

**DEWITT CHARTER TOWNSHIP  
1401 W. HERBISON ROAD, DeWITT, MI  
PLANNING COMMISSION MINUTES  
MONDAY, OCTOBER 6, 2008**

The regularly scheduled meeting of the DeWitt Charter Township Planning Commission was called to order at 7:00 p.m. by Chairperson Zimmerman.

The Pledge of Allegiance to the Flag was said by those present.

ROLL CALL by Secretary Shively.

MEMBERS PRESENT: Marsha Zimmerman, Bruce Keilen, Dale Dailey, Terrie Shively, Kim Smelker, Steve Gobbo, and Trustee Ross.

MEMBERS ABSENT: Jason Flower.

VACANCY: One.

STAFF PRESENT: Township Planner Jim Foulds, Township Attorney J. Richard Robinson and Recording Secretary Linda Parkinson.

APPROVAL OF AGENDA: Dailey requested to add an Agenda Item prior to Rezoning Request 08-880004 so that he can ask to abstain from discussion and voting on this request.

**Keilen moved to amend the Agenda to add an Agenda item prior to rezoning request 08-880004 from David Schlegel Limited Family Partnership to allow Commissioner Dailey to abstain from discussion or voting on said request. Supported. MOTION CARRIED.**

**Gobbo moved to approve the Agenda as amended. Supported. MOTION CARRIED.**

APPROVAL OF MINUTES: **Gobbo moved to approve the minutes as presented. Supported. MOTION CARRIED.**

CORRESPONDENCE: The following correspondence was received and noted by the Planning Commission:

1. Letter dated August 15, 2008 from C2aE regarding Bath Township Pre-Planning for Bicycle & Non-Motorized Pathway Development Master Plan.
2. Correspondence dated September 26, 2008 from Watertown Township regarding Master Plan Community Visioning Workshop.

3. Memorandum dated September 12, 2003 from J. Richard Robinson, P.C., Township Attorney, regarding Conflict of Interest.
4. Code of Ethics and Conflict of Interest Policy adopted by DeWitt Charter Township.

**PUBLIC COMMENTS:**

Ron Clark, representing E.T. MacKenzie Company, 4240 W. Saginaw, Grand Ledge, MI 48837, stated he was present for questions regarding Item I. under New Business (SUP 06-990004).

**UNFINISHED BUSINESS:**

**I. Consideration of Abstention – Commissioner Dailey.**

Commissioner Dailey read a statement requesting to be allowed to abstain from discussion or voting on Rezoning Request 08-880004 from David Schlegel Limited Family Partnership. He explained that his property is currently involved in a sand mining operation located on a portion of his property located at 2707 E. Howe Road. Although he has no involvement with the day to day operation of the pit he does benefit financially. He believes this involvement puts him in a potential or perceived conflict of interest regarding Rezoning Request 08-880004. A “no” vote on his part could be interpreted as trying to keep out a competitor. A “yes” vote might even be interpreted as support of the sand mining industry.

**Keilen moved to allow Commissioner Dailey to abstain from discussion and voting on Rezoning Request 08-880004 from David Schlegel Limited Family Partnership based on his statement. Supported.**

Gobbo questioned the appropriateness of Commissioner Dailey’s request to abstain. Unless Mr. Dailey or a member of his family would directly benefit financially from this request he questions whether the request would fit into the terms of the Township ethics policy, as well as advise received from legal counsel in the past.

Township Attorney J. Richard Robinson, P.C., 1690 Watertower Place, Suite 500A, East Lansing, MI 48823, stated that the Township Code of Ethics and Conflict of Interest Policy goes beyond the scope of financial benefit. He referred to the Statement of Purpose in the Code, page 4, item 12 as it relates to avoidance of the appearance and risk of impropriety. Mr. Dailey has a mining operation on his property and his income from that operation is dependant upon the activity, certainly by approving another mining operation that could cause some business difficulties for him. If Commissioner Dailey voted in opposition to the request, it might have the appearance of him putting his own interests ahead of that of the Township because it would eliminate a competitor. In closing, Attorney Robinson stated he felt Mr. Dailey’s request is appropriate.

