

**FINAL**  
**CHARTER TOWNSHIP OF COMMERCE**  
**\*\*ELECTRONIC ONLY\*\***  
**PLANNING COMMISSION MEETING**  
Monday, July 13, 2020  
2009 Township Drive  
Commerce Township, Michigan 48390

Due to Governor Whitmer's Executive Orders, this meeting was held via Zoom, video conferencing technology.

**A. CALL TO ORDER:** Chairperson Haber called the meeting to order at 7:01pm.

**ROLL CALL:** Present: Larry Haber, Chairperson  
Brian Parel, Vice Chairperson  
Brian Winkler, Secretary  
Tom Jones  
Bill McKeever  
George Weber

Also Present: Dave Campbell, Township Planning Director  
Jay James, Engineer/Building Official  
Paula Lankford, Assistant to the Planning Director  
Ben Sebrowski, Township Director of Technology  
Mark Stacey, DDA Director  
Randy Thomas, Insite Commercial

**B. APPROVAL OF AGENDA**

**MOTION** by Jones, supported by McKeever, to approve the Planning Commission Regular Meeting Agenda of July 13, 2020, as presented.

**ROLL CALL VOTE**

**AYES:** Jones, McKeever, Winkler, Weber, Parel, Haber

**NAYS:** None

**ABSENT:** None

**MOTION CARRIED UNANIMOUSLY**

**C. APPROVAL OF MINUTES**

**MOTION** by Jones, supported by Winkler, to approve the Planning Commission Special Meeting Minutes of June 1, 2020, as written.

**ROLL CALL VOTE**

**AYES:** Jones, Winkler, Weber, Parel, McKeever, Haber

**NAYS:** None

**ABSENT:** None

**MOTION CARRIED UNANIMOUSLY**

**D. UPDATE OF ACTIVITIES**

Bill McKeever – Zoning Board of Appeals

- We did not have an agenda since the last Planning Commission meeting.

George Weber – Township Board of Trustees

- The last Township Board meeting was on the 9<sup>th</sup>. I'll quickly go through some of the highlights.
- Regarding Board appointments, Jose Mirkin was reappointed to the DDA for a 4-year term.

- We have some new blood on the Parks and Recreation Committee with Mrs. Sarah Henderson. She has been appointed for a 4-year term, expiring in 2024.
- A couple other items might be of note to the Planning Commission. We are finally underway with the repaving of the Peninsular Park project, which is just north of Union Lake. It was lots of work with getting an intergovernmental agreement with West Bloomfield. The SAD was voted on and approved, so that will begin and should be finished by the end of summer.
- Tomorrow night, I think we will agree to amend the purchase agreement option for the Library land with Bruce Aikens. As you know, his option to buy that parcel was set to expire at the end of this month. Due to COVID and everything being delayed, possibly for a couple years, we will extend that to July of next year.
- Regarding Parks, Hickory Glen and the Richardson Center, we're looking at doing some new layouts, targeting parking and maybe some pickleball courts at the Richardson Center. We will do a study on both of those parks combined just in time for the 2021 Budget.

Brian Winkler – Downtown Development Authority

- From the June 16<sup>th</sup> DDA meeting, which I believe the Commissioners have received the minutes for, there are two things of note.
- One is that Randy Thomas provided the DDA Board with a very detailed update on the impact that COVID-19 will have on real estate for sale in the DDA, particularly the Aikens parcel, but also a very detailed description of the impact that the pandemic will have on real estate in general. I urge the Planning Commission to read the minutes from that meeting because Randy had a lot of good information that I think we all would benefit from.
- The other thing I wanted to mention was the election of officers. The DDA elected to stay the course with the current officers for the coming year, which for the sake of continuity was a great move.
- As always, I open the discussion up to Mark Stacey if he has anything to add.

Mark Stacey – The Barrington project is moving right along. I spoke with them this morning. They're looking at moving in the first tenants probably the first of the year. You'll note that at the front landscaping, the wing walls have been installed and they will be sprucing that up to make it look like a wonderful development. Adding to both George and Brian's comments, we're working closely with Bruce. Obviously the COVID situation puts a lot of issues in play with things like theaters and hotels. We're not sure how that's going to shake out, but I do know that when we're done, we're probably going to have the first COVID-19 compliant development in Michigan. Whether that means that you have put in different ventilation systems, make the streets bigger, have more pickup windows, adjust the alleyways for people to pick up product purchases from the back door; we're not sure yet, but Bruce is working on it. He has his development in Rochester Hills doing some of those things already. He has spent time up in Traverse City for the reopening to see how they handled it. He is very actively involved. He knows he has to get this development going. As you remember, he is an owner now. He purchased the front portion of the property for approximately \$4.5 million, so he is committed to getting this developed as soon as possible.

Jay James – Building Department

- It has been relatively busy since things have opened back up, but it's mostly been because of the backlog of work.
- We see a few permits coming through, but not nearly what we'd typically see.
- I would expect that toward the end of this month, things will start to slow down, and then probably until after the election.

Chairperson Haber – Before we move on, I'd like to introduce you all to Chelsea Rebeck and Samir Karim. They are going to be joining the Planning Commission. Hopefully they will be approved tomorrow. We invited them to join our group and we look forward to having them help us out. Welcome to the group!

Chelsea Rebeck – Thank you, Larry.

Samir Karim – Thank you.

Chairperson Haber – We look forward to meeting you in person, if that ever happens.

#### **E. PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA**

None.

#### **F. TABLED ITEMS**

None.

#### **G. OLD BUSINESS**

None.

#### **H. SCHEDULED PUBLIC HEARINGS:**

None.

