

Augusta Charter Township
8021 Talladay Road, Whittaker, MI 48190
Special Board of Trustees Meeting
April 28, 2009 5:30 pm and
Regular Board of Trustees Meeting
At Lincoln School East Cafeteria
April 28, 2009 7:00 pm

1. Call Special Meeting to Order by Hafler at 5:31 pm.
2. Pledge of Allegiance
3. Roll Call: Lula, Hafler, Giszczak, King, Jackson and Tobler. Absent: Sherbine.
4. Public comments opened at 5:32 pm, closed 5:32 pm.
5. Motion by Hafler, 2nd by Jackson to go into closed session. Roll Call: Aye: Lula, Hafler, Giszczak, King, Jackson and Tobler. Nay: None. Absent: Sherbine. Motion passed.
6. Motion Hafler, 2nd Giszczak to reopen the special meeting at 6:01 pm.
7. Motion by Hafler, 2nd by Giszczak to accept fire department contract as amended, with updated draft to be returned for Supervisor and Clerk signatures. Roll Call: Aye: Lula, Hafler, Giszczak, King, Jackson and Tobler. Nay: None. Absent: Sherbine. Motion passed.
8. Public comment opened at 6:01 pm, closed at 6:04 pm.
9. Motion by Hafler, 2nd by Jackson to close special meeting at 6:05 pm. Motion passed.
10. Regular meeting at Lincoln School East Cafeteria called to order by Hafler at 7:01pm.
11. Pledge of Allegiance.
12. Roll Call: Sherbine, Lula, Hafler, King, Giszczak, Tobler and Jackson.
13. Motion by Hafler, 2nd by King to add lawn cutting service, temp service; friendly amendment Sherbine to move W&W rezoning to follow first public comment period and move the water sewer rates public

hearing and public comment period from the end of the agenda to follow the W&W rezoning. Motion passed.

14. Motion by Hafler, 2nd by Lula to accept the April 14, 2009 minutes as amended. Motion passed.
15. Motion by Tobler, 2nd by Giszczak to convey to the Washtenaw County Road Commission to prepare the 2009/2010 contract to include Hitchingham Road not to exceed \$45,000. Roll Call: Ayes: Sherbine, Lula, Hafler, King, Giszczak, Tobler, Jackson. Motion Passed.
16. Public Comments opened at 7:16 pm, closed at 7:23 pm.
17. Presentation from Alan Greene of Dykema Gossett PLLC, representing Joel Gershenson for the rezoning application (RZ-08-01) of W&W Augusta, LLC as outlined in their letter dated April 20, 2009 submitted "to summarize the reasons why the Board should reject the recommendation of the Planning Commission to deny the rezoning and approve the rezoning request at issue."

The meeting was opened to additional public questions and comments.

Planning Commission Secretary Tobler read into the record the Planning Commissions finding of fact supporting the Planning Commission recommendation to the Augusta Board of Trustees:

FINDINGS OF FACT – FEBRUARY 12, 2008

ROADS

1) In 2002, the Planning Commission deliberated the impacts of the Belle Mead PUD on traffic at the Willis/Whittaker intersection. The Planning Commission was assured that a deal had been arranged between the developer, Lincoln Schools, the Road Commission and the Township to widen the Willis/Whittaker intersection with exclusive left-turn lanes and to signalize the intersection. Acceleration lanes in front of the PUD and Lincoln High School were also to be provided.

2) Applicant's Transportation Impact Study notes on page 11 that this construction is currently planned (for year 2005) as well as the widening of Whittaker Road from 2 to 5 lanes (years 2011-2015). Applicant contends that with these planned improvements that the added 12,181 daily trips (page 12) generated by the grocery store and retail space will not create a problem. However, without these improvements, applicant's Study indicates that the Level of Service will deteriorate from the existing E [38.3 seconds] to F [633.5 seconds] in 2010 with the proposed shopping center (page 29). The 12,181 added daily trips more than double the existing traffic level, which was indicated in an earlier report to be about 8000 daily trips.

3) Contrary to applicant's assertions, improvements to the Whittaker/Willis intersection are NOT included in the latest Washtenaw County Road Commission Five Year Capital Improvement Plan (37 projects) published October 21, 2008 for years 2009 to 2013. This \$1.3M project is shown in the list of 44 unfunded projects. Further, the possible widening of Whittaker Road to 5 lanes is not even mentioned in the 5 Year Capital Improvement Plan. Applicant's Study also recommends other improvements having substantial costs between Willis and Bemis Roads which are not included in the Capital Improvement Plan, and hence are not likely to occur. Contrary to applicant's assertions (p3, Nov 12 communication), the Planning Commission did review certain traffic studies and did require a joint traffic study to be developed by the 3 PUD applicants in 2004, which would include the combined impacts and also extend to US23 and I94. Despite this agreement by the 3 PUD developers, said traffic study was never performed.

