Charter Township Of Lyon
Planning Commission
Meeting Minutes
February 13, 2006

Approved as changed on March 13, 2006

Date: February 13, 2006
Time: 7:00 PM
Place: 58000 Grand River

Mr. Barber called the meeting to order at 7:00 P.M.

Roll Call

Present: Barber, Mike (chair)
Dome, Jim
Hamilton, Jim
Soper, Ted (vice-chair)
Williams, Laura

Absent: Hicks, John (Board Liaison)
James, Laura (secretary)

Also present: Philip Seymour, Township Attorney
Chris Doozan, Township Planner
Michelle Aniol, Township Planner
Al Hogan, Township Building Official

Guests: 7

Approval of Agenda

Mr. Soper made the motion "that we approve the agenda for Monday February 13, 2006 as written." Mr. Hamilton supported the motion,

Voice vote:
Ayes: all
Nays: none
Absent: Mr. Hicks and Ms. James

Motion approved.

Approval of Consent Agenda: None

Comments from public on Non-Agenda Items: None

Public Hearings: None

Old Business: None

New Business

1. AP-05-48, Quadrants (VS-17) Industrial Spec Building Site Plan, Site plan review of proposal to construct an industrial building on Helene Drive.

Mr. Doozan reviewed the comments in the McKenna Associates letter dated January 30, 2006.

Robert Carson 41111 Andover Road, Bloomfield Hills, MI - Mr. Carson explained that he was representing the applicant and explained that this is a site plan for a use as zoned. It is an approved use for this area and is the construction of a building on speculation without a tenant in mind. It is no different then if you were to have an industrial building that exists today and a tenant moves out. You would not require the owner to knock the building down until another tenant was found. Mr. Carson argued that the "conditions in 'A' which have now been corrected to certificate of occupancy and 'C' which is the building permit, are illegal." Mr. Carson also commented that the building can be built. It is subject to lawful ordinances that the Township has, but it is not up to the Planning Commission to require issues with respect to certificates of occupancy or the pulling of building permits. It would be a denial for the Planning Commission to do that because one could never build a building based on speculation. He cannot answer questions about the tenant because he does not have a tenant as of now. The applicant does have a use as of right, so he is entitled to build on the property. It is land that the Township and Planning Commission have undertaken to hold the use as industrial. A site plan has been provided for an industrial building that meets the criteria. It should be approved without conditions. As to any other lawful conditions, we can discuss them. The two conditions relating to the tenant are self-defeating to the development and not a requirement that you create for any other type of use within the Township. Mr. Carson gave an example of residential property that has ordinances dictating what types of buildings will be built on property and do not require one to pull a building permit once the Township knows who is going to buy or lease the house. That is a major block that we need to address.

Mr. Doozan commented that as he indicated in item "A" and applies to item "C" that it would be prior to issuance of a Certificate of Occupancy so that would indicate that you could pull a building permit and build a building prior to those two items being addressed. Mr. Carson responded that it is not up to the Planning Commission. The Planning Commission does not set the criteria for Certificates of Occupancy. There are other ordinances that do that. The Planning Commission, under that State of Michigan, must approve or deny site plans if they meet the zoning ordinances. Certificates of Occupancy are not up to the Planning Commission. To have a restrictions related to tenants in the site plan approval is an inappropriate exercise of authority by the Planning Commission. It is not a subject that is simply technical, it really does relate to how the Township operates. The examples that I gave with respect to existing buildings is applicable. If you have an existing building that is in an industrial use, residential use, or commercial use, you do not restrict how the building is going to be built based on who the tenants are. You look to the ordinances to see if it meets the desired criteria, if it is a use that you are entitled to based on the ordinances, if your planner gives you a report that says that you meet all of the criteria, it is up to your other ordinances and the building department to determine whether they have built the building according to standards and whether a Certificate of Occupancy should be issued. It is not up to a site plan approval. We cannot knock down the building later on. The Planning Commission is to set the criteria to determine whether the building meets the criteria for the Township. We cannot be put in the situation where we build a building, spend millions of dollars, and then have someone say our site plan is revoked.