**II. (Previously Item I.) Rezoning Request 08-880004 from David Schlegel Limited Family Partnership** for property located at 1650 and 1720 E. Clark Road, Lansing, MI 48906, and a 19.11 acre vacant property located on the south side of E. Clark Road, east of Boichot Road, west of Wood Road, in the northeast  $\frac{1}{4}$  of Section 22 of DeWitt Charter Township, to rezone approximately 46.86 acres from A (Agricultural) and R3 (Residential Single Family) to A (Agricultural). **Note: Postponed at the September 2, 2008 meeting.**

Township Planner Jim Foulds briefly reviewed staff's memorandum dated October 1, 2008 giving background information and explaining the current status of the request. In response to questions from the general public and Planning Commission members at the September 2, 2008 meeting, the applicant voluntarily submitted a correspondence dated September 25<sup>th</sup> that further clarified the conditional rezoning amendment and a smaller land area to be rezoned to the A (Agricultural) Zoning District. Therefore, the issue before the Planning Commission is to consider the conditional rezoning request as amended on September 25, 2008 by the applicant (copy attached).

Foulds explained that Conditional Rezoning is a provision that was allowed by the State Legislature to allow communities to attach conditions voluntarily offered and negotiated with the property owner and a local jurisdiction (see page 6 of staff's report). The Township does have some history of granting a Conditional Rezoning involving Avalon Place (Rezoning Request 07-880003).

Foulds stated that staff's recommendation was framed from questions raised by the Planning Commission members at the August 4<sup>th</sup> Public Hearing, as well as comments made by the public. He briefly explained the three principals considered by staff when forming a recommendation for approval of the request.

Foulds read for the record staff's recommendation for Rezoning Request 08-880004 from David Schlegel Limited Family Partnership (see staff's report).

Gobbo questioned if it would be possible to require the applicant to post a bond to insure the restoration of the site.

Township Attorney J. Richard Robinson noted that even if the rezoning request is approved, a Special Use Permit would be required to allow for the extraction of sand and gravel from the proposed site. Typically the issues of operational activities and a commitment of the final grade elevation are addressed at the time that a Special Use Permit is considered for approval.

The primary issue currently before the Planning Commission is the rezoning request. In the case of a conditional rezoning such as the applicant has proposed, a contract will be entered into between the applicant and the Township that will be a restrictive covenant on the land regardless of ownership of the property.

Keilen commented that many residents retain their homes based on the Master Plan designations of the area surrounding their property. When the residents in the area of the proposed site see

that it is designated for residential, one would assume that a mining operation would not occur. In addition, Mr. Keilen stated he has seen many conceptual drawings presented to the Planning Commission and in his opinion, very few come to fruition. Therefore, he does not feel comfortable supporting the request to “down zone” the property.

Chairperson Zimmerman invited the applicant to speak.

Mark Schlegel, representing David Schlegel Limited Family Partnership, 16527 Wood Road, Lansing, MI 48906, stated staff has done an excellent job outlining the voluntary conditions proposed by the applicant that were formed to address any concerns or issues expressed at the Public Hearing. He reiterated the conditions offered related to the existing home on the property located at 1650 E. Clark Road, Lansing, MI 48906. He has received a phone call from an individual interested in purchasing the home under the conditions offered in their September 25, 2008 letter. He feels the purchase options proposed are attractive and fair to anyone who is concerned with the preservation of the home located at 1650 E. Clark Road.

There were no further questions or comments.

**Keilen moved to recommend to the Board of Trustees that Rezoning Request 08-880004 from Davis Schlegel Limited Family Partnership, as conditionally amended on September 25, 2008 by the applicant, be denied based on the fact that approval would deviate from the current Master Plan and the proposed interim use would have an adverse affect on the residents in the surrounding area. Supported.**

Commissioner Shively stated she also feels the proposed request deviates from the DeWitt Charter Township Master Plan and approval of the request would adversely affect many residents in the surrounding area.

Gobbo stated he may have voted in favor of recommendation for approval based on the conditions voluntarily submitted by the applicant that appear to be a balance between the property owner’s rights to use the property in a reasonable fashion and issues expressed by the public.

