

OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION

MINUTES OF A MEETING HELD JUNE 11, 2009

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**Agenda**

**OMNI CREDIT UNION – SPECIAL EXCEPTION USE AND SITE PLAN AMENDMENT  
– REQUEST TO PERMIT AN OUTDOOR DISPLAY COMPONENT. PROPERTY IS  
6622 WEST MAIN STREET, PARCEL 3905-14-185-031**

**PIE PRODUCTS – SPECIAL EXCEPTION USE AND SITE PLAN REVIEW –  
REQUEST TO PERMIT OUTDOOR SALES AND SERVICE. PROPERTY IS 6600  
WEST MAIN STREET. PARCEL 3905-14-185-022**

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A meeting of the Oshtemo Charter Township Planning Commission was held on Thursday, June 11, 2009, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Terry Schley, Chairman  
Fred Gould  
Bob Anderson  
Kitty Gelling  
Carl Benson  
Richard Skalski  
Deborah Everett

Also present were Jodi Stefforia, Planning Director; Mary Lynn Bugge, Senior Planner; Chris West, Associate Planner, James Porter, Township Attorney, and four interested persons.

**Call to Order and Pledge of Allegiance**

The meeting was called to order at approximately 7:00 p.m. The “Pledge of Allegiance” was recited by the Commissioners.

**Agenda**

The Chairman asked if there were any changes to the Agenda. Ms. Stefforia said she would like to discuss the Southwest Michigan Trail Summit under other business. Carl Benson made a motion to accept the agenda as amended. Ms. Gelling seconded the motion. Upon vote, the motion carried unanimously.

## **Public Comment on Non-Agenda Items**

The Chairman indicated that the fourth item on the Agenda was Public Comment on Non-Agenda Items. There was no public comment.

## **Minutes**

The Chairman said the next item was the review and approval of the May 14, 2009 minutes. Ms. Gelling suggested one change under the introductory section, changing the phrase “four interested person” to “four interested persons.”

There being no further changes, Ms. Gelling made a motion to approve the minutes, as amended. Mr. Skalski seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

## **OMNI CREDIT UNION – SPECIAL EXCEPTION USE AND SITE PLAN AMENDMENT – REQUEST TO PERMIT AN OUTDOOR DISPLAY COMPONENT. PROPERTY IS 6622 WEST MAIN STREET, PARCEL 3905-14-185-031**

The Chairman said the next item on the Agenda was the consideration of the Special Exception Use and Site Plan Amendment to permit outdoor display for the Omni Credit Union located at 6622 West Main Street, Parcel number 3905-14-185-031.

The Chairman asked for the report from the Planning Department. Ms. Bugge submitted her report dated June 11, 2009, which is incorporated herein by reference.

Ms. Bugge explained that the applicant was requesting approval to allow an outdoor display of a motor vehicle on a circular paved area adjacent to the main building entrance. She said the vehicle would typically be displayed for one month, seven (7) days a week from March through September. She said there would be two (two) small signs each less than 1.5 square feet, one indicating the auto dealership displaying the vehicle and the other Omni financing.

Ms. Bugge then took the board through a review of Section 30.215 as more fully set forth in her report.

The Chairman asked if there were any questions. Mr. Anderson asked about the vehicle sign. Ms. Bugge indicated they would be small enough that they would be considered incidental signs since they were not readable off site. Mr. Skalski asked where the sign would be located. Ms. Bugge said the applicant could provide that information.

Mr. Benson asked if the Planning Commission was opening the door if it broadly interpreted “customarily incidental” to allow banks to display motor vehicles? He expressed a concern that it would allow other merchants to display other items for sale

outside. The Chairman noted that's what the board would consider during its deliberations.

The Chairman asked if he could hear from the applicant. Mr. Andrew Young, on behalf of Redmond and Company introduced himself to the Planning Commission. Mr. Young also introduced Paul Downey, COO of Omni Credit Union.

Mr. Young pointed out that the patio had been created as part of the original design and thought that the display of a vehicle there would be quite attractive. Mr. Downey said that they would only display new cars on site. He also noted that none of the vehicles would be for sale but that they were there to promote the financing available through Omni Community Credit Union.

Mr. Young thought that the location of the patio, just off the parking area, would not create a problem and would in fact help promote local dealerships.

The Chairman began the questioning process by asking the applicant to explain the logic between the display of a vehicle and the primary use of the credit union. Mr. Downey said that the primary business of the Credit Union was lending and automobile financing was a significant portion of their business.

