

**DEWITT CHARTER TOWNSHIP
1401 W. HERBISON ROAD, DeWITT, MI
PLANNING COMMISSION MINUTES
MONDAY, JUNE 5, 2006**

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

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

ROLL CALL by Secretary Smelker:

MEMBERS PRESENT: Steve Gobbo, Bruce Keilen, Jason Flower, Mike Nolen, Terri Shively, Kim Smelker, Greg White and Trustee Seeger.

MEMBERS ABSENT: None.

VACANT SEATS: 1 (DeHoog)

APPROVAL OF AGENDA: **Keilen moved to approve the Agenda as presented. Supported. MOTION CARRIED.**

APPROVAL OF MINUTES: **Flower moved to approve the minutes of the May 1, 2006 Regular Meeting. Supported. MOTION CARRIED.**

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

1. Staff's letter dated May 2, 2006 to Robert A. Owen, Jr., Planning and Zoning Administrator, City of East Lansing, regarding their proposed Comprehensive Development Plan.
2. Letter dated May 11, 2006 from Lori Mullins, RLA, Senior Project Manager, City of East Lansing, regarding staff's comments on their Comprehensive Development Plan.
3. Letter of resignation from Planning Commissioner Jane DeHoog dated May 19, 2006.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS:

- I. **PUBLIC HEARNG – Rezoning Request 06-880002 from George F. Eyde Limited Family Partnership and Louis J. Eyde Limited Family Partnership**, for property located at 14073 S. US 27, on the southeast corner of US 27 and Clark Road, in the northeast ¼ of Section 22 of DeWitt Charter Township, to rezone approximately 11.20 acres from M2 (Multiple Residential) to BC (Business, Community).

- A. Open Public Hearing. **Chairman Gobbo declared the Public Hearing opened at 7:05 p.m.**
- B. Administrative Comments/Applicant Comments/Public Comments.

Assistant Planner Harmony Gmazel briefly staff's report dated June 2, 2006 advising that the applicant is requesting to rezone approximately 11.20 acres from M2 (Multiple Residential) to BC (Business, Community). The property is located at 14073 at the southeast corner of US 27 and Clark Road.

The site is the former Crosswinds mobile home park and most recently held approximately 24 mobile home units, as well as two one-story buildings. All structures have been demolished and removed. In addition, approximately 4.5 acres of the southern portion of the site lay within the 100 year floodplain.

The surrounding zoning consists of BC (Business, Community) to the north and west, and A (Agricultural) to the east and south. The surrounding land uses consist of Commercial to the north and west, and Undeveloped to the east and south.

Gmazel went on to review the uses allowed in the existing M2 (Multiple Residential) zoning district, as well as the uses allowed in the proposed BC (Business, Community) zoning district (see pages 3 and 4 of staff's report). The site complies with the minimum lot size requirements of the requested M2 (Multiple Residential) zoning district.

Gmazel further reviewed the request for compliance with the Comprehensive Development Plan noting that the proposed BC (Business, Community) zoning district is consistent with the HC (Highway Oriented Commercial) Future Land Use designation for the site. In addition, the subject property is presently served by all necessary public facilities, consistent with the growth management policies of the Plan.

With respect to public services and facilities, Gmazel stated the following: the Clinton County Road Commission indicates no objections to the request, but does note that Clark Road is not subject to weight restrictions; the Michigan Department of Transportation (MDOT) has indicated that access to the site will not be permitted from US 27; public water is available to serve the site via Clark Road; sewer service is available along Clark Road; the Clinton County Drain Commissioner's office noted that the parcel is bordered on the east and south by the Prairie Creek and Gunderman Lake Drain. Once a use is proposed, the parcel owner must contact the Drain Commissioner's office for drainage requirements; no additional agencies cited issues with the proposed rezoning.

In closing, Gmazel advised that the request is consistent with the Comprehensive Development Plan and the proposed BC (Business, Community) zoning district is consistent with both the Future Land Use Map and Growth Management Plan.