Mr. Seymour replied that he did not think that is what the Township or the ordinance says. "I think everyone here would agree that once you build a building, no one is going to say that the building has to be torn down." Eventually someone has to be able to say that whatever tenant you put in that building complies with one of the uses in an I-2 district. It is the responsibility of the Planning Commission to an extent and also the building department. I agree with you and so does Mr. Doozan, if the building meets the requirements of the set backs, dimensions, and what not, you have every right to build that building. It is just what happens at that point and time. You may want to bring in something that does not comply with the I-2 district. Mr. Carson argued that was the responsibility of the building department. The Township has a Zoning Ordinance Officer and that is their job, not a Planning Commission function. " I understand that it is an industrial use, an industrial building, the industrial user must comply with the lawful scriptures, and a Certificate of Occupancy will have to be pulled for a number of reasons. That is not a Planning Commission function. "I do not want a site plan approval with conditions that says either knock your building down - you do not have a valid site plan approval, or worse, you can't use it." The Planning Commission is not empowered to review a building once it has already been built.

Mr. Doozan argued that none of the conditions suggest that. Mr. Carson replied that in "A" and "C" it talks about users and that is not the job for the Planning Commission, and it is not the appropriate conditions to put on a site plan approval. The Township has ordinances that govern use, occupancy, and building codes. There are other people in the Township that administer that. He does not think that it is appropriate to approve a site plan with those types of conditions. It is another way to put the owner at risk. Mr. Carson wants to be treated just like everyone else.

Mr. Barber commented that the Planning Commission looks at traffic, tree ordinances, and additional traffic, with all buildings that come before the Planning Commission. They want to look out for all the people in the Township.

Mr. Soper asked Mr. Doozan if this meets the impervious surface ordinance. Mr. Doozan answered yes.

The Planning Commission discussed the details of outside storage.

Mr. Carson explained that he did not think the building should be viewed any differently than if you have an existing building in the Township and a tenant moves out and a new tenant moves in. If the new tenant comes in and does not require a special land use permit and is of the use that belongs there, it is handled administratively. The Township has a zoning administrator to handle it. You should not, through a site plan on a speculative building, try to insert the Planning Commission or the risk of a site plan any more than you would for an existing building. It meets all of the criteria; he thinks that is clear. To the point when the tenant is going to be put in the building, the tenant will come forward, and the Township will know what the uses are through its zoning administration, and it will have to comply with any lawful ordinances. If it requires a special land use, they will have to come in for a special land use permit. If it does not require a special land use permit it will be handled administratively like every one else. It should not be singled out at this stage or have any conditions that someone might argue in the future that your site plan is void or you have not met your site plan. It is one thing to risk not getting a certificate of occupancy after you spent millions of dollars. It is another thing to not be able to get financing because there is no tenant, so they cannot satisfy the site plan. Therefore, they cannot build. They meet all the criteria; leave it to the administration later on.

Mr. Soper asked about the tree survey and the discrepancies. Mr. Carson answered that the discrepancy was the issue of being between 3,614 and 3,353. Mr. Soper commented that 3,614 and 3,353 was the discrepancy on the two sheets, but the compulsorily amount is at least 2,801 caliper inches short of the required amount. Mr. Carson commented that the tree ordinances are applicable to every project, so they have an alternative to what they do. "I do not know which alternative they will do; they have not gone through the entire analyses as to what has to happen. That is a building permit issue. That is not a site plan issue." Mr. Soper asked Mr. Carson if he has an issue with the tree ordinance and if they are going to conform to it. Mr. Carson answered that he has not studied the tree ordinance, so he does not know what the alternatives are. It is usually not a site plan issue. If the Township has a valid ordinance, something is going to have to be done.

Mr. Barber asked if the Township has done this is the past and found out a description of where the trees are going to be put in and how many caliper inches for site plan review. Mr. Soper answered yes.

Mr. Seymour asked Mr. Carson if he agreed the proposed replacement is 2,801 short. Mr. Carson answered that he had no idea. He has not reviewed that issue because he understood that there was going to be a condition of the site plan approval that it met the ordinance. It does not appear to me, if this is accurate, that we are going to be able to plant this site with all the different trees. Condition "D" says that you either plant the site or seek an alternative to the Township Board.

Ms. Williams clarified that the only issue is the language of condition "A" and "C". Mr. Carson answered no, that it was "A" and "C" period. Mr. Doozan suggested that the Township require that condition "A" be put on the site plan as a note. Mr. Carson answered that it is not the providence of the Planning Commission to condition a site plan over those issues and he would not agree to that. Mr. Dome suggested that the Township take outside storage off the site plan. "You do not have a tenant, how do you know that they are going to have outside storage?" Mr. Carson continued to say that this is the same situation you would have with an existing building with a new tenant. It happens all the time and is not the first time it has happened in the Township. Any type of user who is in an existing building and leaves, has a new tenant who comes in. The tenant then goes to the Township, wants a certificate of

occupancy, the Township makes a judgment through the zoning administration and building department as to whether it is appropriate and then they grant a Certificate of Occupancy if it is appropriate. It is not a site plan issue. Mr. Barber asked what the objection to making it just a note in the site plan was. Mr. Carson answered that it is not a condition of the site plan and is not of the providence of the Planning Commission to do that. Mr. Carson explained that he does not have the ability to go to a lender and tell them to ignore the note or condition. What happens if your site plan is void, how do you get a construction loan?