4) Applicant states that "If the site is developed as zoned, neither the County nor the Township could require roadway improvements to be constructed with the approval of the site plan". Given that the necessary road improvements are NOT included in the Five Year Capital Improvement Plan, it is reasonable to conclude that these necessary improvements will NOT occur in the foreseeable future beyond those five years. The applicant's Study demonstrates that without these improvements, the existing road infrastructure is inadequate. At a December conference, MTA Executive Director Larry Merrill was specifically asked whether the lack of road infrastructure was a valid reason for denying a rezoning request. The answer was a definite "Yes". Although the current application is for Conditional Rezoning, "an owner of land may voluntarily offer in writing conditions related to the use and/or development of land for which the rezoning is requested. The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily by the owner" (C/W report Oct 28, 2008).

SEWER

Applicant states "Public sewer and water service are readily accessible to the Property" (page 2 Appendix 1 of the application). The applicant states: "The Township's consultants raise very vague and unspecified concerns regarding site plan issues".

"Although we are fully convinced from our extensive review of Township records that there is adequate sewer capacity for our project, if it turns out that is not the case, it would be simply constrain the size of the development" (page 5, November 26, 2008).

The Township's Engineering Professionals have reported that there is ZERO available capacity in the existing sewer pipe on Whittaker Road in front of applicant's property.

100 Percent of the pipe capacity has been contractually obligated for many years via Part 41 Permits with MDEQ and Lincoln Farms. At this time, ZERO additional sewer taps can be permitted, and NOTHING is available for the proposed development.

STORM WATER

Applicant states: “The subject property can provide storm water management facilities that will meet or exceed the typical standards of the Washtenaw County Drain Commissioner”. “The detention basin discharge rate was assumed at 0.085 cfs/ac of property area. The WCDC typical rate allowed for detention basin discharge is 0.15 cfs/ac.”

Several years ago, a Board of Determination was held for the entire John Bird Drain. The WCDC presented evidence that the drain was in very poor condition and required extensive cleaning and even re-engineering to support development. Existing flooding has been reported on properties at the Willis Road location for example due to poor drain condition.

As a result, Lombardo Properties entered into an agreement with the WCDC to determine the necessary improvements to the drain to support their proposal, and agreed to bear all costs. The current applicant had the opportunity to participate on the committee which met monthly for about 2 years, but did not except for one meeting according to available records. Last year, Lombardo either terminated this project, or placed the project on hold for the indefinite future. No drain improvements have been made or are currently planned to our knowledge.

Given this, it appears unlikely that the applicant would be able to obtain the required Certificate of Outlet. Further, I discussed the proposal with Chief Deputy Drain Commissioner Dennis Wojcik prior to the November public hearing. Since there is no application before the Drain Commission, by policy they do not provide written comment.

He agreed with my understanding of the status of John Bird Drain. He also indicated that it would be probable that the Drain Commission would apply the same standards as were applied to the Lombardo project, namely that the high water level of the receiving stream, Paint Creek, could not be any worse than existing conditions. This is a much stricter standard than the “typical standards of the Washtenaw County Drain Commission”. Mr. Wojcik wondered how this standard could be met without resorting to a “retention basin” instead of the standard “detention basin” design. A retention basin would require favorable soil conditions not usually found in Augusta Township.

MASTER PLAN

1) The proposed rezoning is not consistent with the Master Plan’s objective of promoting commercial development that integrates well with existing residential uses. The proposal appears to be similar to, although downsized from, the Paint Creek Crossing Kroger mall just 4 miles to the north. This is a much more intensive use than those envisioned in the Master Plan. Further, the current zoning is primarily Ag/Residential which supports 1 acre homesteads, instead of “Agriculture” as repeatedly and erroneously stated in the Applicant’s application and arguments.

The current Master Plan (adopted December 14, 2004 and revised 2007 regarding Farmland Preservation) generally shows the subject area planned for Single Family Residential II (2 dwellings per acre) except for some commercial uses at the NE corner of Willis/Whittaker. A previous Master Plan of October 1992 shows a similar plan. Both Plans precede the applicant’s financial interests in the area. Given this, claims of a “Taking” appear to be inappropriate. The existing Lincoln School facility is admittedly an intensive use, but has previously existed for a long period of time. The “interface” between the school and the adjacent existing residential use to the east (mixed with existing agricultural use) has existed for a long time, and it is reasonable to believe that all residents in that area are comfortable with this existing interface. The Master Plan was written to deliberately consider and “honor” what already exists at this interface.