#### **I. NEW BUSINESS**

##### **ITEM I1: GODDARD SCHOOL – USE DETERMINATION**

The Goddard School and franchise owner, Kellie McDonald of Lake Orion MI are requesting a Use Determination for a potential new childcare center located on a vacant parcel on the west side of Haggerty, between Pontiac Trail and Oakley Park.  
Sidwell No.: 17-24-200-052

Dave Campbell, Planning Director, gave a review.

Randy Thomas – Dave, you did a great job. Maybe, just for the new Planning Commissioners, can you explain why the Planning Commission adopted that 1500' rule and what its intent was. That will help me explain the rest.

Dave Campbell – My belief is that the intent was to keep primarily single-family residential neighborhoods from being overrun with daycare centers, and in so doing, having a residential zone turn into a quasi-commercial zone if there were too many daycare centers on any particular street or within a couple blocks of one another. I don't

know that the same concern would apply to Haggerty Road, which as we all know is a commercial, light-industrial, office corridor. However, it would still require a formal action by the Planning Commission to waive that spacing requirement.

Weber – Dave, do you know approximately when Section 26.202 was approved?

Dave Campbell – I did not look that up. Paula, correct me if I'm wrong, I would think it has been there since at least 2010 when the Township adopted a wholly new Zoning Ordinance.

Paula Lankford – Correct. It was 2010. I don't think we had that spacing requirement prior to that, but I would have to look it up.

Weber – No, that's fine. I was just looking for a ballpark.

Randy Thomas – Thanks, Dave. I appreciate that. I'd like to turn it over to Kellie McDonald. She owns and operates out in Orion Township. Kellie, could you give a brief introduction and then also address what you deem to be the market need from your perspective?

Kellie McDonald – Thank you. I currently own a Goddard School franchise in Lake Orion. We were the first franchise in Michigan 13 years ago, and now there's subsequently nine, with two as close as Novi. One is under construction, and one is about a year open.

We've been looking to grow and expand. We've been looking for a second site for a while. We came across this one and we're excited with it.

**Commission Comments:**

Chairperson Haber – Bill, we'll start with you. Any questions or comments?

McKeever – No, I don't necessarily have an issue with it. I would look at it the same way as Mr. Campbell's assessment as far as the reasoning behind the 1500' rule.

[7:23pm – The public meeting was disrupted. The IT Director solved the issues.]

Weber – I have a couple of questions. From this particular lot, further north on Haggerty, we have available space at Oakley Park and Haggerty. Was that parcel looked at? I don't believe it is as large, but that would be well beyond the 1500'.

Randy Thomas – Kellie was sent that parcel along with this site to evaluate both.

Kellie McDonald – I don't remember the other site.

Randy Thomas – It's in front of the climate-controlled storage facility on the corner of Oakley Park and Haggerty.

Kellie McDonald – The corner piece; I can't speak to much detail on it. A lot has crossed my desk, but I can revisit it if it is more optimal.

Weber – One additional question. Do you need 2 acres, based on the preliminary layout that you provided? If you need 2 acres, I don't think the lot at Oakley is 2 acres.

Randy Thomas – That's actually 2.3 acres, and the other is 1.8. There is a price differential between the two sites.

Mark Stacey – Significant.

Kellie McDonald – Oh, that could have been it.

Weber – You mentioned that there is excess demand. There's probably at least 5 existing daycare centers within a 2-mile radius I guess, and you mentioned that all of those are at very high capacity. Out of curiosity, I'm assuming you contacted them, but what capacity level are they at?

Kellie McDonald – I don't know if anybody tells a potential customer exactly what their capacity is, but I do know of a first-hand experience. I had a family that lived just west of the Kindercare. They drove to my Lake Orion school, so they drove an hour each way. They moved here while relocating and found a home, but the Kindercare didn't have space for all three children. After about a year, they finally had three spaces open up and they moved their children there.

We do a competitive analysis. All of the financials fit what we want. We don't take this lightly. It is a substantial investment on our part to build and to buy another franchise, and of course, no business is 100% guaranteed.

Dave Campbell – Ms. McDonald, is the method or curriculum of the Goddard School different from other daycare centers in the area?

Kellie McDonald – I think we're considered a premier service, which is why people drove an hour. They got to the point where they just couldn't do it anymore. Ours is a little bit different from the other programs in that we have a degree teacher in every classroom and lesson plans beginning with infants. We use a creative-based curriculum endorsed by the Michigan Department of Education, which is what children have when they enter into public and private school kindergarten. We focus on curriculum and also social aspects of the young mind.

Parel – I have no comments. Good question by George. Ms. McDonald, I appreciate the answer. I'm good.

Jones – Have you taken into consideration the spacing and preparations in how you're going to address COVID problems?

Kellie McDonald – We're licensed by the County. That drives our plan. Right now, there are no restrictions on group sizes in early childcare. We're deemed as an essential

business. We were never mandated to close. Currently, every adult that comes in wears a face mask. We screen them, check temperatures and sanitize their hands upon entry. This goes for all staff members, and also parents dropping off.

Jones – Other than that, I really don't have a problem. It sounds like your school is something different than just babysitting children. It's an educational plan. The other thing I would say is that I have a concern about the 200'. It's kind of close, but perhaps that's just lot line to lot line, and not necessarily facility to facility.

Dave Campbell – The 1500' spacing is meant to be property line to property line, and in this case it is 200' from the north property line of Kindercare to the south property line of this site, with a party store in between. An interesting collaboration of uses.

Winkler – I agree with Bill McKeever's assessment of what Dave mentioned about the reason we have that 1500' proximity rule. I would welcome a facility such as the Goddard School to Commerce Township.

Chairperson Haber – I think that 1500' rule was more for residential areas. This is a commercial area so I don't think it really applies here. I don't see any problem with it. Dave, we talked earlier today about two things. One was the possibility of school buses coming into the area, and two was access to the walkway behind the facility. I asked you, will there be an access from the walkway to Haggerty Road? So when we do get sidewalks there, will people be able to access that park area?

