



**Planning Commission**  
**July 18, 2012 Minutes for Regular Meeting & Public Hearing**  
(public hearing minutes follow regular minutes below)

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**REGULAR MEETING MINUTES:**

The Charter Township of Orion Planning Commission held a regular meeting on Wednesday, July 18, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

**PLANNING COMMISSION MEMBERS PRESENT:** Doug Zande, Chairman; Carol Thurber, Vice-Chairwoman; John Steimel, Trustee, Rep. to PC; Don Walker, Commissioner, Rep. to ZBA; Justin Dunaskiss, Commissioner; Chris Barnett, Commissioner

**PLANNING COMMISSION MEMBER ABSENT:** Dick Christie, Secretary

**TOWNSHIP BOARD OF TRUSTEES PRESENT:** JoAnn Van Tassel, Supervisor; Penny Shults, Clerk; Alice Young, Treasurer; John Steimel, Trustee, Representative to PC; Neal Porter, Trustee; Mike Flood, Trustee; D'Arcy Gonzales, Trustee

**CONSULTANTS PRESENT:** Beth McGuire, Township Zoning/Planning Administrator; R. Donald Wortman (Township Planner) of Carlisle/Wortman Associates, Inc.; Dave Schroeder (Township Engineer) of Orchard, Hiltz, & McCliment, Inc. (OHM); Dan Kelly, Township Attorney

**OTHERS PRESENT:** Michela Tierney, Thomas Peters, Megan Peters, Chris Carpenter, Greg Parker, Bob Madole, Brent Taplin, Robert Pote, Ken Notter, Anna Notter, Jaclyn Brooks, Clint Connelly, Chad Toth, Susan Venn, Peter Bouyounan, Emily Engelhart, John W. Hart, Richard Batt, Mike Cicchini, Jim Eppink, Sally Barron, John Capozzoli, Phoebe Schutz

1. **OPEN MEETING:** Chairman Zande called the regular meeting to order at 7:00 p.m.

2. **ROLL CALL:** All members were present, except Dick Christie.

3. **MINUTES:** Moved by Commissioner Steimel, supported by Commissioner Barnett to approve the 06-20-12, regular meeting minutes and the 06-20-12, PC-2012-07, Orion Square Conditional Rezoning and Special Land Use public hearing minutes as presented. **Motion carried 6-0** (Christie was absent).

4. **AGENDA REVIEW AND APPROVAL:** Chairman Zande overviewed correspondence received from Ms. Beth McGuire, Zoning/Planning Administrator, dated July 18, 2012\*, in which she referenced the attached letter date stamped received by the Township on July 17, 2012, from Mr. Chad Toth, of Real Estate Gives, 109 Indianwood Road, in which he requested an extension on their approved site plan\*.

*Moved by Vice-Chairwoman Thurber, supported by Commissioner Steimel to approve the agenda as amended to add agenda item 8,A, Real Estate Gives Site Plan Extension, 109 Indianwood Road. **Motion carried 6-0** (Christie was absent).*

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REGULAR MEETING MINUTES CONTINUED...

Chairman Zande recessed the regular meeting at 7:04 p.m. and opened the PC-2004-23(2012), Village Square Planned Unit Development Amendment joint public hearing with the Township Board of Trustees at 7:05 p.m.

Supervisor Van Tassel opened their special meeting with the Planning Commission at 7:05 p.m. and closed their special meeting at 8:55 p.m.

Chairman Zande closed the PC-2004-23(2012) public hearing and recessed the regular meeting for a break at 8:55 p.m. and reconvened the regular meeting at 9:04 p.m.

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5. **BRIEF PUBLIC COMMENT - NON-AGENDA ITEMS ONLY:** None.

6. **CONSENT AGENDA:** None.

7. **NEW BUSINESS**

**A. PC-2004-23(2012), Village Square Planned Unit Development Amendment, Concept Plan, 3590 S. Baldwin Road:** Mr. Richard Batt (applicant), of Redwood Acquisition LLC, 23775 Commerce Park Road, Suite 7, Beachwood, Ohio 44122, was present.

Chairman Zande noted that the Township Attorney will explain why we're again reviewing this case at this point.

Mr. Dan Kelly, Township Attorney, stated, over a year ago the Township was sued by Fifth Third Bank who became the owners of the southern parcel of property of the subject site by way of a foreclosure. What they sued the Township for was to actually dissolve the PUD that then existed so that they could then get their line of credit and they had posted some significant letters in favor of this project. The middle piece of the project had also or shortly thereafter was foreclosed by Citizens Bank, so the only real parcel that was completed pursuant to the PUD was Walgreen's and the other property owners all went bankrupt and their properties were turned over with the slight exception of the little 40-foot strip that is not significant to my summary. What was significant about that is that the banks wanted the PUD dissolved and a motion was filed in the Oakland County Circuit Court to dissolve the PUD, which would have, in effect, taken this property back to what it was zoned prior to the 2005 PUD Agreement. I know that there's a combination of zonings that existed there and some of it included commercial in fairly significant high-density all the way back to the rear property line. The Township has fought that over the last year. We were successful in at least beating the motion for summary disposition filed by Fifth Third Bank, so that the Court believed that there was at least a question of fact that we could go forward and shortly after that motion is when Fifth Third Bank agreed to a sale of their parcel to LRM Associates. As a condition of that sale of the parcel, LRM agreed to abide by the current PUD and we believed it was in the best interest of the Township to protect the PUD Agreement. Subsequent to that, LRM purchased the property from Citizens Bank and now the bulk of that property is under the control of LRM. Again, LRM has agreed to abide by the PUD Agreement and to go through this process in terms of an amendment. The only matter that is now remaining is to resolve the litigation. We have a proposed Consent Judgment that we believe the Township and the Township Board has tentatively approved that protects the PUD Agreement as it exists. It does not change any of the authority of the

REGULAR MEETING MINUTES CONTINUED...