The proposed rezoning is intended to allow a much more intensive use along this interface. Although the Lincoln School administration has not provided significant comment on the proposal, citizen members of the Lincoln School Community have. This input was received not only for the current application, but during the visioning sessions held concurrently with the development of the Master Plans of 2004 and 1992 and others. The desire to limit commercial growth close to the school facility was clearly expressed. The commercial areas in the Master Plan at the NE and SE corner of Willis/Whittaker have existed for a long period of time, in some respects well before 1985 or so. The area at the NE was modified around 1985 or so to accommodate a specific request of a developer to build a mini strip mall. This developer abandoned his proposal literally a few days after the township adopted the requested rezoning for the developer. The existing mixed uses on this corner area are constantly evolving, and have changed on their own from a more commercial use (an electric motor store and a HVAC business) to less intensive uses (a church and a Doggy Day Care).

During the deliberations of the current 2004 Master Plan, every effort was made to accommodate the active PUD proposals on the table at that time. The Lombardo proposals included a proposed commercial area at the SW corner which included the 5 homes mentioned in the applicant's November letter, and hence this was included in the Master Plan. The combined PUD proposals for Paint Creek Village and Paint Creek West, Augusta Farms, and River Park were coordinated with the respective developer's approval to share in the development of the required infra structure in the Urban Service District. Since that time, the River Park and Augusta Farms PUD proposals have been formally abandoned, and the Paint Creek proposals have been inactive since about 2005, and have expired. Without the active participation of these PUDs, there no longer exists a viable plan to provide and meet the infra structure needs relating to roads, sewer and water, and storm water.

CONCERN REGARDING VIABILITY FOR SUCH COMMERCIAL DEVELOPMENT

In 2004, the following residential developments were actively planned by developers: Paint Creek Village, Paint Creek West, Belle Mead, Kensington, Augusta Farms, Lincoln Farms, Lincoln Pines, Augusta Commons, River Park, Augusta on the Lake, Eagles Landing, Augusta Crossings, Autumn Ridge, et.al. Today, only Belle Mead, Lincoln Pines and Augusta Commons are active at extremely low levels. Hence the expected future demand for commercial uses is gone for the foreseeable future. Necessarily, plans for the corresponding infra structure improvements have been tabled, and are not available for the current proposed development, which has been assumed in the Rezoning application.

Applicant provides limited Market Demand and Opportunity Gap Analysis in the proposal. The section on "Planned Demand" is completely obsolete, and was so before the Application was made. The proposed 10 Minute Trade Area includes an existing and competing Kroger mall just 4 miles from the proposed site, and much of the Trade Area is outside of the township boundaries. Furthermore, other malls in Belleville and Milan compete with their own 10 Minute Trade Area, and subtract from the claimed clientele. At the MTA January 2009 Annual Conference, speaker Carmine Avantini AICP commented that current projections indicate that "one third of retail outlets will fail in 2009" (What Your Planning Commission Should Be Doing Now). He also indicated that Townships should be seeking Performance Bonds and other financial guarantees, where ever possible, against the likelihood of vacant storefront properties and the associated problems to the Township and neighborhoods.

On November 12, 2008, a survey was taken of some of the area's existing malls. The results were: Rawsonville Rd/I94 – 7 vacant storefronts; Gault Village – 7 vacancies including 1 very large facility; mall at James Hart Parkway (on Whittaker Rd) – 10 vacancies; Paint Creek Crossing – 16 vacancies. This excludes at least 3 known closed grocery retail facilities in Belleville and Ypsilanti. In the Village of Willis, the following facilities were vacant: Willis Barbershop, Willis Daycare, Laundromat, Roberta Shrock Adult Foster Care, the Pickle Barrel restaurant, Nellis building, Bunyea building and the Willis Feed Mill. The Willis Hardware went out of business a few years ago, but was replaced by MichTechOne (an HVAC business).

It is generally agreed that the Planning Commission has a responsibility to consider the possibility of “over building” as it pertains to managing the public resources and the public interests of safety and welfare.

SITE PLAN ISSUES VS REZONING ISSUES

Applicant has indicated that many of the above issues should and could in fact be resolved during Site Plan Review. However, granting Rezoning implies that the Planning Commission believes that the issues can be resolved generally by refinements of the onsite development, and that generally the existing capabilities of the infra structure are adequate without substantial new costs to the public. Applicant has already indicated that during the Site Plan process, “If the site is developed as zoned, neither the County nor the Township could require roadway improvements to be constructed with the approval of the site plan”. This probably extends to sewer and storm water issues that are much more generic than the Site Plan details. Hence any of the major infrastructure issues that extend beyond the proposed site should be resolved prior to any rezoning.