Dave Campbell – First, there's a paved pathway at the far east end of the Merrill Park neighborhood. Their detention ponds are back there and there's a nice asphalt pathway that loops around the detention ponds and connects back into their neighborhood. Even though it's owned and maintained by the Merrill Park HOA, it is open to the public. This property that we're talking about, their west property line abuts that Merrill Park park area, and that pathway has a stub which stubs into the west end of this property. Since we didn't know what was going to develop on this property, we had Pulte at least get that stub built with the intent to potentially connect to the Merrill Park pathway system, which itself then connects with the bigger pathway system of the Commerce Towne Place development.

From the perspective of the use as proposed, a daycare center, on one hand I could see the logic of them wanting to have a connection to that pathway system to take the kids for nature walks or fun stuff. Also, people who live in the Merrill Park neighborhood, a lot of whom are young families, might be customers of a daycare center at this property. It might make sense on nicer days to walk the kids to school. That said, I can also understand there being a safety concern since the property backs up to detention ponds. I could see the logic either way of wanting to maintain that connection. As far as a sidewalk along Haggerty Road; with any new development, the Planning Commission has the discretion whether or not to require a frontage sidewalk along the public road. If you look at the aerial, it's a hodge-podge of what we do and don't have for sidewalks on this stretch of Haggerty Road. If and when we get to a site plan, it would be up to the Planning Commission whether or not it would make sense to have a sidewalk along this property's frontage of Haggerty Road.

The other question about school buses I may defer to Ms. McDonald. I feel like I asked you, Kellie, and I don't remember the answer. Are you going to offer latchkey at this property? And if you did, would latchkey have Walled Lake school buses coming and going from the property? That is something we would want to think about when we get to site plan approval.

Kellie McDonald – We currently do not at my Lake Orion site. That is based upon the lack of demand because the public school offers it. I'm not that well-versed in Walled Lake Schools, so there is potential for that, but right now I do not offer that.

Dave Campbell – If and when we get to the site plan for this property, we will want to think about circulation for school buses if Ms. McDonald determines that is something she will want to offer.

Chairperson Haber – One concern I always have is the ingress/egress during busy hours. A number of years ago, before M-5, I would have frowned upon this particular usage on Haggerty Road. However, Haggerty does not have the same intensity it had back then, so I don't have a problem with it. Dave, what are you looking for on this?

Dave Campbell – I would like to see a motion. You would be waiving a Zoning Ordinance requirement for 1500' of spacing.

**MOTION** by Jones, supported by McKeever, that the Planning Commission approves Item I1, the request by the Goddard School and franchise-owner, Kellie McDonald, for a Use Determination for a potential new childcare center located on a vacant parcel on the west side of Haggerty, between Pontiac Trail and Oakley Park.

Sidwell No.: 17-24-200-052

Motion to allow the land use of a childcare center & preschool on "Parcel L" (Parcel ID# 17-24-200-052), a vacant 1.8-acre parcel on the west side of Haggerty Road between Oakley Park and Pontiac Trail, despite its distance of less than 1,500 feet from at least one other State-licensed childcare facility. The Planning Commission finds that a childcare center on the subject property would not result in an excessive concentration of such facilities in a single neighborhood or the Township overall. This motion is relative to the proposed land use only, and is in no way intended to imply site plan approval. The motion is specific to The Goddard School's operation as described in the narrative provided by franchise-owner Kellie McDonald.

**ROLL CALL VOTE**

**AYES:** Jones, McKeever, Parel, Weber, Haber, Winkler

**NAYS:** None

**ABSENT:** None

**MOTION CARRIED UNANIMOUSLY**

**ITEM I2: Discussion: Lakeside pool fences – Jay James, Building Official**

Jay James discussed the following with the Planning Commission:

- I'll give you some background first.
- A couple years I came to the Planning Commission asking for your interpretation and input as far as pool fencing and pool covers.

- The Building Code, when it last changed in 2015 I believe, or started in 2017, the Code allowed specific pool covers to be used in lieu of fences. So, these pool covers had to meet certain requirements in which they would have to be closed, and once closed, they are considered inaccessible by the public.
- I brought that to the Planning Commission and you made it clear that you still wanted to see fences around pools, and that's what we have been doing since then. However, we have had multiple pools come to the Building Department that are on waterfront lots. They're on the lakeside of the lot, and the Building Code does allow the water to act as a fence or a barrier for access. If you were to run fences down both sides of the property line, all the way to the water, the water would act as the other barrier and the pool would be considered inaccessible by anyone outside of that household.
- Our Ordinance, however, does not allow fences to go within 25' of the water's edge. Our Ordinance also prohibits fencing that runs parallel to the water in any circumstance. We've got a conflict of the Ordinances, where our pool Ordinance requires the pool to be fenced in, but on a lakefront lot you can't fence it in without being in conflict with the other fence Ordinance which prohibits fences from running parallel to the water.
- What we've been doing is allowing fences to go around the pools, and trying to keep the fence as close to the pool as possible. Typically, you have the pool's edge, and then there's a walkway, and then we have them put up the fence. However, multiple residents have asked to have a larger pool deck where they would put up chairs and places to sit, so that fence now gets bumped out from being close to the pool and maybe closer to the water.
- I'm just looking for some direction on what the Planning Commission would like or wants to see, specifically when it comes to pools on lakeside lots. I think some residents would love to have fences run all the way down, and in some cases that might be a good option, but in some it might not. Everybody wants to have a little more space in their pool area. I can understand; I have a pool and I have a large deck to go with it. My yard allows me the ability to do that, but when you're on the lake, we've got to take into account viewsheds of the neighbors and other items like that.
- I'm just looking for direction to help me and to help these residents on what they're looking to get. When I tell them they can't do that, some of them have looked in the Ordinance and said, "But this Ordinance allows it."