Planning Commission or the Township Board to go through the process that we're doing right now. My concern, as counsel for the Township, is that the Consent Judgment has not been entered and it will not be agreed to until all of these little pieces including that little 40-foot strip that I talked about is resolved. If the Consent Judgment is not approved, we are subject to being sued again by anyone who owns this property that seeks an order of the Court saying that effectively this PUD Agreement is defunct, because the parties that entered into that agreement no longer exist. I don't know what the outcome of that legal scenario is of litigation, that is a possibility. I'm not here to weigh what's good or not good, but the fact of the matter is that we could lose the PUD restrictions that we have on this property if that lawsuit were to prevail. So, for purposes of the litigation that currently exists, all of the parties have pretty much agreed. There's one little loose end that Walgreen's has to sign off on it and it's very difficult for Walgreen's, as a corporation, to approve these things, but assuming that Walgreen's does approve of the Consent Judgment, the litigation portion of it would be resolved. What I would suggest for the Planning Commission's review of this in reading the zoning ordinance, the fact that we have an existing PUD and this is an amendment of the existing PUD as well as the fact that we run the risk that the PUD could be challenged and eliminated. The fact that we have a guaranteed plan could be considered a benefit in terms of the ordinance as it's prepared. That's the summary if anyone has any questions these are all public records and it's pretty close to being resolved hopefully.

Chairman Zande inquired, if the PUD were terminated, what would happen?

Attorney Kelly stated, what would happen is that Walgreen's would become a non-conforming use and we would somehow have to correct that. The other parcels would revert back to what they were previously zoned. I know there were a number of different zonings.

Planner Wortman noted that it was primarily General Business-2 (GB-2), which would allow fast-food restaurants.

Attorney Kelly stated, I'll just add one other thing, because I have dealt with LRM's counsel throughout the litigation. LRM's counsel actually would have preferred that the PUD be eliminated, because of that very reason. The underlying zoning would have allowed LRM somewhere on this site to have a drive-thru restaurant. They would have preferred to be out from under the PUD, which the Township didn't allow.

Commissioner Steimel stated, this application is from Redwood Acquisition LLC and it shows that the entire site including the two commercial pads are on their plans, even though it has been stated tonight that they plan on retaining ownership of only the apartments, which would be in conflict with the PUD ordinance, which states that the whole PUD must be under one single ownership. Is there a problem there? Because part of that is how we got in trouble here.

Attorney Kelly stated, absolutely how we got in trouble here. You're right. The ordinance does provide that there must be single ownership and that the agreement must be with the entity in the ownership. I wasn't aware of whatever the agreements are with Redwood and LRM until we arrived here at the meeting. There is a mechanism that allows a representative of all of the properties to come in and go through this process, so this is completely legitimate. However, when we get to the point of an agreement being entered into, it needs to be with a single owner and that single owner can then

REGULAR MEETING MINUTES CONTINUED...

subsequently sign or convey the property, but it's going to subject to the PUD and the single owner is still required to meet the obligations of the PUD and that's how we handle it.

Commissioner Steimel noted his concern that this time the Board needs to make certain that there are details in the agreement to protect the Township.

Commissioner Dunaskiss stated, but once that one applicant is finalized, so the closing date is essentially right after the fact, they can go split the parcel, sell the commercial side, sell the residential side, just like any other PUD, correct?

Attorney Kelly stated, yes, but the terms and the conditions of the agreement run with the land.

Vice-Chairwoman Thurber inquired, can you clarify that .92 acre?

Attorney Kelly stated, there is a disputed parcel. The original proposal had this 40-foot strip on the south side of Walgreen's. Because of some legal technicalities, that parcel was not foreclosed by Citizens Bank and it was retained by Mr. Jeff Hennig. Mr. Mullins basically initially proposed the entire project by excluding that 40-foot strip and then recently has reached an agreement, I understand, with Mr. Hennig to actually purchase that. That has not occurred because the Consent Judgment and the purchase of that 40-foot strip are going to close at the same time.

Planner Wortman noted that the 40-foot strip is where the old nursery was prior to 2005.

Attorney Kelly stated, it did not have a separate parcel number, but it did have a legal description that was not included in the mortgage.

Mr. R. Donald Wortman, of Carlisle/Wortman Associates, Inc., (Township Planner) overviewed their PUD Amendment Review correspondence, dated June 28, 2012\*. Also, during the pre-application meeting, it was agreed with the applicant that they would not have to qualify for eligibility since this is considered an amendment to the original approved PUD. He then reviewed the PUD procedure and the history of the PUD. A benefit of the approved PUD is that it was a considerable down-zoning from what it was zoned. In their opinion, it does comply with the Master Plan as well as the Gingellville Overlay District, which would be an attractive pedestrian atmosphere for their residents.

Commissioner Steimel noted that this project will increase the traffic, however, what it is currently planned for would be about the same amount of traffic. The trees got removed, but I believe that they had the right to do that, because they have a plan that they have a permit for right now with the currently approved plan. The trees can be verified, too. Also, the community benefits should be reviewed and/or verified, since some of them are not proposed in the new amendment. He is also concerned that the two commercial sites have no details about them at all as far as what the buildings are going to look like and how the Township can be protected.

Planner Wortman noted that you could stipulate in the PUD Agreement that those details would be provided.

REGULAR MEETING MINUTES CONTINUED...

Attorney Kelly noted that one way to look at it is for those two restaurant pads, you're simply changing the zoning to allow for them. All of the site work and conditions can be made part of the agreement that they'd be provided as conceptual and as final as well.

