

**OSHTEMO CHARTER TOWNSHIP**

**PLANNING COMMISSION**

**MINUTES OF A MEETING AND PUBLIC HEARING HELD JULY 25, 2013**

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**AGENDA**

**SPECIAL EXCEPTION USE AND SITE PLAN REVIEW OF THE APPLICATION OF TIM HORTON'S FOR A NEW RESTAURANT WITH DRIVE-THRU SERVICE LOCATED AT 6779 WEST MAIN STREET IN THE C LOCAL BUSINESS DISTRICT (PARCEL #3905-14-305-025).**

**DISCUSSION OF PROPOSED ZONING ORDINANCE AMENDMENTS RELATED TO TEMPORARY SIGNS**

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A meeting of the Oshtemo Charter Township Planning Commission was held on Thursday, July 25, 2013, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT:     Kitty Gelling, Chairperson  
                              Fred Antosz  
                              Wiley Boulding, Sr.  
                              Dusty Farmer  
                              Millard Loy  
                              Terry Schley  
                              Richard Skalski

MEMBERS ABSENT:     None

Also present were Greg Milliken, Planning Director, Attorney James Porter, Meeting Transcriptionist, Martha Coash, and three other interested persons.

**Call to Order and Pledge of Allegiance**

The meeting was called to order by Chairperson Gelling at approximately 7:00 p.m., and the "Pledge of Allegiance" was recited.

## **Agenda**

The Chairperson asked if there were any additions, deletions or corrections to the Agenda. Hearing no changes, she called for a motion to accept the Agenda, as submitted. Mr. Loy made a motion to accept the agenda as presented. Mr. Skalski seconded the motion. The motion passed unanimously.

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

Chairperson Gelling called for public comment on non-agenda items. There being none, she proceeded to the next agenda item.

## **APPROVAL OF THE MINUTES OF JULY 11, 2013**

The Chairperson asked if there were any additions, deletions or corrections to the minutes of July 11, 2013. No changes were noted. Mr. Boulding, Sr. made a motion to approve the minutes as presented. Mr. Skalski seconded the motion. The motion was approved unanimously.

## **SPECIAL EXCEPTION USE AND SITE PLAN REVIEW OF THE APPLICATION OF TIM HORTON'S FOR A NEW RESTAURANT WITH DRIVE-THRU SERVICE LOCATED AT 6779 WEST MAIN STREET IN THE C LOCAL BUSINESS DISTRICT (PARCEL #3905-14-305-025).**

Chairperson Gelling indicated the next item on the agenda was the continuation of a public hearing to conduct a special exception use and site plan review of the application of Tim Horton's for a new restaurant with drive-thru service located at 6779 West Main Street in the C local business district (parcel #3905-14-305-025) tabled from the July 11 meeting. She asked Mr. Milliken to please provide introductory comments.

Mr. Milliken said he would recap the situation for Planning Commissioners. He indicated the special exception use and site plan review for Tim Horton's is for a café and restaurant with drive-thru service on the south side of West Main Street, west of 9<sup>th</sup> Street, west of the Crystal Car Wash and east of the General Rental property. The site is 1.5 acres, with 200 feet of frontage on West Main St. The special exception use is due to the drive thru use. A public hearing was held at the meeting on July 11 and was tabled until this evening. The applicant's original submittal two weeks ago called for full use of the existing curb cut on M-43 with no changes, but did include the cross-access service drive concept. Access was the primary discussion point last meeting and the reason for the tabling.

He explained the Staff's recommendation was that the access point be removed based on consistency with the Township's Access Management Plan over a 20 year

history, over 20 years of development that has been consistent with the policies and the vision of that plan, and the recommendation of the Township's Traffic Engineer. Through the course of the discussion at the last meeting, it appeared a majority of the Commission members seemed accepting of a right-in only concept that would allow development of the parcel as well as provide a solution to many of the concerns raised by the applicant.

Mr. Milliken said that although that resolution would be contrary to his original recommendation, he believed it would be consistent with the intent of the Access Management Plan and many of its policies. He concluded by saying the applicant has brought a revised plan with a right-in, right-out arrangement for consideration by the Commission.

Chairperson Gelling thanked Mr. Milliken for his comments and asked Commissioners if they had questions for Mr. Milliken.

