollar store is going in less than a mile away which may explain Dollar General's eagerness to develop in the small community.

Janet Schrader, Lakeside citizen, came forth to ask if the location was chosen as a result of the failed buyout of the other dollar store chain. Schrader continued that she has read the reaction of Dollar General is to place competing stores in the same market.

Tom Gold questioned what other properties Dollar General considered. Oleszczuk stated that they were looking at no other sites. Gold asked if they are considering other sites. Oleszczuk said they would not turn other options away but this site is their current focus.

Michael Young of Sawyer came forth to question how a developer that has built 140 stores could mess up the required parking spot calculations. He furthered that he feels they are being disingenuous. He asked that the

commission follow their Master Plan because he feels the proposed development does not belong on Red Arrow Hwy. Young stated that he feels the Dollar General does not care about the community. Young stated that previous commissioners looked out for the people of the community to maintain the unique aesthetic and he hopes this commission will do the same.

Deborah Hall Taylor, full time Chikaming resident, came forth with 25 signatures against the proposed site plan.

Richard Hoffman of Sawyer came forth to say that he is advocating for his communities unique corridor. He continued that he has lived in the community since 1999 and does not want to focus on dumpsters, lighting and signage.

Reed then read a letter from absent commissioner, Grace Rappe, into the record. The letter expressed Rappe's concern with the site plan's conflict with the ordinance that was made apparent by the Williams and Works review. Rappe feels that in order to meet the parking requirement the developer needs to add additional parking spaces or return to the ZBA for a new variance. Rappe added that the site plan needs to address adjacent residential use lots. Rappe vehemently disagreed with the proposed reduction of the driveway width. She suggested that the applicant prove semi-truck access is still viable.

Brown then asked the new Zoning Administrator Richard Kubsch to speak. Kubsch recommended that the board weigh all new information and prepare their decision in writing after considering everything presented throughout the evening. He stated that his job is to read the zoning ordinance and make recommendations to the board.

Sarah Doty of Harbert stated that she feels the proposed site plan makes no fiscal sense for the community. She continued that tourism is the main industry of the community. Doty added that psychologically people associate dollar stores with check cashing businesses and it cheapens the community. She furthered that money leaves the community when people shop at stores like this and goes to Tennessee or China.

Scott Sullivan spoke and expressed that he would like to see a vote on the site plan tonight. He furthered that the deliberation has gone on for so long and this is an opportunity to stop setting a negative precedent for requests like this.

Mary Brown asked what the process would be if the site plan were denied. Kubsch answered that the applicants would have the option to appeal to the Township Board.

Resident Bob Beemer came forth to state that he feels since the information originally presented to the ZBA was phony and the decision should be sent back to them to once again deliberate upon to get their opinion on the correct facts.

Brown then asked the applicants if they would like to withdraw their application and resubmit an updated plan or if they would rather the commission make a decision.

Oleszczuk asked to step out of the room to deliberate with his business partner.

After a brief recess Brown called the meeting back to order at 8:57 p.m. Knowlton expressed that based on Williams and Work's opinion that conditions could be placed on some parts of the proposal while others are only minor separations from the ordinance, they would still like to move ahead with an opinion. Oleszczuk questioned if there was a written opinion of the township attorney given to the Planning Commission. Oleszczuk asked if the letter could be read into the record. Hilmer answered that he received an email list with several questions from Supervisor Wayne Warner that were submitted to him by the chair of the Planning Commission. Hilmer expressed that it is up to the client if they would like to make the letter public and there is nothing in the letter he takes issue with being made public. John Kursle questioned who the client is since the response was to Warner and if the commission may waive the privilege. Hilmer expressed that he believes it to be acceptable for the commission to waive the privilege.

Richard Sullivan asked that it be noted in the record that during the brief recess Hilmer, Kubsch and the applicants met in private. Scott Sullivan said he feels the meeting was unethical. Kubsch responded that nothing happened in the meeting that he feels could not have been public. Richard Sullivan questioned if any commissioners gave Hilmer permission to meet with the applicant. Brown responded "no" but said he trusts attorney Hilmer to not imperil the township. Richard Sullivan stated that in the past when he requested

information from Hilmer he was told the requests had to come from the Township Board. He added that he was told that Kubsch would be at this meeting only in an observatory matter. Brown stated that they want complete transparency. Brown asked for a detailed written account of what was discussed in the meeting to be made available at the township for public review. Brown stated that he feels Hilmer is of the highest integrity but just to be on the safe side he will get the document.

Brown then read question two from the letter Warner sent to Hilmer. It was in regards to the legitimacy of the variance approving the reduction of parking spaces. Hilmer answer that if the calculation of the floor area is incorrect and the ZBA made its decision based on these incorrect facts, the matter should be resubmitted to the ZBA for reconsideration in light of the new information.

Zarantenello moved that Hilmer's entire letter be read into the record, supported by Wood.
Motion carried.

Brown then read Attorney Hilmer's complete response into the record.

Marske moved to send the parking issue back to the ZBA for revaluation, supported by Wood.
Motion carried.

Reed, Marske, Wood, Carlson, and Brown voted aye. Zarantenello voted nay.

Brown stated that the ZBA meeting is a public meeting and he invited the public to attend. Sullivan expressed concern with incorrect information being posted on the website and a lack of times and dates being divulged.

Moore stated that the case will need to be posted in the paper with advanced notice.

With nothing further, Marske moved to adjourn the meeting at 9:18 p.m., Wood supported.
Motion carried.

Meeting adjourned.

Respectively submitted,
Jessica Miller
Recording Secretary