Ross noted that page 11 of staff’s report dated October 1, 2008 states “Several of the Uses Permitted by Special Use Permit in the A Agricultural District could be problematic in terms of noise, odor, and vibration for the adjacent single family land uses.” Ross further noted that the applicant has been very up front with the intended use of the subject property and has made an effort to respond to concerns expressed by the public. However, he supports the recommendation for denial because the intended interim use of the property for excavation purposes would cause an adverse impact on traffic. He further feels that approval of the rezoning request would be a movement in the opposite direction from a policy and implementation standpoint away from a strategy recommended in the adopted Comprehensive Development Plan.

Commissioner Smelker stated she is also in favor of a recommendation for denial based on traffic safety issues and the fact that approval would be a “backwards step” from the Master Plan of the Township.

**ROLL CALL vote on motion:**

**AYES: 5    NAYS: 1 (Gobbo)    ABSENT: 1 (Flower)**

**ABSTENTION: 1 (Dailey)**

**MOTION CARRIED.**

Chairman Zimmerman thanked everyone present for their involvement.

Commissioner Keilen noted that the Planning Commission is a recommending body to the Board of Trustees. The request will now go before the Board for their consideration.

**III. (Previously Item II.) PUBLIC HEARING - Request for Special Use Permit 08-990009 from Ron Jona and Associates** for property located at 1171 and 1121 E. Webb Road, DeWitt, MI 48820 and 12651 and 12649 S. US 27 DeWitt, MI 48820, at the northeast corner of S. US-127BR (formerly US-27) and Webb Road, in the southwest ¼ of Section 10 of DeWitt Charter Township, to allow the applicant to construct a 13,579 sq. ft. drug store with a drive through pharmacy.

A. Open Public Hearing. **Gobbo moved to open the Public Hearing at 7:50 p.m. Supported. MOTION CARRIED.**

B. Administrative Comments/Applicant Comments/Public Comments.

Township Planner Jim Foulds briefly reviewed staff’s memorandum dated October 1, 2008 pointing out the location of the proposed site. The applicant is requesting to construct a 13,579 sq. ft. drug store with a drive through pharmacy. The site consists of four (4) single family residential parcels at the northeast corner of S. US-127BR and Webb Road. The applicant intends to remove the existing residences from the site. The drug store is a use permitted by right in the existing BC (Business, Community) zoning district. The drive through pharmacy is permitted by Special Use Permit.

Foulds advised that the subject site was rezoned in July of 2008 from R3 (Residential Single Family) to BC (Business, Community). In addition, the site is the northern most properties included in the Traffic Access Management overlay zone and will be subject to the requirements of the Access Management Ordinance for the Township.

Foulds further advised that the applicant has requested approval from the Michigan Department of Transportation (MDOT) for a signalized intersection at S. US-127BR and Webb Road. Based on MDOT’s response at a recent Board of Trustees meeting the intersection does not meet the requirements for the installation of a signal. However, MDOT will pursue additional information to see if there are any unique characteristics for the site.

Lastly, Mr. Foulds noted that the applicant has submitted a written request dated October 2, 2008 asking that the Planning Commission table request for Special Use Permit 08-990009 after public comments have been made.

Keilen questioned if the site would be required to comply with the same standards of the Access Management Plan as the properties located on S. US-127BR to the south.

Foulds advised that the northern terminus of the Access Management overlay zone is the northern property line of the subject site. Should the Planning Commission recommend approval of this request, staff would recommend an extension of Access Management area to the north. In fact the Comprehensive Development Plan currently calls for non-residential development on the S. US-127BR frontage properties.

Shively expressed concerns with the site plan indicating the proposed access to be onto S. US-127BR.

Foulds stated that the objective of the Access Management Plan is to reduce the number of driveways onto S. US-127BR. However, driveways are permitted if they meet certain driveway spacing requirements. Should the applicant choose to move forward with the project, a traffic study will be required.

Chairperson Zimmerman invited the applicant to speak.