Weber – Jay, what is the height of the fencing around the pool in the Ordinance?

Jay James – It's 4'.

Weber – And the fencing that is allowed to run perpendicular to the water along the property's line, not to go 25', what is the minimum height for that?

Jay James – The maximum is 4'. We do not allow any fences over 4' on the waterside front yard.



Weber – But you can't get closer than 25' to the water's edge with any fence going down.

Jay James – Right.

Weber – Obviously, the Ordinance around the pool is a safety issue. You don't want the neighbor's kid to fall into the pool. Living on a lake, you don't want to have fencing that runs all the way down to the water's edge and obstructs views across property lines. Could you use that 25' setback and say that, as long as your fencing is no closer than 25' to water's edge, with the maximum height of 4', would that accomplish what you're looking for?

Jay James – We can do that, however when you run it down both sides to within 25', you have to run a fence to the water's edge which is specifically prohibited in our fencing Ordinance.

Chairperson Haber – Dave, do you have anything you want to add to this before we go further into this discussion?

Dave Campbell – I'm letting Jay handle this. I think the outcome of this, one way or another, needs to be an amendment to our Zoning Ordinance to clarify whatever we all agree upon, either this evening or in a subsequent meeting. There is a conflict between what we require for a pool fence relative to what we require and what we prohibit for a lakeside fence. A lot of people want to have a pool on a lake, and so one way or another we've got to make those standards mesh with one another.

Jay James – Correct.

Chairperson Haber – George, anything more you want to add?

Weber – Jay, the document you supplied in the packet is a perfect example of what can and can't happen. The primary purpose is safety around the pool. We need to make sure we protect that. The secondary purpose is not obstructing property lines going down to the water's edge, correct?

Jay James – That is one of the items.

Weber – Do you have a recommendation or an alternative?

Jay James – I don't. I have my personal opinion, but that might differ from my professional opinion.

Weber – We're interested in your professional opinion.

Jay James – Okay, my professional opinion is that the pool must be enclosed with a fence for safety issues. There is nothing in our Ordinance or the Building Code that directs as to how far that fence has to be away from the pool. For instance, I have a

very large backyard and I could fence in my entire backyard just because I have a small pool. People on a lake don't get that opportunity because we don't allow them to fence in their entire lakefront lot. So one of the options is to allow fencing to go as close as 25' and that would be good; however, I just want everyone to understand that in some cases, the neighbors will still indicate that it's intruding onto their viewshed. I don't see a way to get away from the viewshed issue, because we will always have that issue with neighbors on lake lots.

Weber – How is the viewshed impacted if you have a 90-degree fence line, and you're allowed to have that fence perpendicular to the water, that goes 25' from the water?

Jay James – At the maximum, we can only make somebody build their house 25' away from the water's edge. Our Ordinance says, if you're building on a lakefront lot, your house must be setback the average of the two adjoining lots, but no more than a maximum of 50' from the water's edge. If all the houses are 50' back and somebody puts in a pool, and they want to take the fence out to within 25', you might have neighbors complaining about that.

Weber – But even if you don't have a pool, you could put a fence up to 25', correct?

Jay James – You could, but not parallel with the water.

Weber – That 4' fence, does it need to be see-through, whether it's chain link or posts, or can it be a solid 4'?

Jay James – Paula, correct me if I'm wrong, I believe it has to be ornamental.

Paula Lankford – That's correct.

Weber – I'm not sure what that means.

Jay James – Ornamental is a wrought iron type of fence.

Weber – Not solid.

Dave Campbell – Not a privacy fence.

Jay James – One of the options is that we could look at them on a case-by-case basis. We could send them to the Zoning Board of Appeals. There are some properties where it really wouldn't hurt to run it all the way to the water, but Dave and I are very cognizant, trying not to put something in the Ordinance that will show up in front of the ZBA.

Weber – How many of these are you seeing?

Jay James – I think we've seen 3 or 4 this year.

Weber – What has been the solution, are they just fencing in the pool?

Jay James – Yes, we're telling them you can fence in a walkway or a pathway, and most of the time that's all they're looking for is a walkway around the pool. The majority of the decking is usually between the house and the pool for chairs and tables, but there are some lots that are pie-shaped that get larger at the water, so they want decking toward the water. Or, they don't have neighbors on the other side of the water so it's more of a clear viewshed for them. It's 6 of 1, half-dozen of the other.

McKeever – Obviously we either need to make a minimum boundary around a pool, or ... Have we looked into surrounding municipalities to see how they address it?

Jay James – I have not. I believe we looked when we brought it to you with the pool covers.

McKeever – Because we're in the lakes area, I'm sure it's addressed in other municipalities that may be able to offer us some guidance on how they work.

Jay James – Let me back up one step, because there is one solution if it's something that the Planning Commission would consider and that is allowing the automated covers that comply with the Building Code. If you were to allow that, that would eliminate the fencing issue.

McKeever – But then we would be requiring that cover on a pool.

Jay James – They could still put in a fence if they so chose, but a cover would suffice. If we put a minimum; say, you're allowed your pool, the outside edge of your pool, a 5' walkway and then your fence. If they don't want that, they could go with the automated pool cover so that they wouldn't have to do that fencing.

Weber – But the automated pool cover ... the purpose of the fence is that somebody doesn't have to close a pool cover. The fence is there. If somebody forgets to close a pool cover, we've got a safety issue.

Jay James – Correct.

Dave Campbell – Jay, correct me if I'm wrong, the automated pool cover is allowed per Building Code as a substitute for a fence?

Jay James – Correct.

Weber – Bill, to your comment, on Wolverine Lake there's a number of pools and they are all fenced around the pool. There isn't anything that extends beyond the general pool area.

McKeever – I realize that but the situation we get into is like Jay says, everybody wants to have their yard as a patio right to the beach. As long as we're going to allow people

to build a pool within the setback, then we're going to have to come up with some sort of compromise where fencing or covers can exist.