Chairman Zande noted that he, too, is very concerned that there isn't enough detail on the plans to protect the Township from getting unsatisfactory restaurant sites that may not conform to the Gingellville Overlay District regulations.

Mr. Dave Schroeder, of Orchard, Hiltz, and McCliment, Inc., (Township Engineer) overviewed their concept plan review correspondence, dated July 2, 2012\*. In their opinion, the PUD concept plan, as submitted, is in substantial compliance with the Township's ordinances and engineering standards. However, the applicant should address the following comments prior to site plan submittal: 1)It appears the applicant is only proposing earth grading for the future commercial area. The applicant should note the limits of proposed activities for the proposed future development including the storm water system, paving, landscaping, etc. and indicate appropriate phasing; and, 2)The applicant should provide a minimum 12-foot wide easement for the 8-inch water main and minimum 20-foot wide easement for the sanitary sewer throughout the site.

Commissioner Steimel noted that the phasing needs to be clearly specified in the plans.

Vice-Chairwoman Thurber inquired what the water feature would be, about trash pick up, and that there needs to be stop signs.

Mr. Batt replied that it would be wet retention on the front with a fountain. They would have a trash compactor on the site. He agreed that they will have the stop signs on the site. Also, they used carriage doors on the garages to dress it up. He believes that they meet the requirements for the exterior brick. They do not allow on-street parking. They do not use interior site street lights. Instead they use carriage lights on the units and they use photo cells.

Planner Wortman suggested adding to their plans some landscaping to break up the repetitive view of the lined up driveways in the development.

Mr. Batt agreed to do that.

Commissioner Steimel suggested that it be included in the PUD Agreement that the buffer landscaping be irrigated to ensure the longevity of the landscaping.

Mr. Batt agreed and assured members that it is also in their best interest to maintain the landscaping.

Commissioner Barnett commented that in his opinion we're doing a bad job of communicating with the people who this affects the most and we need to be more prepared to answer those questions as far as the work that has been done on your site. He is concerned about what the phasing is going to look like. Also, we don't want to have two fast-food sites built and the apartments never happen.

REGULAR MEETING MINUTES CONTINUED...

Mr. Batt noted that they will come in and do all the infrastructure all at once and then we come in and start constructing apartments. We'll stay on that site for eight or nine months until we are done building. We deliver 10 to 12 units per month.

Commissioner Barnett inquired, are you also financing construction and improvements on the commercial sites?

Mr. Batt stated, no.

Commissioner Barnett stated, when I was talking phasing, I'm thinking, you have a phase unto yourself that would be developed, the residential apartments portion?

Mr. Batt stated, yes.

Commissioner Barnett noted that he has seen some of their projects and they are very nice. Also, he would like to see details on the restaurant pads.

Chairman Zande asked if the applicant would consider screening the air conditioning units.

Mr. Batt replied that they will look into that. Also, that they are willing to work with the neighboring property owners, but need to have a consensus of whether they want a berm or a fence.

Ms. Sally Barron, of 3365 Maybee Road, noted her concern about the noise that will be coming from the 77 a/c units.

Mrs. Michela Tierney, of 3395 Maybee Road, noted that the original approved plan included trees that are to be planted for a buffer of her property and is wondering if that will still happen.

Mr. John W. Hart, of 915 Hemingway Road, commented regarding his opinions on subjects not related at all to this case.

Moved by Commissioner Barnett, supported by Commissioner Walker to extend the meeting until 11:00 p.m. **Motion carried 6-0** (Christie was absent).

Mr. Batt stated, I would request that you would take action.

Commissioner Walker noted that it is the unknown about the drive-thru restaurants that bothers him a great deal.

Members agreed.

Attorney Kelly commented that the representative for the two drive-thru restaurants will still have to come back to obtain site plan approval and basically what you would do, you're allowing the zoning of it. I'm not going to say that you're not giving away a little bit, you certainly are because it is part of the PUD and they are proposing that it be part of the PUD and without much detail at all, you'll end up with two drive-thru's there.

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Commissioner Barnett commented that it is frustrating that there is no one here representing that entity that can answer questions for us.

Mr. Batt noted that he doesn't understand why that matters.

Members noted that it matters because it is part of the PUD.

Mr. Batt noted that before anything can be done, Mr. Mullins has to come in and answer those questions.

Commissioner Barnett commented, true, but our Attorney said that we will be giving up.

Attorney Kelly stated, it's not as if he's starting off from a fresh start. He's starting off with a drive-thru window and part of a PUD that has been approved. We could condition this approval that we take certain steps with regard to the PUD agreement on the commercial end, so that we kind of restrict it. We can lay out and provide us with whatever else the Planning Commission wants. The problem is that we don't know how much can be provided at this time within the timeframe that you want to get started. You've presented a proposal here that is asking the Planning Commission to consider it without much detail for the two commercial sites.

Chairman Zande noted that for example, they could establish hours of operation to correspond with the drug store.

Mr. Batt inquired, what if we asked for PUD approval with those two sites as just a blank piece of paper?

Attorney Kelly stated, they would still be approved for purposes of the PUD-

Commissioner Barnett stated, because this is the site plan that's-

Attorney Kelly stated, I guess so. You're saying no drive-thru-

Commissioner Barnett inquired, would we have to postpone that for a new site plan or could we approve it based on-

Attorney Kelly stated, no this is just concept, so they could come back with a final plan.

Planner Wortman inquired, Dan, you're ok without a legal description and a current or modified application?

Attorney Kelly stated, no not for this. When they come back for the final site plan, I'm assuming that these plans are detailed enough. We need to identify that these are the two commercial properties that we're just going to leave blank.

Planner Wortman noted that it would have to be subject to them submitting a revised legal description as soon as possible.

REGULAR MEETING MINUTES CONTINUED...