Mr. Soper asked Mr. Doozan if the Township has an existing building and it changes tenants, do they not have to bring in an industrial activities statement? Mr. Doozan answered yes. Mr. Soper clarified that an industrial statement has to be turned in regardless. Mr. Soper suggested what Mr. Carson is saying is that we do not need to make that part of the site plan, that has to take place rather we make the condition or not. Mr. Carson answered yes. Ms. Williams commented that the reason the conditions are on the site plan is so this element does not get lost. Mr. Doozan replied that usually the Township has a tenant identified and an industrial activities statement. We wanted to make sure that we get one once the tenant is identified.

Mr. Soper asked if whether the Township puts that condition on the site plan or not, an industrial statement has to be given before they get a certificate of occupancy. Mr. Doozan answered yes.

Ms. Williams asked if there was any risk in not having the condition in the site plan. Mr. Seymour replied that the risk was the ordinance says the industrial activity statement is an integral part of the site plan approval. This is probably the first time the Township has seen this since the passing of the industrial activity statement. Ms. Williams commented that she is trying to get a recommendation.

Mr. Seymour commented that it was not the Planning Commission's intent to tell the applicant that they have site plan approval and then tell them to take their building down. The applicant is entitled to build a building that meets all the ordinance requirements for an industrial area.

Ms. Aniol asked if the applicant had to pull a building permit for the construction if they want to be approved, they also have to pull a tenant build out permit once the tenant is identified. What Mr. Carson is saying is the Planning Commission cannot condition the site plan upon a Certificate of Occupancy or a Building Permit; can it be conditioned upon a tenant build out? Mr. Seymour commented that his issue is what if they build it out themselves and then you miss that opportunity? Mr. Hogan said that they would have to pull a building permit; all they are approved for is the shell. They cannot go in and build offices or do anything for their tenant without a tenant build out permit. They will technically have two Building Permits.

Mr. Carson commented that in respect to that you don't get site plan approval for the build out of the interior of a building. Mr. Dome said that it happens everyday, for example, may impact parking. Mr. Carson commented that the Planning Commission does not tell an applicant if they can build 20 foot or 30 foot offices. The tenant improvements of an existing building are not something that comes back to the Planning Commission unless it alters the site plan. The Township has a building official who administers the building code everyday and you do not pick out a section of the ordinance and make a special mention to condition it on a site plan.

Mr. Barber commented that what intrigues the Planning Commission is that there is no tenant and Mr. Carson has spent twenty minutes telling the Planning Commission that they have to approve this site plan with out a tenant. Mr. Barber commented that this is a lot of property and not simply a house.

Mr. Carson said that it is common to build a building with no tenant, for example, shopping centers, office buildings, or houses. It happens all the time, but may be odd for an industrial use.

Mr. Hamilton asked Mr. Doozan if the Planning Commission approves the Industrial Activities Statement. Mr. Doozan replied that normally when the site plan review and there is a tenant identified, the Planning Commission does. It does not necessarily have to happen that way. It can be approved administratively.

Mr. Dome asked what the ordinance said. Mr. Seymour answered that the ordinance reads that the industrial activities statement is an integral part of the site plan approval. Mr. Dome commented that once they get site plan approval, the applicant does not have to give the Planning Commission anything. Mr. Soper commented that the

applicant does not have to give anything to the Planning Commission, but they do have to submit an Industrial Activity Statement when a permit is pulled. The Planning Commission answered no. Mr. Soper clarified that after this point the Township has no control at all. “I have a problem with that.”

Mr. Carson replied that an Industrial Activities Report was given. It was not given for a specific tenant. The Industrial Activities Statement that was given said it was for a use that would be appropriate in the district and would be run in a lawful manner. If you interpret your ordinance the way the question implied, you would never have an industrial building built on speculation. If that is the position, you are essentially turning down the site plan because you cannot have an industrial building on speculation. You are saying that if you do not have an exact user, you cannot build it.

Mr. Soper commented that he did not agree with that at all. When you get a tenant that you are proposing to put in that location, I do not understand why they cannot submit an Industrial Activities Statement. Mr. Carson commented that Mr. Doozan said that they are going to have to. Mr. Soper and Ms. Williams confirmed that they were hearing contradicting information.