Parel – I'm not sure I have any further comment other than I do agree that it could set a dangerous precedent, or it could lead to significant safety issues if we allow pool covers in lieu of fencing. I don't like that idea.

Jones – I agree with what Brian just said. I saw something not too many months ago of a child that crawled under a cover. I do not understand the type of cover that you're talking about, or whether it's possible for a child to crawl underneath one of those things.

In any case, having had a pool for many years in Southfield, they were very specific about the fencing around the pool because of their liability in having to condone something that could potentially create liability for them. It's not just a liability for the homeowner; it's a liability for us. From that standpoint, I feel strongly about a fence around the pool and not having it run down to the water's edge, because that leaves it open for someone to come in that you don't want in there.

Winkler – I see three items that I think the Township Ordinance needs to address. The first is, what is the minimum distance that the fence needs to be away from the edge of the pool on however many sides the pool has?

The second item is, whatever requirements we come up with the positioning of the fence around the pool, based upon what I just said, if the property owner can't provide a fence along the waterside edge of the pool that meets that 25' setback clearance, then maybe the ordinance needs to read that if they can't meet those first two criteria, then the Township allows for the fence to run to the property line.

I think there's a multi-faceted issue here. One is, what is that minimum distance from the pool edge to the side of the pool for the fence, and then what happens when Jay faces a situation where the fence along the waterline ends up being closer than 25' to the water's edge?

Chairperson Haber – I remember this discussion very well from when we originally brought it up. Our intent was for the safety of the children. If you want a pool, you've got to do certain things or you don't have a pool. We said we wanted a fence around the pool, and I think that's the way it should read. We can debate how far it has to go from the edge of the pool. I think that was the intent. Jay, do you want us to redo this whole Ordinance?

Jay James – No. So what I'm hearing so far is that you don't want any fences closer than 25' to the water's edge, and we want to try to restrict the fence between the pool and the lake to a certain distance.

Typically you would have a 5' walkway. I would also recommend that you allow at least another 3' for some landscaping, because some people want to put shrubs between the walkway and the fence, but under no circumstance can that fence be closer than 25' to the water.

Chairperson Haber – I think that's it. Is that the intent everybody?

Jones – Yes, that the pool is enclosed with fencing.

Jay James – The pool is enclosed with fencing, the sides can go to their property lines, but no fence can go closer than 25' to the water's edge, or no more that say 8' from the outside edge of the pool to the water.

Jones – Right.

Winkler – I'm okay here.

McKeever – Okay.

Jay James – Dave and I will work on getting that verbiage into the Ordinance and we will bring it back to you.

Chairperson Haber – The intent was always to keep people safe. We need to keep the fence around the pool.

### **ITEM I3: Discussion: Attorney opinion regarding electronic signs**

Dave Campbell – This has to do with electronic signs. We have talked about whether the Township should prohibit them moving forward, whether they be a changeable message electronic sign, or a static electronic sign. I think the consensus I've heard in prior meetings is that we want to say, no more of these, and the ones that we have will remain as lawful, nonconforming signs.

Before we moved ahead with amending the Zoning Ordinance, we wanted the opinion of the Township Attorney. Anytime you're talking about signs, now you're talking about protections of free speech. It took awhile due to COVID and the shutdown, but we did receive an opinion letter from the Township Attorney. It was included in your packets and it states, yes, you as a municipality are within your rights to prohibit electronic signs, on the basis that by their very nature they can be distracting to drivers. They're bright, they move, they flash, they scroll and therefore, case law demonstrates that there is a legitimate argument that they are a public safety concern.

The Township Attorney did point out that the same logic would not apply to changeable signs, the type that you change by hand with vinyl letters. You can't make a valid argument that those are a distraction to drivers because they are not meant to change instantly.

If the Planning Commission is still of the opinion that we should amend our sign regulations to prohibit electronic signs, which other communities do, and which our Attorney says we are within our rights to do, we will make that change. Sometime in the near future, we will schedule a public hearing for that amendment to the Zoning Ordinance, along with some other changes we want to make to our sign regulations that we have been talking about for a while, particularly those that come up at our Zoning Board of Appeals for freestanding signs that are too close to the road. That's a pretty regular item at the ZBA, so we want to make some adjustments to that.

Chairperson Haber – Okay, let's run through this quickly. Bill?

McKeever – I agree.

Parel – I didn't get everything I asked for, but I'm happy that we're no longer going to have any electronic signs going forward.

Chairperson Haber – So you're all for it?

Parel – Yes. Dave, I've got a question with regard to gas stations and how this applies to them. What happens under this scenario if we start banning electronic signs. I don't think there will be many, if any, new gas stations coming. But, if an existing sign of a gas station comes to the end of its useful life, would that gas station no longer be able to replace their old sign with a new electronic sign?

Dave Campbell – That would be the intent, unless we want to address that specifically. If Applebee's sign comes to the end of its useful life and they want to replace it with an electronic sign face, we would tell them we don't allow electronic signs and they would have to install a static sign face. If they already had an electronic sign and it breaks down, they could repair it, but they couldn't replace it.

So, a gas station in particular, if they have a changeable electronic gas price sign and they wanted to replace it, or they were doing re-branding, they would have to revert back to the more traditional sign model where they change it by hand.

Jones – I don't think we should do that to them. I think we should allow them to have a similar product. It's not flashing, but it's something where they can change the price and it stays the same all day. I think we need to accommodate them.

Parel – So Tom, you're thinking for gas stations specifically, we would allow a carve-out for them?

Jones – Yes.

Parel – But everybody else who has electronic signs, and their sign comes to the end of its useful life, they will no longer have the right to put up a new electronic sign in place of that.

Chairperson Haber – I think once the sign dies, it dies and it has to be replaced by a new one. There are no new electronic signs. That's what we're saying.