Attorney Kelly commented, the current owner of the property is LRM.

Mr. Batt commented, yes.

Attorney Kelly stated, I'm assuming you're representing to the Board that that is ok with LRM to not address his request for a drive-thru.

Mr. Batt stated, after him not coming tonight, I'll deal with it.

Mr. Hart asked for more time for public comment.

Chairman Zande agreed.

Mr. Bouyounan noted that he is not comfortable with approving just the residential part and not the commercial part and is also concerned about the single ownership aspect and we're going on a lot of assumptions.

Commissioner Steimel explained the PUD concept plan and final plan procedures.

Mr. Hart again commented regarding his opinions on subjects not related at all to this case.

Mr. Cicchini commented that believes that the original plan was going to be a premium up-scale nicely landscaped commercial property, but now we're going to a high-density rental community with a lot of risks. He encouraged members to include a detailed preserve in this plan.

Mr. Thomas Peters, of 3707 Hidden Forest Drive, commented that his property will abut the proposed apartments. He is very concerned that Mr. Mullins is not present to answer questions.

Moved by Commissioner Barnett, supported by Commissioner Walker to extend the meeting to 11:30 p.m. **Motion carried 6-0** (Christie was absent).

Commissioner Steimel noted that he would hate to see this site go back to all commercial and that's what makes this situation a little different. If it did, you could have commercial right up to your backyards and there would be nothing we could do about it, because it is allowed in GB-2. We're trying to negotiate for as nice of a solution as possible for our residents.

Mr. Chad Toth, of 109 Indianwood Road, commented that would be opposed to this PUD. He believes that the apartments would be like a modern day mobile home park and would bring in trouble and things that he doesn't want in his community.

Mr. Ken Notter, of 3693 Hidden Forest Drive, requested that if the petitioner could supply them with some statistics about the solidity of the rent rates, those kinds of facts would make them feel better about the development. He is in favor of the residential portion of the development, but would prefer to have sit-down restaurants rather than the proposed fast-food restaurants, to provide a walkable destination for a local gathering place as was mentioned and is encouraged in the Gingellville Overlay District

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requirements. He doesn't want this site to end up looking like the empty strip mall and partially-finished condos across the street from this site.

Moved by Commissioner Steimel, supported by Commissioner Dunaskiss regarding case PC-2004-23(2012), Village Square Planned Unit Development Amendment, Concept Plan, 3590 S. Baldwin Road, referencing plans date stamped received by the Township on June 7, 2012, **to recommend approval of the Concept Plan to the Township Board of Trustees with the condition** that the two drive-thru commercial properties that are currently shown on the plans would not be shown as drive-thru and just shown as future commercial at this time, preferably before it goes to the Township Board of Trustees to be presented there. I would also encourage the applicant to take in what was discussed here tonight to do some stuff between now and final. The areas that need to be clarified are the buffer areas to the west and to the north. I also recommend that the Township Board should also treat the Concept Plan as a public hearing, not just a first reading type thing, but to go above and beyond so that people can talk to the Board, too, with their concerns. Roll call vote was as follows: Dunaskiss, yes; Steimel, yes; Thurber, yes; Walker, no; Barnett, yes; Zande, yes. **Motion carried 5-1** (Christie was absent).

**8. UNFINISHED BUSINESS**

**A. PC-2011-14, Real Estate Gives Site Plan Extension, 109 Indianwood Road:** Mr. Chad Toth, of Real Estate Gives, 109 Indianwood Road, was present. Moved by Commissioner Barnett, supported by Commissioner Walker regarding case PC-2011-14, Real Estate Gives Site Plan Extension, 109 Indianwood Road, **to grant a one-year extension to expire on July 22, 2013.** Roll call vote was as follows: Steimel, yes; Thurber, yes; Walker, yes; Barnett, yes; Dunaskiss, yes; Zande, yes. **Motion carried 6-0** (Christie was absent).

**9. PUBLIC COMMENTS:** None further.

**10. COMMUNICATIONS:** None.

**11. COMMITTEE REPORTS:** None.

**12. PUBLIC HEARINGS**

A. 08-01-12, PC-2012-09, Text Amendment to Zoning Ordinance No. 78, Minor Planned Unit Developments Public Hearing at 7:05 p.m.

**13. CHAIRMAN'S COMMENTS:** None.

**14. COMMISSIONERS' COMMENTS:** None.

**15. ADJOURNMENT:** Moved by Vice-Chairwoman Thurber, supported by Commissioner Steimel to adjourn the meeting at 11:32 p.m. **Motion carried 6-0** (Christie was absent).

\*on file

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## **JOINT PUBLIC HEARING MINUTES PC-2004-23(2012), Village Square PUD Amendment**

The Charter Township of Orion Planning Commission held a joint public hearing with the Township Board of Trustees on Wednesday, July 18, 2012 at 7:05 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

**PLANNING COMMISSION MEMBERS PRESENT:** Doug Zande, Chairman; Carol Thurber, Vice-Chairwoman; John Steimel, Trustee, Rep. to PC; Don Walker, Commissioner, Rep. to ZBA; Justin Dunaskiss, Commissioner; Chris Barnett, Commissioner

**PLANNING COMMISSION MEMBER ABSENT:** Dick Christie, Secretary

**TOWNSHIP BOARD OF TRUSTEES PRESENT:** JoAnn Van Tassel, Supervisor; Penny Shults, Clerk; Alice Young, Treasurer; John Steimel, Trustee, Representative to PC; Neal Porter, Trustee; Mike Flood, Trustee; D'Arcy Gonzales, Trustee