Mr. Dome asked if it was possible to submit an Industrial Activities Report without a tenant’s name. Mr. Doozan commented that the applicant has submitted an Industrial Activities Report, but it is meaningless because there is nothing there about a specific user.

Mr. Carson asked what has to be done to for a tenant to move into that building. We should be treated no differently. Mr. Hogan answered that they need to submit an Industrial Activities Statement.

Mr. Soper clarified again that when a tenant comes in, they must submit an Industrial Activities Statement.

Mr. Seymour commented that he thought you could read the ordinance to that extent. It says, “in order to plan for and accommodate new industries in Lyon Township, the following information shall be provided for all proposed industrial businesses.” Mr. Soper commented that it does not say for new or existing businesses. Mr. Seymour said no, it says “for all proposed industrial purposes.” Mr. Soper clarified that for anyone that comes into the facility in order to get a Building Permit or a Certificate of Occupancy, they will have to submit an Industrial Activities Statement. Mr. Doozan answered yes.

Mr. Seymour further commented that section J of this portion of the ordinance says, “Site plan review and approval is required for all uses in industrial districts in accordance with article 4. The industrial activities statement described in the following subsection K (which was read before) shall be required for site plan review and shall be considered an integral part of the approved site plan.”

Mr. Barber commented that the Planning Commission could not change the ordinance; that is what the ordinance reads. They will let the Township Board decide whether to change the ordinance or not. He said he believes their hands are tied.

Mr. Carson commented that they cannot build a building on speculation in Lyon Township. That is exactly what we want to do, build this building on speculation. Your review says that. Mr. Barber commented that Mr. Carson is asking the Planning Commission to violate the Planning Commissions own ordinances. The ordinance says that an Industrial Activity Statement has to be given. Mr. Carson argued that they did give an Industrial Activity Statement.

Mr. Soper commented that as long as they are required to submit an Industrial Activities Statement when the tenant moves in, he did not see the problem.

Mr. Hogan asked Mr. Carson if he was willing to submit an Industrial Activities Statement at the time of a tenant build out permit application. Mr. Carson commented that the way he thinks it should work is that a tenant, in order to do business in Lyon Township, has to submit an Industrial Activates Statement, not the landlord. If the tenant wants a Certificate of Occupancy to be able to operate, they would have to do it. It is not up to him, it is up to the tenant.

Mr. Soper asked how many tenants are going to be in the facility. Mr. Carson replied 1 or 2. Mr. Soper continued asking if they were going to make it mandatory, or optional, if they or the tenant does the build out.

Todd Wyett 25900 West Eleven Mile Road - Mr. Wyett answered that they were going to do the build out, not the tenant.

Mr. Soper commented that they will have to get a Certificate of Occupancy in order to do the build out, which means they will be responsible for an activity statement.

Mr. Barber asked Mr. Seymour if the Township ordinance says that one must have an Industrial Activity Statement as an integral part of the site plan review. Mr. Seymour read the appropriate ordinance, " The Industrial Activities Statement shall be required for site plan review and shall be considered an integral part of the approved site plan."

Mr. Soper commented that the one problem he has is that regardless of the applicant, it should not stop someone from trying to build and develop in the Township.

Mr. Carson commented that they came forward with all the information that they know, and the Planning Commission is preventing them from building. Mr. Seymour commented that is not what the Planning Commission is doing at all. Mr. Carson explained that they have to take the risk, get the financing, and have the conditions that the Planning Commission places on them.

Mr. Carson explained that the ordinance that was just read makes it incumbent upon the Planning Commission to review the Industrial Impact Statement now. "We do not have one. If we do not have one, and if you think it is part of the approval process, then you have to turn me down."

Mr. Soper suggested that the Planning Commission leave condition item "A" in and instead of saying Planning Commission, just say Township.

Mr. Wyett commented that they have turned in the best Industrial Activities Statement they could considering they do not have a tenant. Due to the shortage of heavy industrial property in Lyon Township, Oakland County, and even East of Livingston County, there is no shortage of interested tenants. Mr. Wyett also commented that he would like to get approved tonight because they need to get going and have deadlines. The applicant plans on building, doing a build out after the appropriate documentation has been submitted and at that point, no tenant will be signed. Mr. Wyett also commented that he did not believe they needed a Certificate of Occupancy for a vacant building. He agreed that they will come back and submit the appropriate documentation to the Planning Department for the build out and get a Certificate of Occupancy for both of the site plan and the build out, and then they will sign or lease a tenant. After that the tenant will move in subject to the Township ordinance compliance.