Mr. Schley noted there is a similar traffic pattern across the street at Menard's and asked Mr. Milliken to refresh their memories on previous discussions regarding that situation.

Mr. Milliken said Menard's sought a special exception in 1999 for its development and their plan included two full access points onto West Main to service Menard's and the out lots. MDOT approved that request but Township standards did not allow full access drives within 450 feet of an intersection. The easternmost drive is within 180 feet of the intersection, which was too close to allow full access. Therefore, it was limited to right in, right out. In 2006 there was some site redevelopment that occurred, and in conjunction with these changes, the access point was converted to right-in only and a one-way drive.

Mr. Schley asked if there have been any difficulties reported from those business users regarding the drive-in access.

Mr. Milliken said none have been reported during his tenure.

Chairperson Gelling asked if there were any other questions for Mr. Milliken. Hearing none, she asked the applicant to come to the podium to address the board.

Mr. Mark Kellenberger of Tim Horton's thanked Commissioners for letting him appear again this evening. Tabling the discussion from the last meeting allowed him to talk further with Tim Horton's officials to see what they could live with regarding the access point. They agreed to all landscaping requirements and worked to find common ground on the access point with the hope of coming to an agreement. He indicated Tim Horton's could agree to a right-in, right-out scenario curb cut that would include an island, but not the right-in only option. They would like to move it to the west to line it up with their internal drive. A concern is the existing curb cut and the presence of the easement for the car wash to the east. He said they could accept the right-in, right-out

at the original location if necessary and offered to address any questions from the Commission.

The Chairperson asked if Commissioners had any questions for Mr. Kellenberger.

Mr. Schley noted the cross access standard width is 30 feet and asked Mr. Kellenberger about the width of the cross access drive to the west shown on their plan.

Mr. Kellenberger said it is shown as 21 feet, but a 30-foot width is acceptable.

Mr. Schley asked for clarification on whether Tim Horton's would accept a right-only access.

Mr. Kellenberger said a right-in only access would not be acceptable.

Hearing no further questions from Commissioners, Chairperson Gelling asked for public comment.

Mr. Shashin Kothawala, 6914 Northstar, and owner of Crystal Car Wash, told the Commission that the Crystal Car Wash property has an easement and at one time agreed to cross access between the properties, but that in reading the package of materials, it seems to state that Crystal Car Wash agreed to a closure at some point of their access point on West Main Street. He said at no time have they ever agreed to closure of their access point. When the cross access agreement was completed, A-Z Storage was in place with full access. As part of the site plan approval they were allowed to complete that, which was important for the car wash flow issues and material to the business itself. In 2002 Wal-Mart came in and purchased the property from different owners, demolished the storage business, and at that time there was a modification of the vehicular easement which the Township reviewed and found no changes were needed to the access either in or out.

He said Crystal Car Wash wants no change to the access point. There has never been an accident there in 16 years. The Township has had many opportunities to look at this over the years. The road has expanded, but at no detriment to the public, no safety problems to speak of. He said if the Commission were to restrict the access point to a right-in only, one would have to cross six lanes of traffic to get across 9<sup>th</sup> Street to go northbound in order to get to eastbound M-43 from the property, which would be a major safety issue, when now it is very easy to yield and merge in. Very rarely does traffic back up to cause a problem for the acceleration lane, which was created when Wal-Mart was built. It has never been an issue for the access point.

Mr. Kothawala concluded by wishing Tim Horton's well, said he would welcome them as a neighbor, but changing the access point would materially affect his business.

Chairperson Gelling thanked Mr. Kothawala for his comments and asked if there were additional members of the public who cared to address the Commission.

Mr. Tim Shank, 574 Sunset View in Augusta and owner of the property in question, told Commissioners he is a real estate developer and purchased the property because of the deeded access and curb cut to West Main Street with the idea of developing it. He has an earnest tenant who would like to locate here if the access issue can be resolved. He stated Mr. Kothawala has a permanent deeded access to West Main St. in writing and recorded in the County and approved by the Planning Commission many times over a period of years, as reflected in records. He's willing to work with Mr. Kothawala, and said a right-in, right-out access can work, but Mr. Kothawala is legally entitled to his access, so there is a cross-purpose in trying to resolve the issue. Even if they could work with the right-in, right-out with the existing curb cut it still has to be resolved with Mr. Kothawala. He concluded by saying he thinks Tim Horton's is a solid, reputable business, would be a good use in this location, and a benefit to the Township. They are ready to start construction with completion estimated in 90 – 120 days.