Hearing no Commissioner questions, Chairman Gobbo invited the applicant to speak.

Mark K. Clouse, CFO, Eyde Company, 4060 S. Hagadorn Road, Suite 660, East Lansing, MI 48826-4218, representing the applicant, advised that they had recently purchased the subject property. Their incentive for acquiring the site was to clean it up and protect the property value of their real estate at the northeast corner of US 27 and Clark Road (Clark Corners formerly known as the Lansing Factory Outlet Mall). He reiterated staff's comments that the request is consistent with the goals and objectives of the Comprehensive Development Plan. In closing, Clouse offered to and answer any questions regarding the request.

Gobbo questioned if the applicant had any plans for the future use of the property.

Clouse again stated that the reason for purchasing the property was to clean up the site and protect the value of their property at the northeast corner of US 27 and Clark Road. A future use has not yet been determined.

Hearing no Commissioner questions, Chairman Gobbo invited the applicant to speak.

- C. Close Public Hearing. **Hearing no Commissioner questions Keilen moved to close the Public Hearing at 7:19 p.m. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Planning Commission.

Seeger moved that the Planning Commission recommend that the Board of Trustees approve Rezoning Request 06-880002, from George and Louis Eyde Ltd Family Partnerships, to rezone approximately 11.20 acres located at 14073 S. US 27 from M2 (Multiple Residential) to BC (Business, Community). Approval is recommended on the following basis:

- 1. The requested rezoning is consistent with the Future Land Use designation and commercial land use goals of the Comprehensive Development Plan.**
- 2. The requested rezoning is consistent with the Growth Management Strategy component of the Comprehensive Development Plan.**
- 3. The site can be adequately served with the necessary public facilities, including public water and sanitary sewer.**

Supported.

ROLL CALL vote on motion:

AYES: 8 NAYS: 0 VACANT SEAT: 1

MOTION CARRIED.

II. PUBLIC HEARING - Request for Special Use Permit 06-990002 from Erdmen T. MacKenzie, President, E.T. MacKenzie Company, to be allowed to place fill dirt on the property located at 15620 S. US 27, north of State Road, south of Stoll Road, west of BR-27, in the southeast ¼ of Section 28 of DeWitt Charter Township.

- A. Open Public Hearing. **Chairman Gobbo declared the Public Hearing opened at 7:21 p.m.**
- B. Administrative Comments/Applicant Comments/Public Comments.

Planning Director Jeff Gray briefly reviewed staff's report dated June 2, 2006 advising that the applicant is requesting a Special Use Permit to be allowed to import and place fill on a 19.21 acre parcel located at 15620 S. US 27, on the west side of the road, north of Pearl Street, in the southeast ¼ of Section 28. The property has a narrow 66 ft. wide frontage on US 27. The majority of the property is behind several parcels that front on US 27.

Gray advised that the zoning on the property is mixed. The narrow access to US 27 is zoned BC (Business, Community). The remaining portions of the site are in the A (Agricultural) zoning district. The entire parcel is designated on the Future Land Use Map for CC (Community Oriented Commercial). The surrounding zoning consists of BC (Business, Community) to the north and east; R5 (Residential Single and Two Family) to the south; and A (Agricultural) to the west. The surrounding land use consists of Undeveloped to the north and west; Single Family Residential to the south; and Commercial, Residential and Undeveloped to the east.

With respect to site features, Gray advised that the site currently houses a 663 square foot storage building and a cellular tower. In addition, much of the northern third of the property includes State-regulated wetlands and 100-year floodplain. There is also an unregulated wetland near the southern property line.

Gray noted that there are various court orders that affect the use of the subject property. Specifically, violations related to the outdoor storage of junk and debris and the sale of compost. The Township has had to seek orders from the court on several occasions in an attempt to bring the site into compliance. Upon a recent site inspection, staff has determined that the site is once again in violation of the stipulation. The owner is currently in the process of working to remedy these violations. The proposed Special Use Permit states that activities proposed by the applicant may not commence on the property until the site is in compliance with the terms of the stipulation. In addition, the permit also includes a condition stating that the Special Use Permit may be revoked if the site falls back out of compliance with the court order.