Mr. Soper explained that if the applicant gets a Certificate of Occupancy before they get a tenant, the Township does not get an Industrial Activities Statement.

Ms. Aniol said that if what we have right now is an industrial activities statement, which is not complete because the user is not identified, then the activity statement would need to be updated when the user was identified. Therefore there has to be some type of condition of approval for the activity statement.

Mr. Dome commented that this building cannot be leased to any heavy industrial company. There are all kinds of issues. There is no way to fight a fire here if there are high hazardous materials in the building. There is no truck loop and the parking lot should not be so close to the building. You might want to look at this before the Township does approve it.

Mr. Dome asked, "What does the Township do if you build this building and you come in with a dry cleaning company, which is volatile and explosive, but still fits the heavy industrial category and not the industrial use category?" Mr. Carson suggested that the Township does the same thing if a new tenant were to move into an existing building.

Mr. Soper asked Mr. Hogan if the applicant could get a Certificate of Occupancy without an Industrial Activities Statement. Mr. Hogan answered yes, because it is part of the site plan.

Mr. Dome said that the problem is, as commissioners, they are obliged to follow the word of the ordinance. It is up to the Township Board to change the ordinance.

Mr. Barber commented that the Township has hired the experts and the Planning Commission is instructed to follow their advice because it is defensible in court. We are to look out for the interest of the Township. Mr. Soper commented the only way they are going to do that is with condition "A" in place.

Mr. Doozan recommended that the Planning Commission take out "Planning Commission" and substitute "Certificate of Occupancy" instead of Building Permit.

Mr. Soper commented that we will have to have the Township Board look at this.

The Planning Commission, Mr. Carson, and Mr. Wyett continued to discuss the complications of having a condition on the site plan approval.

Mr. Soper said that if the Planning Commission were to treat the applicant like they do everyone else, they would require a detailed Industrial Activity Statement.

Mr. Dome said in defense of the ordinance, it is not very often that someone builds a 210,000 square foot building without a tenant.

Ms. Aniol made a clarification with Mr. Wyett that he wants site plan approval, a tenant build out, a Certificate of Occupancy, and then sign a tenant. She asked, "Is it common to do a tenant build out without a tenant?" Mr. Wyett commented that there will not be a lot of tenant build out. He also commented that they have an idea of whom they want to sign in.

Mr. Carson does not want a condition that says his site plan is risked over some administrator's concept. Mr. Soper said that Mr. Carson is misinterpreting this. The Planning Commission is not affecting his site plan; they are affecting your tenant and how he handles chemicals.

Ms. Williams commented that they are at a stand off because of the way we are interpreting the ordinance.

Mr. Carson said that the question is, "Can you build an industrial building in Lyon Township on speculation?"

Mr. Barber asked Mr. Seymour for his advice on the issue. Mr. Seymour said "Mr. Doozan has made a recommendation that the Planning Commission approve it subject to submission of an Industrial Activities Statement upon identification of a tenant, or at a build out or Certificate of Occupancy and that is what I suggest you do."

Mr. Wyett commented that they have given the best Industrial Activities Statement possible and we have met the site plan requirement for an Industrial Activities Statement, therefore the condition should be removed.

The Planning Commission continued to discuss what would happen if a new tenant were to move into an existing building and their interpretation of the ordinances.

Mr. Carson commented that they have given an Industrial Activity Statement to the best of their ability. He asked that the Planning Commission please accept it without condition relying on Township ordinances or deny their site plan regretfully.

Mr. Doozan told the Planning Commission what was on the applicant's Industrial Activity Statement. In terms of item 6 A, since they do not know what products will be created, there is a list of about 20. In 6 C identification of chemical substances and combustible liquids, there is no answer. There is no answer to 6D, 6E, 6F,and 7. Item 8

(hours of operation) says up to 24 hours a day, and item 9 (days per week) says up to 7 days a week. The rest of the questions are incomplete.

Mr. Dome made the motion “that we approve AP-05-48 conditional on Mr. Doozan's letter with the recommendation as stated with the revision of” A” a complete and specific Industrial Activity Statement by the chief executive of the facility is submitted for review and acceptance to the Township prior to issuance of a Certificate of Occupancy. Condition “C “would be changed from building permit to Certificate of Occupancy and “B” and “D” would stay as written. Mr. Soper supported the motion.

Voice Vote:
Ayes: all
Nays: none
Motion approved.

Mr. Barber adjourned the meeting at 8:30 P.M.

Respectfully Submitted,

Catherine Culver

Catherine Culver
Recording Secretary