

**AUGUSTA CHARTER TOWNSHIP
PLANNING COMMISSION
FEBRUARY 12, 2009
MINUTES**

1) CALL TO ORDER – a Special Meeting of the Augusta Township Planning Commission was called to order on Thursday, February 12, 2009 at 6:30 PM.

2) ROLL CALL and RECOGNITION OF VISITORS

Members present: Keefe, LaFuente, McMahan, Selter, Tobler. Excused: Chie. Tobler chaired the meeting. He advised that the Rezoning Review would be according to the following:

- a) Review application history
- b) Brief presentation by applicant
- c) Review summary conclusions by Township Planner and Township Engineer
- d) New Public Comments
- e) Discussion and deliberation by Planning Commission
- f) Recommendations

3) APPROVAL OF MINUTES

Motion by Keefe, supported by Selter, to approve the minutes of the November 12, 2008 meeting as presented. Vote was unanimous for approval.

4) APPROVAL OF AGENDA

Motion by Keefe, supported by Selter, to approve the agenda as presented. Vote was unanimous for approval.

5) BUSINESS ITEMS

5a) W&W Augusta LLC – Rezoning Application (RZ-08-01)

Tobler related history of the application. This history began with an informal “review” on September 20, 2006. The relevant portion (6a) of the Sept 20, 2006 minutes were read, concluding that the “development could be desirable and sensible once the current PUDs are well under way”. On April 18, 2007, a Public Hearing was held on a formal application for rezoning (RZ-07-01). Tobler read from the minutes including the Public Comments received during the Public Hearing, and also the seven “Findings of Fact” determined by the Planning Commission. This concluded with a unanimous vote to recommend denial of the rezoning application (RZ-07-01). On May 20, 2008, township officials and professionals met with applicant and his professionals at a Pre-Application meeting. On November 12, 2008, a Public Hearing was held on a formal reapplication for rezoning (RZ-08-01). Tobler read the public comments received at the Public Hearing. and recorded in the minutes. Finally, the township received a communication dated November 26, 2008 from Allan Greene responding to the public comments and the remarks made by the township’s professionals in their Review Reports.

Applicants were asked to give a brief presentation of their proposal. Allan Greene gave the presentation and described the history and proposal. He described the application as “neighborhood stores” with a grocery anchor. He believes that the application is in compliance with the Master Plan. He discussed a major goal of the Master Plan which is to segregate development into the Urban Service Districts. He stated that there is no grocery store in Augusta. Locating commercial property next to schools is not uncommon. Boundary lines in Master Plans are not meant to be precise. All planned commercial in the Augusta Master Plan abuts existing residential homes. He stated that Augusta never required traffic

studies in the PUD reviews, but W&W performed one for this rezoning per request of the township. He called the current issues being raised as being Site Plan issues, not rezoning. The current request is for Conditional Rezoning with restrictions proposed by the applicant. These restrictions were intended to reduce concerns due to the proximity to Lincoln Schools. The school Superintendent and Board did not express concerns regarding the rezoning other than being asked to financially contribute to Road improvements. The project will be phased and based upon market demand. A meeting was held with the neighbors to try to resolve conflicts. The proposed buffers are adequate.

McMahon asked whether the “demand” study was local. Answer: 3 miles is a typical radius; 6 miles was used for the current study.

Planner Don Wortman was asked to review the conclusions of the October 28, 2008 Review Report. If the property was rezoned to General Commercial, this could allow many uses. Is the proposal consistent with the 2005 Master Plan? 60% no. How does it fit? Is there a need? Conclusions are on pages 11 and 12 of the report. The proposal is oddly shaped. It doesn't integrate well with existing and future residential uses. In today's market, there probably is not a need. A concern is whether this would dilute the viability of the villages of Willis and Whittaker. Road capacity and traffic impacts are a concern, as well as the compatibility with Lincoln Schools.

Engineer Bill Craigmile was asked to review the conclusion of the October 13, 2008 Review Report. He reported that there were concerns regarding some details of the traffic study and traffic distribution. More importantly, at present there is no sewer capacity available due to contractual obligations.

Comments from the public were invited at this point. Dale Goodwin was present with his family to restate his strong opposition to the project based on compatibility with the Master Plan. He believes that deviating from the Master Plan now will set a precedent. Also, although Mr. Gershenson may be a high quality developer, the property might be sold shortly after the rezoning comes into effect.

There were no additional comments from the public.

Tobler indicated that he had prepared a draft “Findings of Fact” that he would like to read into the record. These statements could then be used as a basis for further discussion and deliberation.