The Chairman said not to be facetious, but couldn't you also put out a boat, television or small shed since those are items the Credit Union could also finance. Mr. Downey said that the Omni Credit Union would not do so and that they would only display new vehicles.

The Chairman asked if this patio had been installed with this proposal as its primary purpose. Mr. Young said that they had installed the patio with that in mind but didn't want it to slow down their initial approval and decided they would address the issue subsequent to the time of the original site plan approval.

Ms. Gelling asked if the credit union ever received any compensation for this type of advertisement. Mr. Downey indicated they did not receive any compensation. Ms. Gelling asked about the size of the display signs to which Mr. Downey replied that they would be very discreet and would remain under the Credit Union's control.

Ms. Gelling asked how long the Battle Creek Credit Union had been displaying vehicles similar to what they were proposing in Oshtemo. Mr. Downey said since about October, 2001. Ms. Gelling asked if the Credit Union had this in mind when the original plans were submitted. Mr. Downey indicated yes. Ms. Gelling asked if the vehicles were not approved what would the patio be used for. Mr. Downey suggested that it might house a bench for seating or continue to be used for the landing area for the flag pole.

Mr. Gould asked if the Credit Union would commit to no more than one vehicle. Mr. Downey said they were very comfortable in limiting it to a single vehicle.

Mr. Skalski asked if there was only room for one vehicle on the patio pad. Mr. Downey said yes. Mr. Skalski asked if the vehicles would be limited to new vehicles and Mr. Downey indicated yes.

Ms. Everett asked if there were any statistics showing how beneficial displays of this type were. Mr. Downey said they had no empirical research or data but that they had been very successful providing financing to local dealerships.

Mr. Anderson asked who would choose the dealers which could display their vehicles at the site. Mr. Downey said it would be up to the marketing director and that it would be done on a one month basis since it was easier to arrange for the display of the vehicles on a monthly basis.

Ms. Gelling asked who was responsible for the upkeep of the car. Mr. Downey said it hadn't been a problem but ultimately the Credit Union would be responsible for keeping the car clean if the dealership didn't. He said if the car needed washing and the car dealership didn't wash it then they would accept that responsibility.

The Chairman asked if there were any comments from the public and hearing none called for Planning Commission deliberation. The Chairman began by pointing out that his initial concern was trying to figure out whether or not this use was incidental to the primary use of the Credit Union and he was concerned about the possible affect to influence other activities in the commercial area. He expressed a concern about whether or not furniture stores would want to place items outside or whether or not people would want to display house trailers, boats or similar items. He said he understood the weak economy but was afraid of what this proposal would be opening up within the commercial area.

Ms. Gelling said she thought the proposal was totally inappropriate. She said that the proposal was too open ended and that the developer presumed that this would be approved at the time the site plan was originally developed. She said she didn't believe it was consistent with the primary business of a Credit Union and didn't think it should be approved. Mr. Skalski said that he didn't have a lot of concern with considering a motor vehicle but was concerned about the next proposed use such as furniture, televisions or other items that might be proposed for outdoor display. He said he wasn't sure where the township might end up.

Mr. Anderson said that there were a number of credit unions in this area and if this was successful he would expect that others would follow suit. He was very concerned about opening the door with this type of outdoor display.

The Chairman said they had allowed other businesses to have outdoor display but on a much more limited basis such as special events for a couple of weeks but nothing of long term duration.

The Chairman said perhaps it could be looked at as seasonal or temporary use but wasn't sure how it could be done under the current ordinance.

Mr. Gould said he was in favor of granting the proposal because it would be out of sight and wasn't objectionable but he did have reservations regarding other businesses in the area and what they might want to do. He pointed out that TGI Friday's was currently selling ribs within the M-43 right-of-way and wondered if this would be opening the door even further. Ms. Everett said this was off-site display and that while she didn't think this proposal was offensive she was concerned about setting an adverse precedent.

Mr. Benson said that while the request seemed quite reasonable he thought the Planning Commission was on shaky ground if they allowed a broader interpretation of "incidental to a primary use." He also said he was concerned about approving it even on a trial basis because once it was approved it would be extremely hard to do away with the use in the future.

Ms. Everett said perhaps the applicant should be looking for a text amendment since the proposed use didn't really seem to fit within the context of the existing ordinance.