**CONSULTANTS PRESENT:** Beth McGuire, Township Zoning/Planning Administrator; R. Donald Wortman (Township Planner) of Carlisle/Wortman Associates, Inc.; Dave Schroeder (Township Engineer) of Orchard, Hiltz, & McCliment, Inc. (OHM); Dan Kelly, Township Attorney

**OTHERS PRESENT:** Michela Tierney, Thomas Peters, Megan Peters, Chris Carpenter, Greg Parker, Bob Madole, Brent Taplin, Robert Pote, Ken Notter, Anna Notter, Jaclyn Brooks, Clint Connelly, Chad Toth, Susan Venn, Peter Bouyounan, Emily Engelhart, John W. Hart, Richard Batt, Mike Cicchini, Jim Eppink, Sally Barron, John Capozzoli, Phoebe Schutz

Chairman Zande opened the PC-2004-23(2012), Village Square Planned Unit Development Amendment Joint Public Hearing with the Township Board at 7:05 p.m. The applicant, Redwood Acquisition LLC, is proposing a development consisting of 77 single-story apartment homes and two commercial pad sites for drive-thru restaurants. The project is located at 3590 S. Baldwin Road. Sidwells #09-29-301-083 & #09-29-301-006.

Supervisor Van Tassel called to order their special meeting to hold the joint public hearing with the Planning Commission.

Clerk Shults called the roll and all Township Board members were present.

Mr. Richard Batt, of Redwood Acquisition LLC, (applicant) commented that they develop single-story apartments that have two-car attached garages, outdoor space and patios, two-bedroom, two-bath, large floor plans at 1,320 square feet, empty nester targeted. They own about 3,000 units and the company was formed in 1991 and they still own the first unit they built. Portfolio wide they're 99% leased, which speaks to the demand for the particular product they deliver. Rentals are a better option for many residents. They use high-quality interior finishes and appliances and are energy efficient. They comply with fair housing on the interior and they comply with ADA on the exterior. They use stone, shake siding, landscaping, and do private patios on the exterior. They will use carriage-style garage doors. They are a luxury, higher rent community. Residents are normally long-term. There will be an on-site manager and they do background checks on every resident. If someone has a blemish on their record, they don't rent to them. They offer a high level of service to their residents. The main things they

PUBLIC HEARING MINUTES CONTINUED...

promote are the peace and quiet and that it is maintenance free to the residents. Also, along with the two-car garage is the double-width driveway where you could park two more cars. They feel this development will be near local businesses and they feel that this development will be a positive to this area. They will create jobs during construction. They will create two jobs in their development, a maintenance person and a property manager. They will also utilize local services, such as, lawn service and snow removal. He believes they will give the Gingellville district a shot in the arm and add a new presence to it. They are doing a nicely landscaped front with a retention pond with a fountain up front, a clock tower, and a lot of green space up front, and will make Baldwin Road much more attractive than its current state. The site is ideal for them and the surrounding retail is important for the residents. They are proposing a revision to the existing PUD with 77 single-story rental homes and two small commercial sites. The existing approved PUD is proposed for 50,000 square feet of retail and 62 two-story townhomes. In contrast, we're bringing to the site roughly 3,600 square feet of retail space vs. the 50,000 square feet that was planned, which is a major reduction in commercial. Currently there are many vacant commercial spaces on Baldwin Road. As far as traffic, this development would not draw near the traffic that commercial would draw. They are offering 77 single-story apartment homes vs. 62 two-story townhomes. The number of residents would be relatively close, but if you look at the overall density, you're dropping almost 47,000 square feet of retail space and you're adding 15 residential units. It's a greatly decreased overall density on the site, which leaves more room for green space and to do a more attractive streetscape on Baldwin Road. They have saved as many of the existing trees as they can. They have provided space for stacking for eleven cars. They have an internal road configuration where that traffic stacking will actually occur on their property rather than on Baldwin Road. They're proposing less density, more green space, a better frontage on Baldwin Road, and they feel they're providing something that is far superior to what is currently approved for that site. They will provide a mound and buffering the residential neighborhood behind them. The current approved plan includes an 8-foot tall fence along the properties that front on Maybee Road. We've agreed to continue that as previously approved. They will repair the retention basin for the health club and providing a walkway to the neighboring businesses. They have addressed the review comments of the Township Engineer and Township Planner and have incorporated them in an updated set of plans.

Chairman Zande offered the Township Board of Trustees time for comments or questions of the petitioner.

Trustee Flood inquired about the fencing.

Mr. Batt noted that the current approved plan includes an 8-foot tall fence along the properties that front on Maybee Road. We've agreed to continue that as previously approved. He then showed him on the plans where the fencing would be placed.

Clerk Shults inquired what businesses would be going into the commercial sites.

Mr. Batt noted that those two parcels will continue to be owned by Mr. Larry Mullins. One of the sites may be used for a Tim Horton's restaurant. The other parcel's occupant is unknown.

Chairman Zande offered time for public comments and questions.

PUBLIC HEARING MINUTES CONTINUED...

Mr. Bob Madole commented that he is a managing partner of Great Lakes Athletic Club, at 3800 Baldwin Road, which abuts the southern property line of the subject site. They have spoken with Redwood Acquisition and they are in support of this proposal and that it would be a step in the right direction for Gingellville.

Mrs. Michela Tierney, of 3395 Maybee Road, commented that when the PUD was first approved for Jeff Hennig, the three residents there talked to him about being buffered and she has drawings that he gave them, but has not heard anything further since then. There was to be a berm and trees put in to incorporate with the other trees, so that there was no pathway through to her property and so she wouldn't be looking at buildings. She wants to know if that agreement will remain in effect. If not, she objects to this project tremendously. She also inquired what happened to the Gingellville Overlay District where there were to be park benches, walkable neighborhood, etc.