[Start of Findings of Fact]

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]

Don Wortman commented that the Planning Commission is advisory to the Township Board on rezoning issues. A recommendation would be transferred based upon “Findings of Fact”.

LaFuente commented that some of the storefront vacancies resulted because of mismanagement. McMahon commented on demand usage and population growth. Past bursts of growth were based on new automotive plant construction. This growth was drawn southward with expanding sewer capacity. Now both economic growth and expanding sewer capacity are not likely to occur anytime soon. Tobler added that the infrastructure plans in the 2005 Master Plan were based on the PUDs that were actively being proposed at that time, where the construction of the infrastructure would be financed by these PUDs. Since these developments have been withdrawn or at best stagnant, there no longer exists a viable means to construct this infrastructure.

Allan Greene commented on the impractical size of the planned commercial parcels along Whittaker Rd north of Willis. He indicated that any commercial uses that might be “offensive” at the proposed location could be excluded as a condition. He further commented that our ordinance restricts the size of a commercial building to be less than 30,000 sq ft. Larger structures would require a Special Land Use. The design of the Site Plan can be modified to address the concerns raised, and the applicant is not looking to use public money to create new infrastructure.

Tobler responded that the traffic study has shown that the road improvements must occur, and there must be a means to construct it now at the same time as the shopping mall. When the 2005 Master Plan was written, the properties at the NE corner of Whittaker/Willis were already there, and the Master Plan simply embraced what was already there. The planned commercial location at the SW corner was proposed by Lombardo, and the Master Plan was written to embrace what was being proposed at that time. This proposed commercial district was proposed to support the needs of the thousands of new homes being proposed by the developers.

Keefe commented on the frontage issues along Whittaker Road. Greene and Gershenson responded that they had tried to acquire the properties, but were not successful.

Attorney Winters was asked to comment. Winters stated that he attended the Preapplication Meeting in May 2008, and was disappointed that since that time there was little meaningful progress in the conditions of the Conditional Rezoning. A lot of the issues raised tonight are legitimate issues, and could have been addressed in a Development Agreement. The township is a stakeholder with the Road Commission on the roads. The road improvements in the area of Paint Creek Crossings, for example, were paid for by the developers; developers pay for development, not the citizens of the township. A Development Agreement could address the issues, including phasing, infrastructure, bonding and other appropriate securities can be obtained, and mitigation measures for deteriorating roads for example. There are tools available for guaranteeing the development of needed road improvements, for example, but these must be initiated by the developer as part of the Conditional Rezoning process.

LaFuente commented that between the roads and the sewer, and the economy changing from that in 2006 to 2009, that these were important variables to consider.

McMahon asked about how to address the issues by developing conditions in the Conditional rezoning since the township cannot initiate these conditions. Winters described a process where the concerns were enumerated, and then the developer makes suggestions as to how the concerns can be addressed.. Greene expressed the developer's dilemma about addressing infrastructure issues without assurances that the Master Plan issues would not still result in denial.

Keefe indicated that he believed that there was considerable public opposition to the proposal. In the last two years, there hasn't been a lot of change in the proposal. Selter stated that current task is to vote on the current proposal before us. McMahon indicated that with the current application, there are steps to still go.

Motion by McMahon, supported by Selter, to recommend to the Township Board the denial of the rezoning application by W & W Augusta (RZ-08-01) based upon the presented Findings of Fact and the public comments received. Vote was unanimous for approval.

6) OPEN DISCUSSION FOR ISSUES NOT ON THE AGENDA

6a) Correspondence Received – letter from James Gaffney opposing the W & W Rezoning

6b) Planning Commission Members – David McMahon expressed an interest and past experience in brownfields. He was hopeful that the township would consider his interest as an asset in becoming involved with the County. McMahon to investigate.

6c) Members of the Audience – none

7) REPORT OF TOWNSHIP BOARD REPRESENTATIVE – none


8) REPORT OF ZONING BOARD OF APPEALS REPRESENTATIVE – none

9) REPORT OF PLANNING CONSULTANT – Wortman suggested that revisions to the Master Plan might be considered based on the discussions tonight. He also notified the Planning Commission that Laura Kreps will be on maternity leave for several months, and Ralph Pasola will fill in.

10) ADJOURNMENT

Motion by Tobler, supported by LaFuente, to adjourn. Meeting adjourned at 9:43PM

Respectfully submitted,

A handwritten signature in cursive script that reads "William E Tobler".

William E Tobler, Secretary
Planning Commission