The Chairman suggested a straw vote to determine whether or not the Planning Commission had reached a consensus. He suggested that they primarily focus on whether or not the use was customarily incidental to the primary use. The Chairman began with Ms. Everett. Ms. Everett said she might be able to tweak the proposal in a fashion that would satisfy the Commission but she didn't want to do it in such a fashion that would set an adverse precedent. Ms. Gelling said she wasn't willing to discuss modifications to the proposal because it was too open ended and would create complications in the future. The Chairman said he certainly didn't favor the proposal because he thought it would set an adverse precedent. Mr. Benson said because of the adverse precedent it would likely set he was not in support of the proposal. Mr. Skalski said he would support it if somehow they could limit it from setting an adverse precedent. Mr. Gould said if the proposal were tweaked he would like to be able to support it. Mr. Anderson said he didn't support it because he thought it would be setting an adverse precedent.

The Chairman asked Staff and council if they had any suggestions. Attorney Porter said that he could not find any way to approve the proposed use without setting an adverse precedence that could be used by other retail businesses in the area. Ms. Everett asked if it would be any different if it was looked at as a seasonal use. Attorney Porter said that even as a temporary seasonal use the result would be the same. It would be extremely difficult to distinguish the outdoor display of this item while not allowing display of other items, especially in light of the fact that the principal use of the applicant was not selling the item they were displaying.

A question arose over whether this was a special use or an accessory use under Section 30.215. Ms. Bugge noted that it was an amendment to a previously approved special use and therefore review of the special use criteria would be a factor and would have to be evaluated if the proposed use was considered customarily incidental to the primary use.

The Chairman said he would entertain a motion. Mr. Benson made a motion, recognizing that while the application was unique and attractive, that the proposed use was not customarily incidental to the primary use and due to the high probability of setting an adverse precedent the Planning Commission should deny the request. Ms. Gelling seconded the motion. The Chairman said that he agreed with the motion indicating that the proposed use was clearly not incidental to the lending institution and would set an adverse precedent. Ms. Everett concurred with the chairman's comments. Ms. Gelling said that she agreed because the proposal was too open ended. The Chairman called for a vote on the motion. The motion passed unanimously 7-0.

**PIE PRODUCTS – SPECIAL EXCEPTION USE AND SITE PLAN REVIEW – REQUEST TO PERMIT OUTDOOR SALES AND SERVICE. PROPERTY IS 6600 WEST MAIN STREET. PARCEL 3905-14-185-022**

The Chairman indicated the next item on the Agenda was the consideration of the Special Exception Use and Site Plan Review of outdoor sales and service. Subject property is located at 6600 West Main Street, Parcel 3905-14-185-022.

Ms. Bugge submitted her report dated June 11, 2009, and the same is incorporated herein by reference.

Ms. Bugge then proceeded to take the board through a review of her report by outlining the proposal by PIE Products, Inc. She said that PIE was proposing to provide on-site windshield repair service in the Meijer's parking lot and would utilize two rolling carts and the necessary tools along with a small canopy for employees to sit under while doing repairs. The use was proposed for approximately six months and would be located on leased space in the parking lot. The use was not related to the Meijer operation. She then proceeded to review the proposal pursuant to the special exception use and the site plan review provisions of the ordinance, as more fully set forth in her report.

The Chairman asked if there were any questions and Ms. Gelling asked about the hours of operation since the report listed the hours from 9-9 but the lease included hours from 11-7. Ms. Bugge suggested that question be raised with the applicant.

Mr. Anderson asked about the applicant not having a sales office. Ms. Bugge pointed out that Section 30.409 of the ordinance required a permanent sales office and it

was up to the Planning Commission to determine whether or not the Meijer structure satisfied that requirement.

Mr. Benson asked if all other outdoor sales had offices. Ms. Bugge indicated they generally did but that certain temporary and seasonal uses did not.

Mr. Benson said he didn't see how Meijers' office could count since it wouldn't be an office of the applicant. The Chairman said that was something which should be handled during deliberations. The Chairman asked about all businesses of this type and where they were currently provided for under the ordinance. Ms. Bugge stated past seasonal and temporary uses had been reviewed under Section 30.409.

The Chairman asked Ms. Bugge if the employees would be provided restroom facilities. Ms. Bugge said she thought they probably would use facilities of adjacent businesses. The Chairman asked Ms. Bugge if they checked the plumbing code to see what the requirements were with regard to bathrooms within 300 feet of an employees work area. Ms. Bugge indicated she had not. The Chairman asked if the site would have to be modified to accommodate ADA requirements. Ms. Bugge said she had not investigated that.