Mr. Robert Pote, of 3755 Forest Spring Drive, commented that he was on this Planning Commission when the current approved agreement was made and he reaffirmed that Mrs. Tierney's recollection is correct. There were a lot of agreements made with the neighboring residents that he would like to see stay in place, just out of common decency. He thinks that the residential portion of this project fits well. He then spoke about the items that the petitioner had stated that were of a benefit to the Township are requirements in the Township ordinances, they are not optional. He is also concerned that what often happens is that developers come in and cherry pick what they want and walk away from the rest of the PUD. He is not in support of the two fast-food restaurants backing up to the residents' properties behind there, which includes the noise from the drive-thru speakers. Also, as part of the PUD process, the petitioner is supposed to provide community benefits. They also need to comply with the Gingellville Overlay District requirements as well as all other pertinent ordinances. He is also concerned about setting a precedent if community benefits are not provided and/or if our ordinance requirements aren't met. He then thanked members for their hard work. He also thanked Trustee Porter for the ordinance that he had initiated that requires the sign on the site of a proposed rezoning or special land use for increasing the public's awareness of what's going on in the Township.

Ms. Sally Barron, of 3365 Maybee Road, commented that she lives right next to the Walgreen's store. She is very concerned about the additional traffic that this amendment would create. She wants to know exactly which restaurants will be in the two commercial sites and that they will contribute very much to the congested traffic issue.

Mr. Clint Connelly, of 3911 Long Meadow Lane, noted that he is the President of the Rolling Meadows Homeowners' Association and that their members have voiced their opposition to the fast-food drive-thru restaurants going in there. He also noted his concern that if a Tim Horton's goes in there and it closes in a few years, we don't need another empty building and the Tim Horton's type of building would be difficult to find a use for. This site would be horrible to this drive-thru type of restaurant due to the traffic issues. He's not opposed to the residential apartments portion of the amendment since it is an improvement over what was previously approved, but he is very concerned about having two fast-food restaurants there.

Mr. Peter Bouyounan, of 3716 Hidden Forest Drive, commented that he lives right behind the subject site and is very concerned that this will increase the traffic issues, which need to be addressed. Also, the community was supposed to get a left-turn signal at Maybee and Baldwin Roads, but that has not

PUBLIC HEARING MINUTES CONTINUED...

happened. He is not supportive of the fast-food restaurants with the unpleasant odors that they produce. He is not opposed to the residential apartments portion of the amendment.

Mr. Thomas Peters, of 3707 Hidden Forest Drive, commented that their property abuts directly to the commercial property. They feel strongly that there should be a tall fence put in for a barrier between development and the neighboring residents. They are not against the residential apartments portion of this project, but are firmly against the drive-thru restaurant aspect of it. He was also surprised that the owner of the two drive-thru restaurants is not present here tonight to answer residents' concerns.

Mr. Chris Carpenter, of 3697 Hidden Forest Drive, commented that their property also abuts the subject site. They are highly concerned about the drive-thru aspect of it, too. He would be in support of the residential portion if the petitioner would install a higher berm and a fence put up. The current berm by his property is only 2-3 feet high. They have young children and have their play structure back there and there is nothing there to keep people from walking into their back yard or to keep their children from going into their back yard. He also noted that the company cannot keep people from renting due to some offences.

Mr. Brent Taplin, of 3921 Long Meadow Lane, commented that the north property, which is the second commercial property, he understands that it's currently part of litigation. Mr. Larry Mullins does not currently own that property. He only owns the one property to the south where Tim Horton's is proposed to go in.

Mrs. Megan Peters, of 3707 Hidden Forest Drive, commented that the petitioner cannot background check the patrons of Tim Horton's and she doesn't want them in her back yard.

Ms. Jaclyn Brooks, of 3695 Hidden Forest Drive, commented that their property also abuts the subject site. She agrees with everything that has been said by her neighbors. She inquired what would happen if the apartments didn't get filled, then what recourse would there be to protect the area.

Mr. Mike Cicchini, of 3713 Rolling Hills Court, commented that his property abuts to the end of the property next to the Great Lakes Athletic Club. He is not in favor of the apartments being put in that location. He also would like to see the Township get some community benefits as part of this PUD, such as a 60-foot natural preserve, at the very least. He is very concerned that the developer may clear away the berm and the trees back there.

Ms. Susan Venn, of 3699 Hidden Forest Drive, commented that she also abuts the subject site. She is opposed to the fast-food restaurants and has serious concerns about traffic patterns and any kind of fast-food restaurant and believes it will damage the appearance of Gingellville and that we can do better. She is concerned about rental residential property because of potential vacancies and dilapidation.

Chairman Zande read aloud correspondence received by Ms. Nancy Carr, of 21395 Tammie Drive, Lake View, AL 35111, and property owner of 3375 Maybee Road, dated June 27, 2012\*. She inquired whether the conditions of the original approval will be included in the proposed amendment.

Chairman Zande asked that the petitioner address the concerns and questions of the public.

PUBLIC HEARING MINUTES CONTINUED...