Gray further reviewed the request for compliance with Conditions listed in 7.13.7 of the Zoning Ordinance regarding excavation of soil and minerals stating the following: fill materials will consist of soils excavated from construction sites; the finished elevation after fill is complete will be 856.00 feet above sea level, raising the

grades on average by about 10 to 14 feet; the applicant intends to maintain a 75 foot setback from the residential properties to the south and a 50 foot setback from the undeveloped property to the west; minimum standards related to setbacks, fencing, signs and grading and site restoration will be met; adequate screening exists along the south edge of the site; staff would ordinarily require a berm on the eastern boundary, however, such a berm would interfere with drainage flows in the area; staff recommends hours of operation to be Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturday from 7:00 a.m. to 3:00 p.m. (limited to five Saturdays in a calendar year); Business-27 will be the primary road used for the operation; a financial guarantee in the amount of \$59,900.00 will be required to assure adequate restoration of the site; dust control on an "as needed" basis is a condition of the proposed Special Use Permit; all machinery on site will have factory installed noise suppression devices; the Permit is proposed to be issued for a period of one year, and renewable for additional years subject to staff inspection and approval of the Board of Trustees.

With respect to fill material, Gray advised that staff has included a number of recommended conditions on the draft permit to define the permissible materials and allow opportunity for monitoring and inspections, as needed. Fill material is limited to uncontaminated soil, concrete and brick. The applicant has indicated that the fill will predominately include soil but may include concrete fragments. Materials that are required by law to be disposed of in a licensed landfill or other licensed facility are specifically prohibited from the site. The applicant would be obligated to notify the Township in writing of the source location, type and quantity of fill materials that would be brought to the property prior to depositing them on the site. The applicant would be responsible for employing a site supervisor to conduct visual inspections of incoming loads. Lastly, the permit would also allow the Township or its agents to conduct inspections of the property on an as needed basis and remove samples from the property, if deemed appropriate.

With respect to agency comments, Gray stated the following: the Clinton County Road Commission has indicated that it has no jurisdiction over activities proposed on the site; Michigan Department of Transportation (MDOT) has jurisdiction of Business-27 and indicates no need to be involved in the request; the Township Fire Chief indicates that the trucks entering and leaving the site will have to use caution on Business-27; and the Township Engineer has questioned whether the applicant has performed any evaluations to assure that adequate topsoil exists on site.

Gray noted that the Clark County Drain runs north and south through the subject property. The project would involve the relocation of the drain. The applicant is also proposing the installation of drainage swales around the fill to divert water to the drain. The Clinton County Drain Commissioner's Office indicates that detailed construction drawings must be reviewed and approved prior to the commencement of construction. It should be noted that there is a fair amount of concern to the residents who live south of the site because the storm water currently comes off of their property and flows north towards the proposed site. Should fill be placed in the middle of the site, it might have an adverse affect on drainage patterns. Conceptually, the proposed swales around the edge of the fill site to allow the water

to move around the property and through the wetlands to the drain. Gray noted that the Special Use Permit includes the condition that fill may not be brought to the site until the Township has received approval of the drainage plan from the Clinton County Drain Commissioner.

In closing, Gray reviewed the request for compliance with standards set forth in Section 7.6(1) of the Zoning Ordinance which provides the Basis for Determination for Special Use Permits (see pages 9 and 10 of staff's report).

Keilen questioned if there was a limitation of the grade height if the fill materials. He expressed concern with the amount of water that might flow towards the residents to the south of the site. He further questioned if the on site supervisor would be an employee of the applicant.

Gray advised that there is no limit listed in the Zoning Ordinance. The applicant has proposed an elevation that would bring the property up to approximately 854 feet. The only Zoning Ordinance requirement related to the grade is that the side slopes cannot exceed 3 ft. of run for each ft. of rise. The Drain Commissioner's Office will have to review plans to assure that the channel around the edge of the fill area is deep and wide enough to take the drainage around the fill area. Revised plans may be required if the Drain Commissioner's Office feels the plans are inadequate. The on site employee will be employed by the E.T. MacKenzie Company.