Chairperson Gelling thanked Mr. Shank for his comments.

Attorney Porter pointed out that the Township does not grant deeded access points, and with all due respect to Mr. Kothawala, there is case law in Michigan that supports closure of access by local governmental units – it can be done. Of course that can be challenged in court. The Commission should make the decision it feels is correct and then let the court sort it out if necessary.

Chairperson Gelling, hearing from no other members of the public, moved to Commissioner Deliberations and asked for their comments.

Mr. Schley said there seemed to be some question about what is in the records regarding what was granted regarding cross-access with the car wash and the potential that a service drive might be required at some point. He asked if the Township's records are sound.

Attorney Porter said he is not aware of any special agreement with Mr. Kothawala regarding the drive. He believes the record is clear regarding cross-access being required across the car wash property as well as the other properties in this area.

Mr. Milliken said there is detailed history of the development that has occurred in this area in the Staff Report. He is confident they are sound and is comfortable with them.

Mr. Loy asked Mr. Kellenberger to clarify whether he is attempting to put another curb cut in alongside the existing one, or share one with the car wash in a new location.

Mr. Kellenberger said Tim Horton's wants to share one curb cut, not two, with a middle island.

Mr. Boulding, Sr. asked Mr. Kothawala what effect the new cut would have on his business.

Mr. Kothawala explained his business lost hundreds of thousands of dollars during construction of Wal-Mart. They are a service business and the ease of flow to his business is critical. By moving the access point they will certainly lose business. People want to avoid driving through dirt when they are washing their vehicle. Customers will go elsewhere during construction. His business is volume oriented and they operate on thin margins. When granted site plan approval it was clear how their business would operate and he does not feel the access point has been a hazard.

Mr. Skalski said he understands the traffic issues and referred to Meijer's and the Drake Road and West Main corner as other locations with similar or worse traffic access issues. He said he appreciates efforts to make access work and feels a right-in, right-out approach would work, be safer and would address the needs of the car wash. He thinks the control island addresses some of the issues.

Mr. Antosz said he would like to uphold the Access Management Plan and noted he is still concerned about right-out safety, but sees no problem with going further west.

Ms. Farmer commented that she understands if the access point is moved the bulldozers and dirt will affect the car wash, but assumed that would be done at the same time construction of Tim Horton's would take place and that the construction itself would also affect the car wash business. She wondered how much the Commission should take that into consideration and asked Attorney Porter to clarify his point that regardless of any access agreement in the past, the Access Management Plan gives the Township the authority to change access.

Attorney Porter quoted from the Access Management Guidelines in the Zoning Ordinance: Section 67.500 (7) "In the case of expansion, alteration or redesign of an existing development where existing driveways do not comply with the guidelines set forth herein, the closing, relocation, or redesign of the driveway may be required." He added that if the Planning Commission chooses to deviate from the Access Management Plan it should have a valid reason for doing so.

Ms. Farmer said in her opinion the Commission should not deviate from the Access Management Plan.

Chairperson Gelling said her feeling is that Mr. Kothawala knew that the existing property to the west would likely be developed at some time. She said it would be hard for the Commission in the future to prohibit someone from coming in because it may cause dust and dirt; she knows it is an inconvenience, but that is part of development.

Mr. Kothawala explained he is not opposed to development, but at the time he bought the property and the car wash project was approved, there was an existing business in place. There was no way they would know it would ever be leveled and redeveloped. They were in, functioning and operating, and using the access point. Now it seems all that will be thrown out the window and it will be necessary to start again. When the property became vacant, he immediately put in an offer; unfortunately it was not accepted and the property went to Mr. Seelye. Had they had the opportunity at the time they certainly would have acquired the property. They have been using the access point for 16 years, with a neighbor when it was developed. Now that it isn't developed, it is an issue. He wants to maintain the access point for which he has an easement. He estimated 60% of his customers use that access point to leave his property and go east bound on West Main St. The car wash is a busy place, is extremely efficient and has good traffic flow, which is the bedrock of their success.