Mr. Jim Eppink, of J. Eppink Partners, Inc., 30 S. Main Street, Suite 22, Clarkston, Michigan 48346, noted that he is the landscape architect for this project and commented regarding the woodland survey of the original agreement and that many of the trees have already been removed, but not replaced. There are about another dozen trees or so that were scheduled to come down, they are maintaining those trees. There is also a replacement count of about 155 trees that have to be re-installed for the trees that were taken down in 2004, which they have agreed to do. To address the berm on the west side of this property. We've identified the existing trees that were surveyed in there and supplied a plant inventory list that talks about the health of those trees, their size, their species, etc. It's our intention to maintain every one of those trees. We're not showing anything to be removed. Everything seems to be in good health and worth maintaining. There is also undergrowth and we'll maintain that both for a natural environment and also for privacy. Our intention for that back 30 feet is to leave it as is with the addition of adding in a berm and adding in a significant number of trees. Due to the existing trees, it just isn't horticulturally possible to create a berm like they did behind Great Lakes Athletic Club. If we were to build a berm that tall, it would kill all those trees. So, our drawings depict identifying existing trees and kind of snaking a new berm among those trees. In the gaps where there aren't trees, we'll build a berm there. There's an area where there are trees, it will go down to the existing grade and then build that berm back up. We're proposing to put significantly more evergreen trees than required in the ordinance, upwards of 60 trees on that western property line and instead of 8-foot tall, we're proposing them to be 10-foot tall and they'd be on that berm as well as all the existing trees. While a fence may be negotiable, we ask for the chance to show you that our alternative is a better alternative. We would save and maintain the existing trees and would significantly enhance the buffer and if we were to put a 6-foot or 8-foot fence along that property line, it would have to be level ground, so we wouldn't be able to extend that berm and it would also make the adjacent back yards seem smaller since with the natural buffer it wouldn't seem closed off.

Chairman Zande asked of Supervisor Van Tassel what the status is on widening Baldwin Road.

Supervisor Van Tassel commented that the last she heard from the Road Commission for Oakland County (RCOC) is that they are still waiting for the review back from the Federal Highway Association regarding the plans for putting roundabouts at Waldon Road, Maybee Road, Gregory Road, Judah Road, and another one. There is no money to buy the properties that they would need to do the expansion of Baldwin Road, so that's where things currently stand. How far into the future this would be, I don't think even the people at the RCOC are willing to hazard a guess.

Chairman Zande stated, so nobody can really address the traffic on Baldwin Road then. Can you address the traffic that might be generated from the site?

Mr. Batt noted that there is an existing PUD that has 50,000 square feet of retail and 62 townhome units. That would produce a significantly more volume of traffic than our 77 rental homes, that's the first point. The second is, I don't quite agree that we're building two-car garages and we have two cars in the driveway and that there's going to be four cars at every one of these apartments and we're producing all that traffic. Because of the statistical general makeup of the population of our residents is empty-nesters, normally half or so of the units are one-car families and the other half would be two-car families. Also, because they are empty-nesters, they have a tendency to not travel at peak times, because they don't have to and don't want to. I don't see the impact on traffic.

PUBLIC HEARING MINUTES CONTINUED...

Chairman Zande asked Mr. Batt to address the Gingellville Overlay District requirements and the drive-thru sites.

Mr. Batt replied that they have taken great care to meet a lot of the architectural requirements of the Gingellville Overlay District. We're using wrought iron fences, the clock tower, a lot of dressing along Baldwin Road that is consistent with the architectural standards the Township has. They are requesting some deviations from those requirements. There are fewer deviations to our proposal than there were to the previously approved PUD. We are asking for a revision to an already approved PUD and we are stepping that down, less density, less traffic, more consistency with the code requirements than with what was previously approved.

Chairman Zande asked for an explanation regarding the requirement for single property ownership.

Mr. Dan Kelly, Township Attorney, noted that the zoning ordinance does require single property ownership with a PUD. I'm not quite sure what you're going to do legally. It does not prohibit us from discussing it. There will be a PUD Agreement ultimately prepared and will need to be signed by the single owner of the PUD. So, it's fine for us to discuss and even approve it, but it'll all be conditioned upon the agreement being signed.

Mr. Batt commented that it's his understanding that there's an agreement made and is being documented.

Attorney Kelly replied that it's not really an agreement. There's litigation involving the original PUD, which is now defunct and that resolution is called a Consent Judgment that would be entered with the Court and for purposes of the Planning Commission and the Township Board's consideration of the PUD, there has been no agreement with regard to any conditions or limitations. The only issue is that Walgreen's will no longer be in the current PUD and that the remaining property will have to abide by the current PUD conditions unless approved by the Planning Commission and Township Board differently.

Mr. Batt stated, that's correct, but to specifically address Mr. Mullins' ownership of that property, is that not a term of the Consent Judgment?

Attorney Kelly stated, it's not. Currently Mr. Mullins is indicating that he will be the sole owner of all of the property that's being applied for in the PUD.

Mr. Batt stated, but the disputed parcel, which is subject to Consent Judgment, right?

Attorney Kelly stated, yes and it's my understanding that upon the Consent Judgment being agreed and entered, that Mr. Mullins intends to own that disputed parcel if you will. It will be under single ownership. The Consent Judgment will not be entered unless it is.

Chairman Zande noted that another question that was raised is, that if for some reason this development doesn't happen after it's approved, what would happen with the property.

PUBLIC HEARING MINUTES CONTINUED...

Attorney Kelly stated, a PUD under the ordinances of Orion actually changes the underlying zoning of the property, so if these apartments are not built or if this development goes belly up like the previous one did, this property would continue to be zoned consistent with the PUD and the PUD Agreement approved by the Planning Commission.

Chairman Zande inquired what the community benefits would be for the Township as a part of this PUD.

Mr. Batt noted that the largest thing is that they're providing a boost to Gingellville and adding residents and walking traffic, which is the concept of Gingellville. The construction will improve the area that will benefit the other retail in the area and will fix a site that has been troublesome to the community for some time and will help the tax income and may provide some employment for local residents.

Mr. Michael Cicchini, of 3713 Rolling Hills Court, noted that he does not believe that the petitioner will save the trees and that this last Spring many of the trees were clear cut on the site.

Mrs. Peters noted her concern that the fast-food restaurants will bring much too much traffic for the area.

Mr. Batt said they are amending an existing approved PUD and the retail is much less than the original PUD and that they've worked hard on their traffic plan.