David Christian, DC Engineering, P.C., 120 N. Bridge Street, Suite E, DeWitt, MI 48820, stated he was present to represent the applicant. He briefly reviewed the Zoning Ordinance requirements related to drive through windows. He advised that the Zoning Ordinance requires that drive through stacking lanes and service windows be a minimum of 100 feet from residential property. The proposed site plan indicates the area is 112 feet clear of the residences to the east and 128 feet clear of the residential property to the north. The Ordinance also requires a 60 foot spacing from the access drive to any intersection. Both entrances to the proposed site exceed that standard. The plans also provide the required 3 car stacking dimensions, as well as a 24 foot wide bypass lane. Lastly, microphone equipment shall not be audible at the property line. He has no comments related to that issue as the equipment has not yet been selected.

There were no comments or questions from the Commissioners.

Chairperson Zimmerman invited the public to speak.

- C. Close Public Hearing. **Hearing no public comment, Gobbo moved to close the Public Hearing at 8:05 p.m. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Planning Commission.

**Keilen moved that request for Special Use Permit 08-990009 from Ron Jona and Associates be tabled until the November 3, 2008 Planning Commission. Supported.**

**ROLL CALL vote on motion:**

**AYES: 7    NAYS: 0    ABSENT: 1 (Flower)**

**MOTION CARRIED.**

**NEW BUSINESS:**

- I. Release of Financial Guarantee - Special Use Permit 06-990004 from Warden Development Company, L.L.C. /Scott Kyes, Managing Member,** to allow the extraction of soil and minerals from a 38.08 acre parcel located southwest of the intersection of Round Lake Road and Krepps Road, in the northeast ¼ of Section 2 of DeWitt Charter Township.

Township Planner Jim Foulds briefly reviewed staff's memorandum dated October 2, 2008 advising that the request from the applicant is for the release of a financial guarantee for an extraction operation that is regulated by Special Use Permit 06-990004. After inspection of the site and review of the restoration plans, staff finds the restoration to be in conformance with the rehabilitation plans. Therefore, staff recommends that the existing letter of credit being held by DeWitt Charter Township in the amount of \$73,102.50 be released.

There were no comments or questions from Commissioners.

**Ross moved that the existing financial guarantee as required by Section 7.13.7 c)(13) for Special Use Permit 06-990004 for the extraction of soil and minerals from property located on the south side of Round Lake Road, east of Business US 127, be released based on the fact that the site has met the rehabilitation requirements of the Special Use Permit. Supported.**

**ROLL CALL vote on motion:**

**AYES: 7    NAYS: 0    ABSENT: 1 (Flower)**

**MOTION CARRIED.**

**EXTENDED PUBLIC COMMENTS ON NON-AGENDA ITEMS:**

Faye Hagy, 1745 E. Clark Road, Lansing, MI 48906, thanked the Planning Commission for recommending denial of Rezoning Request

**REPORTS:**

- I. Trustee:**

Trustee Ross gave a brief report on business conducted and action taken at the September 8, 2008 and September 22, 2008 regularly scheduled Board of Trustees meetings.

II. Zoning Board of Appeals:

Commissioner Gobbo reported that there was no Zoning Board of Appeals meeting held on September 17, 2008, due to no applications being filed.

III. Committees: None.

IV. Staff: South Central Area Plan Final Draft – Review and Referral to the Twp. Board.

Rod Taylor, Township Manager, was present for discussion or questions regarding the South Central Area Plan Final Draft.

Shively suggested signage indicating the entrance into DeWitt Charter Township be placed at the corners of Sheridan Road and Turner Road and Sheridan Road and DeWitt Road. She further stated that traffic signals might be considered at the same intersections.

Manager Taylor stated perhaps the signage designating entrance into DeWitt Charter Township could become an item considered on the Capital Improvement Plan.

Gobbo noted that Turner Road is a main artery from the City of Lansing into DeWitt Township. He encouraged the Township to examine a non-motorized transportation path.

Brief discussion followed regarding the implementation of a non-motorized transportation system that would include and benefit all of the surrounding jurisdictions.

**Ross moved that the Planning Commission send a recommendation to the Board of Trustees for approval of the South Central Area Plan Final Draft with comments from Commissioners Shively and Gobbo included. Supported. MOTION CARRIED.**

DISCUSSION: None.

ADJOURNMENT: **Keilen moved to adjourn the meeting at 8:20 p.m. Supported. MOTION CARRIED.**

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Linda K. Parkinson, Recording Secretary

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Theresa Shively, Secretary