Chairperson Gelling said she is extremely uncomfortable with the special exception use request. She can live with the right-in only access but not the right-out. The Traffic Engineer and MDOT have both done viable and detailed studies supporting their reasoning. Her priorities are what is safest for all concerned and with what conforms to the Access Management Plan. She concluded she was opposed to the Special Exception Use, given the applicants request for right-in right-out access. She asked what other Commissioners had to say in detailed deliberation.

Mr. Schley felt issues with existing agreements should be settled between property owners before an applicant comes to the Planning Commission. The Planning Commission's purpose is not to resolve existing landowner agreements. He would be troubled if the Planning Commission decided to approve a right-in, right-out in direct opposition to the Township consultant. He wants to support the Access Management Plan although it is sometimes difficult to do. He thought the right-in only access was a reasonable compromise. He was not persuaded that enough of an argument to counter the position of the Traffic Engineer with tangible information has been made. He said it is the changing use of the site that allows the Planning Commission to take into consideration what happens to the drive. It is not their business to consider what effect a proposed business would have on an existing drive, but to make considerations of the application based on what the Access Management standards are, what our Engineering consultants say, and what safety standards are. He was not in favor of granting the special exception use as requested.

Mr. Loy found it disturbing that people did not meet and work out an agreement about the access point ahead of time. As a member of the board he will not go against the advice of their people and said he also would have to say no.

Mr. Boulding, Sr. noted this was a confusing issue. The board has heard a lot of information about the detrimental effects of construction on existing business, but there is potential for new business. He did not see a big problem with the 21 ft. versus 30 ft. access width. He said dust would be required with new development, would be

temporary and would need to be lived with for the benefit of everyone. He said he was in a neutral position at this point.

Mr. Skalski appreciated that the applicant is trying to make this work. They have offered to make modifications that he sees as an improvement, and believes they would eliminate some potential problems. He referred to some other locations he looked at in the Township that have similar access challenges. He thinks he could live with their compromise position.

Chairperson Gelling reiterated again that based on safety and work done through the Engineer and MDOT as well as taking into account the Access Management Plan that was put in place for good reason, she is not able to support what the applicant would like at this time.

Mr. Antosz said he would be willing to compromise on the right-in only. His concern is with the right-out. There will be a lot more traffic with two businesses. He is not in favor of the right-in, right-out.

Ms. Farmer said her opinion is that the Commission should follow the Access Management Plan and she knows that is something that might initially affect businesses in the area but she also knows that an access drive can be effective.

The Chairperson asked if there were any further comments before she entertained a motion.

Mr. Milliken said there were several options that had been considered and any motion should be very clear about what is being approved or denied.

Attorney Porter stated that if the Planning Commission were inclined to grant the applicant's request it should be on the record why the request is being granted. If the request is denied, it should be done on the basis of the application – that the applicant will only accept the right-in, right-out access that it is not supported by the Access Management Plan, or it could be stated what the Planning Commission is willing to approve.

Chairperson Gelling noted she had already formulated an all-inclusive and descriptive motion which she would present.

Chairperson Gelling made a motion to deny the special exception use review request by Tim Horton's for a new restaurant with drive-thru service located at 6779 West Main Street based on the applicant's desire to have no less than right-in, right-out access in conflict with the Township's Access Management Plan. Mr. Loy supported the motion. The motion was approved 6 – 1, with Mr. Skalski voting no.

The Chairperson thanked those in attendance for coming back for the extended discussion and moved to the next item on the agenda.



## **DISCUSSION OF PROPOSED ZONING ORDINANCE AMENDMENTS RELATED TO TEMPORARY SIGNS**

The Chairperson explained she had done a lot of research on definitions for "Architectural Signs" covered in 76.000 and talked with a number of different people about it, with many different opinions. What she inferred from her discussions is that it is very difficult to regulate "Architectural Signs" and that it is better to leave some definitions more broad and vague. Chairperson Gelling thought the quote from one of the individuals she had interviewed summed it up best when he stated, "With specificity comes bureaucracy." Different aspects of architectural signs are already included in other places in the ordinance and definitions. She said she went back to Planning Commission minutes of the meetings of February 9, June 8 and July 13 in 2006 and found very involved discussions with many differing opinions on the topic. As a result, in her opinion, it would be better to leave "Architectural Signs" out of the definitions. The rest of the Commissioners concurred with her conclusion.