Ms. Gelling asked if this was the first business of this type in the township since she thought she'd seen one on Drake Road at Harding's. Ms. Bugge said it was the first one of its type which had made a request for approval. Mr. Skalski asked what facilities the fireworks employees had available to them. Ms. Bugge said she was not sure but suspect that it was Meijer. Mr. Benson asked about liability insurance to which Ms. Bugge indicate it wasn't their responsibility to address such issues since that was between a landlord and lessee.

The Chairman asked to hear from the applicant. Mr. Mark Crum introduced himself. He said he assumed they had read his application and that he wouldn't reiterate all of that information but did want to address a few questions that came up.

Mr. Crum said didn't have an office but the type of work they did was not something which would require returns. He said they did provide a warranty and did indicate where their offices were located in Battle Creek. He noted that the hours were somewhat vague because they were dependant upon the weather and it being daylight. He also noted hat they did have an agreement with Meijer to use the restrooms.

Ms. Gelling asked if they were going to use 12 parking spaces or less. Mr. Crum said it would not be more than 8-10 parking spaces and said most often they only use approximately four (4).

Mr. Skalski asked if once they were done operating they would move all the materials off site. Mr. Crum indicated that was correct, they were removed daily.

Ms. Gelling asked how the resin used to repair the windshield was stored. Mr. Crum said it was stored in very small bottles and they usually they didn't have more than two or three bottles on site.

Mr. Benson asked if there were environmental concerns. Mr. Crum said he didn't believe so since all of their waste items were bagged and removed from the site for disposal.

Mr. Benson said he had examined the lease document and the applicant was not allowed to use the bathrooms at Meijer. Mr. Crum said the contract had been changed to allow for use of the bathrooms and apparently the Commissioners had been provided the earlier draft.

Ms. Gelling asked how they would provide electrical service to the site. Mr. Crum said they used 12 volt battery operated tools.

Ms. Everett asked how many employees they normally would have on site and how many cars they could work on at any one time. Mr. Crum said they could have up to two employees on site and work on three cars at one time.

Mr. Benson said that his reading of the Meijer agreement will allow Meijer to relocate Mr. Crum's business to anyplace on their site. Mr. Crum indicated that was true but they had chosen the proposed location because it did have an island barrier. Ms. Bugge indicated that was correct. Ms. Everett expressed concern about the location in spite of the barrier because it was immediately adjacent to the Arby's site generating additional traffic in and around the service drive.

Mr. Skalski asked if Meijer had been approved for three or four similar businesses of about 6000 sq. ft. Ms. Bugge indicated that Meijer had been approved for itself to have outdoor sales and was limited to three, ten day events per year. TNT Fireworks had also been approved and was limited to one event of up to 16 days per year. Mr. Skalski said uses similar to the one approved could present a problem if Meijer were to grant similar requests because it could become a flea market in the parking lot.

Hearing no further discussion the Chairman noted that there were no longer any public present and dispensed with public comment and called for Planning Commission deliberations. The Chairman said that he thought the primary concern was related to land use, however, he was also concerned about compliance with the Michigan Building and Plumbing Code, as well as, the barrier free issues which were previously raised. He said that limited sales were one thing but that the long term use proposed by the applicant was certainly another. He said he was also concerned that the proposed use was impacting on a preexisting approved business.

Ms. Everett said that the length of time of the proposed outdoor sales was certainly an issue verses some of the other short term limited outdoor sales. The

Chairman said he agreed and that while not having a sales office for short seasonal sales was certainly understandable this would be in existence for an extended period of time and he didn't see how it fit within the ordinance.

Ms. Gelling said she had a problem with no sales office on site and no bathroom facilities. She noted that the proposed business was certainly significantly different from the temporary uses previously approved. Mr. Skalski said he understood the concerns about not having a sales office but he thought clearing the site on a daily basis, instead of actually putting a small trailer on site, was actually better.

Mr. Anderson said he thought only having one or two employees might not be a major problem.

Ms. Bugge said she thought the real issue is that Meijer had applied for its approved use with a building and its outdoor space and special sales. She said that the question was whether the Township believes that part of Meijer's use is to lease out its parking lot. Mr. Gould noted that put in those terms, especially in light of the past request by Meijer for additional outdoor sales, the answer was no. Mr. Benson concurred saying that the Township has attempted to maintain a majority of all sales within an enclosed building. Ms. Everett said that the only time they have considered outdoor sales in this area, they were on a temporary, short term basis.