Ms. Barron noted her concern about the negative odors from the fast-food restaurants and about the traffic with that proposed plan as well.

Mr. Pote noted that he would prefer to know much more about the fast-food restaurants before the PUD is approved. He also informed the public that the petitioner is not offering anything as a benefit to the community for community benefits. Everything they are doing they must do as stated in the ordinance. As far as saving the trees, they have to do that to be in accordance with the woodlands preservation ordinance. He also noted that the reason that he pushed for a text amendment to the zoning ordinance, a few years back, so that what you show us in the renderings is what we get along with notes on the plans. That was done, because often we agreed to one thing, but got something else. Promises are cheap, hardware is forever.

Mr. Connelly commented that he believes that there are too many unknowns with this case to be able to take any action on it. He wants to see a traffic study done, too.

Mr. Bouyounan noted that the apartment developers cannot promise that there will only be empty-nesters living there due to the fair housing regulations. He's very concerned about the increased traffic hazards.

Mr. Cicchini suggested reviewing the information more completely before acting on this case.

Mr. Carpenter also suggested reviewing the information more completely before acting on this case.

Chairman Zande overviewed PUD procedures for the public.

PUBLIC HEARING MINUTES CONTINUED...

Trustee Porter inquired of Planner Wortman how this compares with our multiple-family district open-spaced density.

Planner Wortman noted that he did not conduct that type of analysis. The difference in density is 66 units vs. 77.

Trustee Porter commented that the PUD is a deviation of our multiple-family zoning district and they need to look closer at that.

Planner Wortman noted that if the Planning Commission would like them to do an analysis comparing it to the multiple-family zoning, we could do that.

Trustee Porter noted that since this site is ten acres, it should be under the woodlands preservation ordinance.

Planner Wortman stated, that's correct. They would be exempt for those areas that are considered developable. If they are involved in either parking, storm water retention, building footprint area, they would be exempt. The tree ordinance prevents clearing from all portions of the site.

Trustee Porter noted that he questions whether the tree ordinance has been followed with this parcel. It looks as though there are so many deviations from the ordinances and the plan view on these plans looks to him like the storage garages on Waldon Road with no open space. The developer needs to do his homework on this and his own personal feeling is that they don't qualify for a PUD.

Clerk Shults inquired, why were they taking the trees (last March) down in the first place and not abiding by our ordinances?

Ms. Peters noted that she had called the Township about it when it happened.

Supervisor Van Tassel inquired whom she spoke with at that time.

Ms. Peters noted that she called the Building Department in March several times to report the tree clearing, but nothing was done.

Mrs. Beth McGuire, Zoning/Planning Administrator, noted that she would need to confer with Mr. Berger to determine what happened.

Mr. Cicchini commented that the developer had clear-cut all the trees except one.

Mr. Eppink again repeated the 2004 tree survey, plans, etc.

Clerk Shults stated, it might be on your survey, but from what people that live there are stating, they're no longer on the property. So, it appears that we have information that is in conflict.

Mr. Eppink stated, I have been on the eastern part of the site and I know that the trees that we show on the tree survey were there three weeks ago when I was there. The trees that appear on our tree survey

PUBLIC HEARING MINUTES CONTINUED...

and on the tree survey list are there. Part of the Township's part of the review is that they will go out to the site to verify that our tree surveys are accurate. We have provided very specific documentation. He then overviewed their tree information on their plans, which were verified by their surveyor.

Commissioner Walker inquired whether it is true that many trees were removed from the site this last Spring.

Mr. Batt and Mr. Eppink noted that tonight is the first time they have heard about the removal of trees from the site.

Members of the public spoke from their seats and stated that they believe that Mr. Larry Mullins had removed the trees.

Mr. John Capozzoli, of 3448 Waldon Road, noted that those trees were removed in the Spring with huge equipment and that there aren't many trees left.

Clerk Shults noted that based on what's being said here tonight, we need current information to be able to make an informed decision.

Trustee Gonzales inquired when Mr. Batt became involved with this development.

Mr. Batt replied, I'm not sure. I think it was around May.

Trustee Gonzales inquired, this is owned by LRM Associates?

Mr. Batt stated, yes.

Trustee Gonzales inquired, if you're going to be developing this property, who will own the units?

Mr. Batt stated, we are. I'm purchasing the apartment section of this from LRM Associates.

Trustee Gonzales inquired, so that's going to be after the PUD is approved if it is approved?

Mr. Batt stated, correct. One more thing to Ms. Shults is that I think you have current information. We had a licensed surveyor out there and confirmed the tree locations. Part of the process as we go forward is for Township officials to verify those things. I maintain that what you have is current information and is correct.

Mr. Bouyounan asked for PUD procedures.

Chairman Zande again overviewed PUD procedures for the public.

Mr. Pote noted that if Commissioners vote tonight to recommend to the Township Board that this in fact is an acceptable concept for the PUD, you would in fact be recommending that those two fast-food joints are an acceptable concept and we no longer can discuss the fact that they're fast-food joints, is that correct? So, this is a vote tonight on the fast-food joints.

PUBLIC HEARING MINUTES CONTINUED...

Chairman Zande stated, I think you got it right.

Mr. Pote noted that Mr. Mullins has got two pieces there and has got two fast-food joints that your community doesn't want. He is also very concerned about the traffic issues that the fast-food would bring to Baldwin Road.

Supervisor Van Tassel stated, if there is no further comment from the public, the Chair would entertain a motion to adjourn the Township Board portion of this joint public hearing.

Moved by Clerk Shults, supported by Trustee Gonzales to adjourn the Township Board special meeting and joint public hearing at 8:55 p.m. Motion carried unanimously.

Since there were no further comments, Chairman Zande closed the PC-2004-23(2012) joint public hearing at 8:55 p.m.

\* on file

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