Mr. Schley said as he reads the sign ordinance, there are a series of conditions that are very specific that must all be met before an applicant can take a request for a signage variance request to the Zoning Board of Appeals. There will be situations coming up, as they did with the lighting technology, that can't be foreseen or defined. The Ordinance is troubling but consistent in that if someone doesn't meet all the conditions, the ZBA can't approve their request.

Chairperson Gelling asked Mr. Milliken if the Sign Ordinance would be eventually looked at in more detail, while at the same time realizing this was certainly not a priority at this point in time, but something to keep in mind for the future. The Chairperson said tackling the zoning ordinance amendments related to temporary signage was a huge step going forward.

Mr. Milliken said a lot of staff time is spent on signs and that addressing changes to the Ordinance is on the wish list. He said tackling the temporary signage issue was a big goal but when permanent commercial signs are addressed, issues will emerge regarding nonconformity. When we look at it we will need expertise from a signage expert and input from the business community.

In answer to a question from Mr. Milliken about whether the Board is ready to hold a public hearing on the temporary sign zoning ordinance amendments, Chairperson Gelling said the board is ready.

Mr. Milliken said it would be scheduled at a future meeting.

Attorney Porter reminded Commissioners they are a deliberating body, not unlike a court that sits and hears information provided to them, and that if they need additional information on a topic, they should go through the Planning Director. Otherwise it makes

for an uneven deliberating body because one person has information that isn't in the record. The Chair asked for an example, and Attorney Porter noted a statement was made regarding traffic data that hadn't been privy to all concerned.

### **ANY OTHER BUSINESS**

Chairperson Gelling asked if there was any other business.

Mr. Milliken said a public hearing is coming up at the next meeting on August 8 regarding redevelopment at the West Century Center that includes a proposed drive-thru and some significant proposed architectural updates.

There will be a public hearing regarding Flesher Field at the August 22 meeting and likely the temporary signage public hearing will be scheduled then as well.

Mr. Milliken also reported the Zoning Board of Appeals had a hearing on a light variance request from DeNooyer Chevrolet at its meeting last week and granted the request. Our standards have a maximum of 400 watts on each lamp. They have 29 light poles on their property, some with as many as 4000 watts. They are incorporating LED technology, which will lower the wattage from 4000 to around 800 watts. Because one bulb is 800 watts they needed to request a variance to exceed the standard. The ZBA asked that the Township review its lighting ordinance in light of changing technology. This variance will allow significant improvements to their site. The foot candle spread is a lot better, and much closer to Township requirements. In the months ahead this issue will probably be brought to the Planning Commission for consideration.

There was no other business and the Chairperson proceeded to the next item on the agenda.

### **PLANNING COMMISSIONER COMMENTS**

Chairperson Gelling said the Ordinance Enforcement Officer has successfully removed all donation bins at Wal-Mart. He is working on the last two that are still left in the Township. She also complimented Mr. Loy on the successful Oshtemo Historical Society event they recently held at the Drake House on Saturday, July 20.

Mr. Boulding, Sr. said he feels the Access Management Plan will affect other properties where there's relocation of driveways and wondered if that is true.

Attorney Porter said, that is true, and that it would probably be helpful for him to have a copy of the Plan.

Chairperson Gelling asked Mr. Milliken if he would please provide copies for all commissioners, noting although the Access Management Plan is available digitally, it would be advantageous to have a hard copy in hand.

Mr. Milliken said he could provide hard copies to for everyone at the next meeting.

Chairperson Gelling also suggested if Mr. Boulding, Sr. needed more information on the Access Management Plan, it would be helpful to talk with Mr. Milliken.

Mr. Loy thanked everyone for their support for the Historical Society event at the Drake House. Society members were very pleased with how it went.

Mr. Schley noted he attended the DDA meeting earlier in the day. There was some discussion of what to do about an initiative to put some rear access driveways in place behind businesses. Businesses may be faced with the challenge of having to shut down some individual driveways in the future. The single business view vs. the overall community definitions of the character element of the village will likely be an issue. There are clear guidelines that provide expectations that seem to be somewhat different than what is there now. It will be challenging to address as a community, but it is important to maintain consistency and preserve the village character element in the long term.

## **ADJOURNMENT**

Having exhausted the agenda, and with there being no further business to discuss, Chairperson Gelling adjourned the Planning Commission meeting at approximately 8:31 p.m.

Minutes prepared:  
July 28, 2013

Minutes approved:  
August 8, 2013