Flower expressed concern that this request was being considered by the Planning Commission prior to issues being unresolved regarding drainage issues and the fact that the site is currently in violation of the Zoning Ordinance. He is not comfortable recommending approval if the property owner has been an ongoing ordinance violator and disregarded court orders to clean up the site. Perhaps the best way to address these issues would be to postpone action until questions pertaining to drainage, contamination and ordinance violations are answered thoroughly.

Gobbo noted that a drainage easement currently exists on the site. Relocation of the drainage system would require revised easements. He questioned if this should be a point of concern. He concurred with Flower and stated that he would be more comfortable postponing action on the request.

Hearing no further Commissioner questions or comments, Chairman Gobbo invited the applicant to speak.

Ron Clark, E.T. MacKenzie Company, 4248 W. Saginaw, Grand Ledge, MI 48837, representing the applicant, acknowledged the correspondence submitted by surrounding property owners and addressed their concerns as follows: the soils coming to the property will be identified before they are removed from the job site. He stressed that no contaminants will be brought to the property; the applicant would prefer the on site inspector be replaced with the excavated materials being examined before they are loaded on a truck. With respect to Section I.(I) of the Special Use Permit, Clark noted that this may have been inadvertently left in as no berms are

being proposed for this project; the existing vegetation will provide adequate screening within the setback zones. The applicant has had several discussions with the Clinton County Drain Commissioner's Office regarding this proposal; conceptually, they agree that the proposed plan will be effective. Specific engineering plans will be provided for review by the Drain Commissioner's Office. New easements will be required and the proposed system will be an improvement to the existing drainage system. Lastly, the applicant is in agreement with all remaining conditions provided in the Special Use Permit, including hours of operation.

Smelker questioned if the applicant knew the thickness of the existing organic material on the site that they plan to surcharge.

Clark stated, although specific borings have not been done, the deepest area is approximately 20 feet. E.T. MacKenzie Company feels confident that the area will be excavated and remedied, as proposed. The organic material will remain on the site.

Clark further advised that the applicant intends to fill grades to approximately 854 feet. This is the same median elevation of the property to the south and at the entrance drive to US 27. The end result of the project will be a plateau rather than a hill. In closing, Clark advised that some jobs involve removing old clay piping. He requested that it be listed as a material allowed to be placed on the proposed site.

Patrick Hanes, Attorney, 612 W. Lake Lansing Road, East Lansing, MI 48823, representing the applicant, stated the E.T. MacKenzie Company is a very large sophisticated operation that has an environmental section. The applicant is very aware of the fact that contaminated soils cannot be placed on the proposed site. They would not jeopardize their State approvals by bring contaminated soils onto a site. With respect to the on site supervisor, Hanes stated it would be a much wiser use of personnel to have all materials inspected as they are being excavated from the job site. He further advised that soil erosion will not take place. In closing, Hanes noted that approval of this request would be conditioned upon approval from the Drain Commissioner's Office.

Chairman Gobbo noted correspondence from three residents (copies attached) regarding this request. He then invited public comments.

Ron Burns, 15795 Burton Street, Lansing, MI 48906, expressed concern regarding drainage. He explained that many yards that back up to the site are always wet, unless drought conditions exist. He feels the proposed grade changes will result in large amounts of standing water on surrounding properties. In addition, Burns expressed concern regarding contaminants being brought onto the site that would adversely affect the many residential wells in the area.

Steve Bell, Burton Street, Lansing, MI 48906, stated he lives at the end of Burton Street. He expressed concerns regarding excessive noise and drainage. He further advised that the proposed location of the drainage channel is located in a Consumer's

Power easement which is used to service the power lines in the area. Bell questioned if the applicant currently has permission to dump on his property. He stated that on his way to this meeting he witnessed a tandem truck entering Mr. Martens' property.