Parel – That's what we're saying, but I believe Tom is saying that for gas stations, maybe we should consider allowing them.

Chairperson Haber – I think it needs to be for everybody, not just gas stations.

McKeever – But is a gas station considered the same as an animated sign?

Chairperson Haber – We're talking animated signs, and not the ones that you see change the price.

Dave Campbell – In my mind, we're talking about electronic signs. A sign that conveys its message electronically, through a series of small electric diodes. I think if we try to carve out something specific to gas stations and gas station prices, we might be wading into dangerous water again because now you're regulating the content of the message. That's something that we're not supposed to do. Whether the content says, "2-for-1 Cones", or whether the content says, here is what the price of unleaded gas is, we shouldn't be treating them differently based upon the message.

McKeever – No, but can we treat them differently based upon the frequency of the message? I mean if they can just change their pricing from their laptop ... Granted, it fluctuates quite often but it's not like the nuisance signs that are constantly scrolling.

Dave Campbell – I'm not sure how often the gas stations change their prices; I would guess it's a couple times a day maybe. If the intent is to eliminate electronic signs, then you have to apply that equally. If you're going to allow them and say they can only change their message once or twice per day, I'm not sure that was the intent of trying to eliminate them entirely. Even if a message is only changed once per day, do we want an electronic sign?

Chairperson Haber – Are we just talking about animated electronic signs? That may be a better way to say it.

Dave Campbell – I'm talking about electronic signs. Even if the message doesn't change all that frequently, the message is still conveyed by small electronic diodes, as opposed to a static panel or physical sign that is just illuminated with light bulbs.

Jones – Would you consider asking the Attorney, Hans Rentrop, for an opinion on this?

Dave Campbell – I'm always happy to ask Hans questions. That's what he's there for. Help me understand what the question would be.

Jones – Well, for somebody that has a sign that rarely changes and it's just something that shows a price number, or some type of lettering that's not changing constantly. I think it would be pretty tough on a gas station to say that you've got to go back to getting on a ladder to post the sign with plastic numbers. I don't like that idea.

Weber – A question for Dave / Bill. We have X number of gas stations in Commerce, and it's a relatively small number. I'm going to guess that the useful life for one of their signs that displays the price has got to be 25 years or so. There would be repairs, et cetera, but replacing a sign has got to be a pretty long life, unless they're changing brands. Wouldn't that be something that would be most efficient to be handled in the ZBA as a potential solution? Once we get into defining what an electronic sign is, there will be a million different work arounds. Some of the original discussion was, one, we don't want this to look like Las Vegas or other strips we see in our neighboring towns where, at night, the roads are lit up like a Christmas tree because of the brightness and movement of the signs. We also talked about a sign being an advertisement for the company and the location, not a commercial for the daily special on Bud Light.

Chairperson Haber – Dave, I think we're going to have to get a little more clarity on this, but the intent is, we don't want any electronic signs that flash every 15 seconds. Let's get a little more clarity and you can bring it back to us.

Winkler – I agree with Tom in suggesting that Dave Campbell go back to the Township Attorney and see if there's any difference in their opinion to the Township on if a static electronic sign can be dealt with in a different manner than a dynamic electronic sign, which in my opinion, is the chief issue the Township is trying to control in our Ordinance.

Dave Campbell – I'm happy to do that. Particularly what we're thinking about in having this conversation is gas stations and gas price signs?

Chairperson Haber – Every sign. I don't want to just cut gas stations into or out of this. We have to have an Ordinance that's all-encompassing, and everybody has to stick with it, not just one person.

Weber – I'm not clear what we're asking Dave to go back to the Attorney with. I think within the Planning Commission, we need to define that. I think Brian Parel's original view was, "No Electronic Signs" period; not defining what an electronic sign is, versus something else that we've been discussing.

Chairperson Haber – George, let's look at the intent of what we're trying to say. I think Brian and I agree that we don't want signs that change their message every 15 seconds. That's distracting to drivers. It is to me because I read them. I think that's what we have in mind.

Now, these gas stations that change their sign once or twice a day, that's not an animated sign. That's just an informational type of sign.

Weber – I agree with you.

Chairperson Haber – Okay, so Dave, I think that's where we want to go with this. The intent is not to have signs that are distracting by cycling through every 15 to 30 seconds or so. Signs where they change the price a few times a day are not a concern. Brian Parel, do you agree with that?

Parel – I appreciate it. My position is that I don't want electronic signs at all. I think the way that we get them to be banned, and what the attorneys are saying is that we base it on the fact that they are distracting the drivers.

Chairperson Haber – Well, I don't think we want to go back to the time when they had to walk out at a gas station and change the price.

Parel – That's why I just made that call out. I look at other communities and I see several where I respect the ladies and gentlemen that do the same job as us. I always look to see what they do.

When I look to Bloomfield Hills, I don't think that they allow electronic signs of any type. They go back to the old way of doing it.



Chairperson Haber – That’s why I was saying animated electronic signs. That limits it right there without cutting everybody else out.

Dave, go back and see what the attorneys seem to think about that and come back to us so we can delve into it further.

**ITEM I4: Planning Commission 2019 Annual Report**

Dave Campbell – This is a report that you submit on an annual basis to the Township Board. Again, this is something that we would have normally done earlier in the year. I'm going to spend the rest of 2020 just blaming everything on the virus. If I'm late on something, it's because of the virus.

Chairperson Haber – Works for me.

Dave Campbell – Okay, so normally we would get this to you in March. Now it's July. This is our annual report as required by the Michigan Planning Enabling Act. If you are comfortable with its content, you would make a motion to forward it onto the Township Board for their acceptance.

Chairperson Haber – Any comments?

Jones – I see no reason not to forward it as written. It was very well done.