[End of Findings of Fact]

Motion by Sherbine, 2nd by Lula to accept the Planning Commission recommendation, to reject the rezoning application [RZ-08-01] of W&W Augusta LLC. Roll Call: Aye: Sherbine, Lula, Hafler, King, Giszczak, Tobler, Jackson. Nay: None. Motion Passed.

18. Motion by Hafler, 2nd by King to take a five minute break at 8:56 pm.
19. Motion by Hafler, 2nd by King to call the meeting back to order at 9:05 pm. Sherbine absent.
20. Motion by King, 2nd by Jackson to implement Water Sewer Schedule D to take affect with the September estimated billing cycle of June 21, 2009, friendly amendment Lula 2nd by Giszczak that we review in six months for determination if the township can meet it's financial obligations. Roll Call: Ayes: Lula, King, Giszczak, Tobler and Jackson. Nay: Hafler. Absent: Sherbine. Motion passed.
21. Motion by Hafler, 2nd by King to accept the County Sheriff reports. Motion passed.

22. Motion by Hafler, 2nd by Lula to accept the monthly Fire Department Report for March. Motion passed.
23. Motion by King, 2nd by Jackson to evaporate and cease operation of the Accounts Receivable Committee. Roll call: Ayes: Lula, King, Hafler and Jackson. Nays: Giszczak and Tobler. Absent: Sherbine. Motion passed.
24. Motion by Giszczak, 2nd by Tobler to accept the Treasurer's Cash report. Motion passed.
25. Motion by Giszczak, 2nd by Tobler to discuss Utilities Management Invoice separately. Motion passed.
26. 4/28/08: Motion by Giszczak, 2nd by Lula to approve warrants for April for invoice reference number 9272 to 9389 excluding Utilities Management Services invoice reference numbers 9377 and 9378 to be discussed separately. Roll Call: Ayes: Lula, King, Hafler, Giszczak, Tobler and Jackson. Nay: None. Absent: Sherbine. Motion passed.
27. Motion by Giszczak, 2nd by Tobler to exclude \$8,820.03 from Utilities Management Services April 21, 2009 invoice as \$656.25 for miss dig paperwork, \$7,875.00 for daily routine, \$262.52 for enter work orders in data base and \$26.26 for fax YCUA hand reads are not contracted services. Roll Call: Ayes: Giszczak and Tobler. Nays: Lula, Hafler, King and Jackson. Absent: Sherbine. Motion failed.
28. Motion by Lula, 2nd by Tobler that a determination be made of which utility work orders are valid to be billed; friendly amendment by Giszczak for the Supervisor to provide the work order detail for year end invoicing by Thursday prior to the next board meeting. Roll Call: Ayes: Lula, King, Hafler, Giszczak, Tobler and Jackson. Nay: None. Absent: Sherbine. Motion passed.
29. Motion by Tobler, 2nd by Lula to adopt the Special Assessment District Lighting Petition Process as presented. Roll Call: Ayes: Lula, King, Hafler, Giszczak, Tobler and Jackson. Nay: None. Absent: Sherbine. Motion passed.
30. Motion by Hafler, 2nd by King to accept the letter from Wendie Hageman; friendly amendment by Giszczak to authorize the Supervisor to send the Washtenaw County Road Commission a letter expressing the Augusta Charter Township's support and endorsement of the 5K walk/run event for Sunday, September 13, 2009 as presented by

Wendie Hageman. Roll Call: Ayes: Lula, Hafler, King, Giszczak, Tobler, Jackson. Nay: None. Absent: Sherbine. Motion Passed.

31. Motion by King, 2nd by Hafler to accept quote from Blue Line Property Maintenance for mowing the township (\$35.00) and cemetery (\$50.00) per mow, friendly amendment Giszczak for Supervisor to contact the township's lawn service vendor, Bogle's Lawn Service of the change in service providers. Roll Call: Ayes: Lula, Hafler, King, Giszczak, Tobler, Jackson. Absent: Sherbine. Motion Passed.
32. Motion by Hafler, 2nd by Jackson to extend the contract with the temporary company through July 31, 2009. Roll Call: Ayes: Lula, Hafler, King, Giszczak, Tobler, Jackson. Nay: Giszczak. Absent: Sherbine. Motion Passed.
33. Public Comments opened at 11:57 pm, closed at 11:57 pm.
34. Motion by Hafler, 2nd by King, to adjourn at 11:57 pm. Motion passed.

Respectfully submitted:

Pete Hafler, Supervisor

Date

Kathy Giszczak, Clerk

Date