An on site supervisor should be required to assure that the property owner does not bring in materials other than the E.T. MacKenzie fill. In closing, he stated that the Township has enough land fill area and does not need another dump.

Planning Director Gray advised that the property owner does not currently have permission to dump materials on his property.

Delores Carpenter, 1038 Pearl Street, Lansing, MI 48906, stated that her home is located directly south of the subject site. She expressed concerns regarding drainage, well contamination, and unregulated dumping activity currently going on at the site. She stated that a supervisor should be present on the job site and the dumping site. In closing, Carpenter stated that Mr. Martens approached her recently and asked if she would be interested in fill being placed on her property. She clarified that she did not give her permission for fill activity on her parcel.

Melvin Ott, 1014 Pearl Street, Lansing, MI 48906, expressed concern regarding drainage, the lack of maintenance of Mr. Martens' fence, and his ongoing violations to the Zoning Ordinance regulations. He is not comfortable with approval of the proposed request.

Richard Albertson, 1005 Pearl Street, Lansing, MI 48906, stated he recently had a new well put in. His biggest concern is water contamination.

Michael Draher, 15841 Florence Street, Lansing, MI 48906, stated he works near another E.T. MacKenzie job site. He expressed concern with dust control.

Terri Wemigwans, 15790 Florence Street, Lansing, MI 48906, reiterated many of the same concerns expressed by previous residents. In addition, she asked if the Saturday hours of operation start at 8:00 a.m. rather than 7:00 a.m. Her biggest concern is drainage issues that the proposed operation may cause. In closing, she questioned if the drainage swales would be placed within the 75 ft. buffer.

Ray Gesselman, 15862 Florence Street, Lansing, MI 48906, expressed concerns regarding drainage and contamination.

Loretta Spinrad, 16837 Turner Road, Lansing, MI 48906, stated she lives next to a fill site located on Turner Road. She stated that the concerns expressed tonight are very legitimate. She has experienced first hand double tanker trucks sitting in front of her home waiting to enter the site prior to allowed hours of operation. She stated that an on site supervisor is very important to assure that only E.T. MacKenzie trucks enter the property. Spinrad further stated that trucks enter the site on Turner Road on Holidays. Further, the dust and mud problem is horrible. In closing, she noted that the shoulders of Turner Road are elevated due to the heavy truck traffic.

Chanda Young, 1076 Pearl Street, Lansing, MI 48906, expressed concerns regarding dust and water contamination. She questioned if the existing screen of trees in the area would remain in place and if the proposed project would impact their property taxes.

Hearing no further public comments, Chairman Gobbo invited the applicant to respond.

Patrick Hanes, representing the applicant stated the following: E.T. MacKenzie Company is very responsive to complaints when they are made aware of them; the proposed Special Use Permit would be granted directly to E.T. MacKenzie Company and their agreement with the property owner is for exclusive rights to the site; the Drain Commissioner's Office would review and approve any drainage plans; a fence will be constructed on the site; lastly, the proposed Special Use Permit prohibits the parking of vehicles.

Gobbo questioned if the applicant would be willing to provide a surety provision in the Special Use Permit concerning a well protection agreement.

Hanes stated that a well protection agreement may be a practical possibility that would not be an issue.

Keilen expressed concern with unauthorized dumping. He questioned if the Special Use Permit provides E.T. MacKenzie Company with exclusive control of the entry gate.

Hanes advised that remotes are in the trucks to control who has access to the site.

There was brief discussion regarding the placement of fencing and the property owner's rights to access the site and bring unregulated material in.

Brief discussion also followed regarding the timeline for Mr. Martens to bring the property into compliance.

Hanes clarified that Mr. Martens would be in violation of his agreement with E.T. MacKenzie Company if he allowed other fill material on site. He will provide the Township with a copy of the agreement.