**MOTION** by Jones, supported by Winkler; move to approve the Planning Commission’s 2019 Annual Report and present it to the Commerce Township Board of Trustees for acceptance.

**ROLL CALL VOTE**

**AYES:** Jones, Winkler, Weber, Parel, McKeever, Haber

**NAYS:** None

**ABSENT:** None

**MOTION CARRIED UNANIMOUSLY**

**ITEM I5: Development Update Presentation**

Chairperson Haber – This is something I asked Dave to do, to update us on what’s going on in the Township that we approved over the last year or so. We are going to do this on a periodic basis so that we can see the progress.

Dave Campbell shared his screen for the PowerPoint presentation. He provided project location, site plan, building elevations, current photos of the site, and discussed the following updates with the Commissioners:

- Allergy & Asthma Physicians – Nice brick and tile; landscaping is coming in. It turned out to be a pretty nice site along Union Lake Road.
- Bajoka Plaza – S. side of Maple, E. of M-5; this is obviously still under construction. They have started on their landscaping. I think they hope to have this done by the fall.
- Barrington Apartments – At the northwest corner of Martin and Pontiac Trail; this is their landscape plan. We went with the elevation of the clubhouse and this is how it looks to date. It’s turning out pretty nice with all the stone, brick and windows. This is their two-story product. There will be 12 units per building, and

every unit has their own 2-car garage. I think these will be popular when they're ready by the end of the year.

- Benstein Grille – This one has been getting a good bit of attention lately from folks with loved ones in the cemetery. Here was their landscape plan which got tweaked along the way. As part of this, they did a building addition along the north side of the building. You can see the area that is the addition, and if you look further back, you'll see the expansion of the parking lot. This just got paved and striped the early part of last week. This is the relocated pathway, which was part of their deal to buy property from Commerce Township to build their parking lot. We do have at least one family with a loved one buried in the cemetery who was not happy to see these trees removed. We're having conversations with them. Benstein Grille has started putting in their landscaping. When they're finished, the Township might want to see a few additional trees or shrubs planted, or even a privacy fence to create more of a buffer between the expanded parking lot and the relocated pathway.
- Beyond Self-Storage – This is in a high-visibility spot at Oakley Park and Haggerty. I think it turned out pretty nice for a storage facility.
- Basic Rubber & Plastics Company – This is Boulder Court, on the west side of Martin Road. This was what they call Unit #4 of the industrial subdivision. The building turned out almost exactly like the rendering. They added a knee wall along the front, which turned out pretty nice.
- C.A. Hull – This one goes back a few years, but it took awhile to get completed. This was an office addition to the C.A. Hull facility along Goldie Road on the west side of Haggerty. Here's their rendering. The portion with the glass and brick, that's the new portion. The original portion goes back to the 60s. C.A. Hull builds bridges for MDOT, so they've got a big yard behind the building with all their cranes and materials. We required them to screen that, and they did a pretty good job of it.
- Comfort Care – The corner of Decker Road and 14 Mile; this is an assisted living facility. This is their color elevation and I tried to get a picture at the same angle. That building is coming along and I think they want to be open by the end of the year.
- Michigan Schools & Government Credit Union – At Pontiac Trail and Walnut Lake Road; this is completely done, landscaping is in, lawn has filled in pretty well.
- Savage Building – Mr. and Mrs. Savage own a company called Build Master. This is on Comwall Park, which is on the north side of Maple, just east of Benstein Road. This is a light industrial building along some wetlands. It's off the beaten path a little.
- Shearwater – This is over toward Walled Lake Western High School at the corner of Beck and Maple. It was called Maple Ridge when it was approved; they subsequently changed the name. The clubhouse obviously looks very similar to Barrington as it's the same developer. If you get over there, it is very well landscaped. There are flowers everywhere, guys running around with string trimmers and lawn mowers all the time making everything look really nice. We

will have that same expectation with the level of landscaping and quality with Barrington once it's done.

- Sidecar Sliders – Haggerty Road; this was taking an old building and putting a new restaurant in it. It's a building that hadn't had anybody in it for probably 20 years. Their lawn could use some water, but here's their outdoor seating and the building has a fresh new look.
- Zerbo's – South side of Maple Road, east of M-5, next door to the Bajoka plaza; this one has taken a long time, but as you can see, they're very close to being done. The lawn and landscaping are in. It's certainly a very different building in terms of materials and design, but it's turning out nicely.

Chairperson Haber – Dave, thank you very much for doing that. I hope everybody appreciated it. We're going to do this on a more regular basis now. I think we did a fine job and we should compliment ourselves because all these things came out looking nice, and they're all assets to the community.

Dave Campbell – My pleasure.

**J: OTHER MATTERS TO COME BEFORE THE COMMISSION:**

Chairperson Haber – This is a very happy and sad day for me. It's time to say farewell to Tom Jones. Tom and I have been together to 20 years or so. He's been here for 22. Tom, I will miss your expertise, I will miss your smile and I will miss your friendship. I wish you the best in your next 25 years. With that being said, Dave has a couple things he'd like to say.

Dave Campbell – I had Paula track down some statistics. This is the back of Tom's baseball card. His first meeting was in November 1998. We did a count by going through all the old minutes and we think that Tom has attended 396 Planning Commission meetings. He had only a handful of absences in his 22 years. He was the Planning Commission Secretary from 2001-2004. He served as the Chairperson in 2005, and his longest duration as the Vice Chairperson from 2006-2017. Obviously Tom has been a great asset to the Planning Commission and to Commerce Township. We're all going to miss him. Thank you, Tom.

[Applause]

Ben Sebrowski – Can I also add something? For an 88-year-old, he handles this Zoom thing pretty well.

Chairperson Haber – There was a lot of help, but he has done it. Tom, give us a couple departing words.