The Chairman said he thought Ms. Bugge made the most pertinent point and that is, Meijer's business was approved and its outdoor sales were quite restricted. Approving additional outdoor sales would only encourage Meijer to attempt to expand its outdoor sales. He asked how they could treat, for example, a Meijer's request for an outdoor paint facility any differently then the applicant's request. In essence what Meijer was doing was breaking up its site into one or more business locations which he didn't think was consistent with their original site plan approval.

Ms. Everett said if they approved this use she questioned how they could deny other similar requests within the Meijer parking lot. The Chairman said if this was approved then there would likely be additional requests for other outdoor sales in parking lots throughout the township. Ms. Everett said this proposal wasn't consistent with what Meijer had been approved for and its requests were only on a temporary, seasonal basis. Ms. Gelling said that if this were approved she thought the township would loose control not only over the Meijer's lot but other parking lots throughout the township.

Mr. Skalski said his only concern was that Meijer might be able to come up with six or seven other uses on the site. He suggested perhaps a text amendment that would limit the percentage of the lot that they could use for similar uses to avoid future problems. The Chairman said that allowing this type of use in a parking lot would create difficulty for Ordinance enforcement within the township.

The Chairman asked if there was any further discussion and hearing none said he would entertain a motion. Mr. Skalski made a motion to approve the special exception use as proposed for a windshield repair business provided the applicant provide an updated lease and it was consistent with the applicant's request. The Chairman asked if there was a second. Hearing no second to the motion the chairman noted that the motion failed for lack of support.

The Chairman asked if there was another motion. Ms. Gelling made a motion to deny the special exception request and site plan approval based on the discussion in the record. Mr. Anderson seconded the motion. The Chairman called for further discussion. Ms. Everett suggested the board note its reasons why they were denying the request. The Chairman asked that each member of the Planning Commission note their bases basis for their vote as they voted on the motion.

Ms. Everett indicated that she was going to vote in favor of the motion because she did not believe the applicant met the ordinance criteria and that is was not a temporary use and therefore it was significantly different from previously approved outdoor sales in this area. She was also concerned about setting an adverse precedent that would negatively affect the community.

Ms. Gelling voted in favor of the motion saying that the time frame was not appropriate. She also noted that no office was present and that it would set an adverse precedent opening up other parking lots for similar uses in the area.

The Chairman said he would vote in favor of the motion. He said that he thought that the proposal would affect the community's quality of life and that prior outdoor display requests by Meijer had been rejected. He said he thought businesses should generally operate within the confines of an enclosed building and that this site was not approved for additional outdoor sales and that approving the application would be contrary to the existing site plan for Meijer.

Mr. Benson said that he would vote in favor of the motion and said he didn't believe there was any exception to allow this proposed use in the ordinance and that a strict reading of the ordinance did not favor approval of this special exception use. He also expressed concern regarding setting an adverse precedent.

Mr. Skalski said he would vote no on the motion. He said the Township had approved fireworks sales in this area before and thought that the fact that the applicant would remove everything on a daily basis would not make the use incompatible with surrounding uses.

Mr. Gould voted in favor of the motion. He said that temporary meant short term and this request was not that. He said that the other approved temporary uses were not a problem but the original site plan for Meijer didn't include the use of its parking lot for

long term sales and he didn't think it was appropriate to approve this request as a special exception use.

Mr. Anderson said he would vote yes based upon the provisions of Section 30.409a.

The Chairman concluded by saying that the motion had been approved 6 -1 and that the special exception use and site plan approval was denied.

### **Any Other Business**

The Chairman asked if there are any items under other business. Ms. Stefforia noted that the Southwest Michigan Planning Commission was having a trails update and had called for a June 25<sup>th</sup> trails summit on updating the regional maps. She encouraged the members to provide their input. She noted the meeting would commence at 6pm at the fairgrounds.

There was brief discussion as to whether or not the Planning Commission would hold it's meeting on the 25<sup>th</sup>. The Chairman encouraged the Planning Commission to meet and discuss any further updates on the Master Land Use Plan. Ms. Stefforia said that she would make sure that a chapter of the Master Land Use Plan was completed for the board's consideration on the 25<sup>th</sup>.

### **Planning Commissioner Comments**

None

### **Adjournment**

The Chairman asked if there were any further comments, and hearing none, he called for adjournment. The meeting was adjourned at approximately 9:30 p.m.

Minutes Prepared:  
June 18, 2009

Minutes Approved:  
June 25, 2009