Flower stated that although the E.T. MacKenzie Company has a good reputation, he is concerned with the landowner being a frequent violator of the Zoning Ordinance. He cannot support a recommendation for approval of the request and would be in favor of postponement.

Discussion followed relating to the fact that the proposed Special Use Permit is not valid until the subject site is brought into compliance.

Clark advised that the applicant has offered to help the property owner bring the site into compliance. He reiterated that the site must be in compliance before any fill activity can begin. He would prefer that the Planning Commission not postpone action on the request.

Hanes stated it is in everyone's best interest that the site be brought into compliance. The applicant and property owner are working very hard towards that goal.

Keilen also stated that he is uncomfortable with recommending approval of this request because of the outstanding zoning violation issues.

Brief discussion followed regarding the possible postponement action on the request.

Jon Wemigwans, 15790 Florence Street, Lansing, MI 48906, expressed concern with drainage and the subject site falling out of compliance once the Special Use Permit would be granted.

- C. Close Public Hearing. **Hearing no further comments, Keilen moved to close the Public Hearing at 8:45 p.m. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Planning Commission.

Keilen stated there were too many unresolved issues surrounding the request. Therefore, he cannot support a recommendation for approval.

Seeger moved to recommend that the Board of Trustees approve Special Use Permit 06-990002 from the E.T. MacKenzie Company based on the plans last revised on April 21, 2006. Approval is recommended on the following basis:

- 1. The use has been designed in accordance with the requirements of Sections 6.4.8 and 7.13.7 of the Zoning Ordinance.**
- 2. The conditions included in the permit assure that the use will not be hazardous to existing or future uses in the vicinity.**
- 3. The standards of the Basis for Determination listed in Section 7.6(1) of the Zoning Ordinance have been met.**

Supported.

Shively commented in support of the applicant providing a well protection agreement.

Flower moved to postpone action on request for Special Use Permit 06-990002 from E.T. MacKenzie Company until the July 5, 2006 meeting to allow the applicant and staff to resolve outstanding issues expressed by the residents and Commissioners. Supported.

Gobbo encouraged the residents to make staff aware of any improprieties happening on the subject property.

White thanked the public for their input and encouraged them to remain involved in the process.

ROLL CALL vote on motion:

**AYES: 6 NAYS: 2 (Smelker, Nolen) VACANT SEAT: 1
MOTION CARRIED.**

NEW BUSINESS: None.

EXTENDED PUBLIC COMMENTS ON NON-AGENDA ITEMS:

Melvin Ott, 1014 Pearl Street, Lansing, MI 48906, expressed concern with possible illegal activities at the Green Acres Motel and The Hothouse.

Chairman Gobbo directed Mr. Ott to express his issues to the Board of Trustees or the DeWitt Township Police Department.

REPORTS:

I. Trustee:

Trustee Seeger gave a brief report on business conducted and action taken at the May 8, 2006 and May 22, 2006 regularly scheduled Board of Trustees meetings.

II. Zoning Board of Appeals:

Gobbo advised that there was no Zoning Board of Appeals meeting in the month of May as no applications were filed.

III. Committees:

Gray advised that with the resignation of Commissioner DeHoog, a vacancy now exists on the Ordinance Amendment Subcommittee.

Chairman Gobbo appointed Commissioner Flower to the Ordinance Amendment Subcommittee.

IV. Staff:

Gray briefly advised the following: Auto-Owners Insurance Company is now in the pre-application process for requesting the rezoning of their 300+ acres located in the Township; action on the E.T. MacKenzie Company operation in Bath Township has been postponed; and, Commissioner DeHoog regrettably has to resign from the Planning Commission due to her job relocation.

DISCUSSION:

With respect to the City of East Lansing Comprehensive Development Plan, Keilen advised that he drafted a letter to Supervisor Galardi expressing that he does not intend for his property to become part of the City of East Lansing at any point in the future.

ADJOURNMENT:

Seeger moved to adjourn the meeting at 9:03. Supported. MOTION CARRIED.

Linda Parkinson, Recording Secretary

Kim Smelker, Secretary