Jones – I mentioned to Paula recently that I've retired from the real world three times, and in each case, I did not miss the job but I missed the people. This is different – here I'm going to miss the job and the people. It has been a pleasure. I've always looked forward to it all these years.

We have had great Trustees that have been there, starting with Dan Munro, then we had David Law, then John Hindo, and now George Weber. I think George is equal to or better than any one of them. We have been lucky to have a good representative from the Township Board. I'm really going to miss this. It chokes me up a little bit. I loved it, but I think that it's time. With my health issues I'm being ultra-careful about going places, and I'd like to be around for a little bit. I just now got a great-granddaughter and I want to spoil her. I'm going to miss you guys.

Chairperson Haber – Tom, don't be a stranger. You know you're more than welcome to attend our meetings anytime.

Jones – I'd love to come to a meeting.

Weber – Just don't ask any hard questions.

Dave Campbell – Hopefully we can still give Tom a proper send off once we're back to having in-person meetings.

Chairperson Haber – We'll share some plans with you soon, Tom. Do me a favor, continue to watch our meetings. Come to them if you can. I value your expertise and your knowledge and we'll miss you a lot.

Jones – Well, if you ever think there's a meeting you want me to listen to, I'll use Zoom.

#### **K: PLANNING DIRECTOR'S REPORT**

- **NEXT REGULAR MEETING DATE: MONDAY, AUGUST 10, 2020 @ 7PM - potentially electronic-only**
- On August 10<sup>th</sup>, we will potentially see a petition from the Union Lake Road Kroger store. They would like to upgrade their liquor license from beer and wine to beer, wine and liquor. That requires Special Land Use approval from the Planning Commission. Their application just came in yesterday.
- 84 Lumber is having their preliminary conference for their Conditional Rezoning. We have that scheduled for Wednesday; that's with the Township Attorney and the Township Supervisor. That's the formal kickoff for their effort to retrofit a lumberyard on Pioneer Drive off Martin Road.
- At tomorrow night's Township Board meeting, they'll be hearing a presentation from the developers who want to build about 200 new houses on the western most of the Sleeth Road gravel pits. The Planning Commission saw this project about a couple years ago as a concept. They've been working through everything all this time and different financing options. They will present a proposal tomorrow night for a Brownfield financing program that the Township, Oakland County and the State of Michigan would all have to partner on. They are hoping for preliminary buy-in from the Township Board.
- Paula and I are still trying to schedule a meeting with the potential buyers of the Bay Pointe Golf Course. The family that owns it has been trying to sell it for a long time.

Paula – It's scheduled for Monday.

Dave Campbell – Okay. Depending on how that meeting goes, we might finally be seeing something happening on that property.

Discussion took place regarding the soil borings and soil conditions on the Bay Pointe site.

Winkler – For Dave and Paula's benefit, I let them know previously that I am unable to attend the August 10<sup>th</sup> meeting because I would be on vacation. However, if the meeting is held via Zoom, or electronically, I will be able to attend. If it is in-person at the Township Hall, I will not be able to attend.

Chairperson Haber – It will probably be a Zoom meeting. We'll try to keep it short.

Winkler – Given the agenda, I would be more than happy to participate.

Dave Campbell – Mr. Weber requested that I mention, there was a significant ruling by the Michigan Supreme Court that has to do with medical marijuana and particularly the primary caregivers. These are the folks that can grow up to 12 plants per patient, and they can have up to 6 patients, so up to 72 plants.

There were two separate cases that found their way through the Michigan Court of Appeals and all the way to the Michigan Supreme Court. The baseline question was, "Can local municipalities like Commerce Township zone primary caregivers?" Can we say, for example, that primary caregivers are only permitted in the industrial district, which is what Commerce Township currently says. That was challenged by a couple different caregivers who said, "The State law doesn't say that you can, therefore you cannot." The Court ruled that, yes, local municipalities are within their rights to regulate primary caregivers, above and beyond what is allowed by State law.

Therefore, our Zoning Ordinance is correct when we say that primary caregivers can only grow their medicine within our industrial districts.

Chairperson Haber – Okay, I knew we'd get it right. You figured that one out.

Weber – I have a couple quick items to add. For knowledge, I did read where Granger is selling a number of their properties, and not just within Michigan. It looks like they're trying to divest of some of their senior care centers. Maybe that's why we have not seen them come back after they met with us many months ago.

Dave Campbell – Yes, we've been hearing that from Randy Thomas as well, that Granger is looking to sell and that the Commerce Township location would be one of those facilities.

Weber – The other thing is that Jay gave me access to Near Map a few weeks ago. It's the tool that Jay uses and brings up on the screen when we ask him what a property looks like. You can go back into the history to see what the property was. It shows the property lines, et cetera. I think that would be an outstanding tool for all of the Planning

Commission members to have access to. I think it would help us prepare for the meetings much better and maybe we will be able to ask more intelligent questions too.

Chairperson Haber – Paula, can you work with Jay on that?

Dave Campbell – We will send all of you an invitation to your Commerce Township email addresses. You have to accept, and then create a username and a password.

Weber – It only took Dave 5 minutes to take me through a quick tutorial.

Jones – With regard to the Kroger request for liquor. Do we have to look at how they fit into our current ordinance? We just turned down a couple people recently.

Dave Campbell – Yes, and Tom, the reason that Kroger is a different animal is because we specifically said, if you are a full-service grocery store then the standards that apply to you are different than the standards that would apply to a party store or gas station.

Jones – Oh, okay.

Dave Campbell – But they still have to get Special Land Use approval.

**L: ADJOURNMENT**

**MOTION** by Jones, supported by Weber, to adjourn the meeting at 8:38pm.

**ROLL CALL VOTE**

**AYES:** Jones, Weber, Winkler, McKeever, Parel, Haber

**NAYS:** None

**ABSENT:** None

**MOTION CARRIED UNANIMOUSLY**

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Brian Winkler, Secretary