

**CHARTER TOWNSHIP OF LYON
BOARD OF TRUSTEES
SPECIAL MEETING MINUTES
JULY 27, 2006**

Approved as submitted September 5, 2006

DATE: July 27, 2006
TIME: 7:00 PM
PLACE: 58000 Grand River

1. Call to Order: Supervisor Young called the meeting to order at 7:01 PM.

2. Pledge of Allegiance

3. Roll Call: Present: Lannie Young, Supervisor
Patricia Carcone, Treasurer
Pamela Johnson, Clerk
Brent Hemker, Trustee
John Hicks, Trustee
Troy Schilling, Trustee

Also Present: Matthew Quinn, Township Attorney
Chris Olson, Township Superintendent
Chris Doozan, Township Planner
Leslie Zawada, Township Engineer
Al Hogan, Township Building Official

Guests: 20

4. CALL TO THE PUBLIC

None

5. CONSENT AGENDA

- Approval of Resolution Designating Clerk as Grant Administrator for AVCB Machine

Ms. Carcone moved to approve the Consent Agenda as submitted. Mr. Hicks supported the motion.

Roll Call Vote: Ayes: All
Nays: None

Motion approved.

6. APPROVAL OF AGENDA

Ms. Carcone motioned to approve the agenda as submitted. Mr. Hemker supported the motion.

Voice Vote: Ayes: All
Nays: None

Motion approved.

7. Beztak Presentation Erwin Properties

Sam Beznos, 31731 Northwestern Highway Suite 250 – Mr. Beznos introduced the property and said that he believed that this plan will benefit the township and Beztak's needs. He explained the plan consists of 100 condominiums and town homes, 217 single-family homes, retail component, and a round about connecting the intersection of Silver Lake Road and Kent Lake Road.

Ralph L. Nunez (President of Design Team Limited) – 17255 W. Ten Mile Road – Mr. Nunez used a 3-D digital tour that traveled through 1). Erwin Orchards/Kent Lake Rd., 2). Commercial Gateway North, 3). View west to pond, 4). Roundabout with themed plantings, 5). Westbound Silver Lake Rd., 6). West subdivision entrance, 7). West park entrance, 8). Play structure, 9). View south to homes, 10). View south to pond, 11). View south to existing homes, 12). View north streetscape, 13). View into east park, 14). East subdivision entrance/pond, 15). View north into commercial development, 16). Commercial gateway east, 17). View north into commercial development, 18). View west towards Kent Lake Rd., 19). East condominium entrance, 20). Heading west through condominium development, 21). South condominium development, 22). Roundabout with themed plantings.

Doug McDowell, 21355 Hatcher, Environmental Engineer– Mr. McDowell explained to the board that one of the issues he has had to address over the past 10 years is when a development builds on properties that have been used for agriculture. Many orchards are being looked at for development. Due to this, they have done a lot of research. Mr. McDowell gave the Board a color coded Historic Orchard Location Map. He explained that pesticides used prior to 1947 were called lead arsenic, a metal based pesticide that is retained by the soil that does not degrade over time. He explained that there are two areas likely to have lead arsenic impact, the orange and green areas on the map. Mr. McDowell explained that the initial work done on the property to investigate for arsenic was done across the entire property. They found the lead arsenic was only used on the southwest portion of the parcel. The volume of impacted soil is less than what was originally thought. Test results showed arsenic in the areas where arsenic was applied at concentrations between 20 and 80 parts per million. He also commented that those numbers are consistent with most historic orchards. He also said that the arsenic impact is between 1 –2 1/2 feet deep. Another item that was looked into was the potential for fill areas on the property. They looked at any area that could possibly have disturbed soil. Mr. McDowell tested 34 places on the property. They found a location that did have subsurface debris and test results showed some amounts of PCB in the area. For their purposes they consider the entire fill area to be contaminated soil. When they calculate the volume of soil and a remedial estimate using \$22.00 per cubic yard to excavate, haul and dispose of the soil and to conduct various engineering and site prep work, they ended up with an estimate of 6.8 million dollars. This is less than the original estimation.

Mr. Young asked which area was the contaminated area on the map. Mr. McDowell answered that prior to 1947 lead arsenic was used. The green area has less contamination than the orange area, but still is contaminated.

Mr. Olson asked if they were going to have to remediate the yellow area. Mr. McDowell answered that they would not have to remediate it. He also asked if the remedial estimate of 6.8 million dollars is all inclusive of costs similar to prior proposals. Mr. McDowell answered yes. Mr. Olson pointed out that it was half of what the Board was told last time. Mr. McDowell said that a factor that played into the difference of the cost was that the original projections were based on data from a previous consultant before they did any work on the site. Mr. Olson asked if there were numbers provided, similar to the June 5th letter that was previously provided. Mr. McDowell said that they can provide it later or it may be part of a different presentation.

Mr. Mark Jacobs, Dykema Gossett, 400 Renaissance Center, Environmental Attorney– Mr. Jacobs discussed the Brownfield Program. He said that the Brownfield has assisted other developers and municipalities. The

Brownfield laws went into effect in 1996 and since 1998 Mr. Jacobs has been working with the Brownfield program. Mr. Jacobs explained that historical properties like Erwin's have often been a financial burden on municipalities because of two reasons. 1) In the 1980's the state and federal government enacted laws that made anyone who purchased contaminated property liable for clean up. 2) The cost and uncertainty of the cost of cleaning the contaminated property. He also explained that a law was passed so that after June 5, 1995, people could purchase a contaminated property without being strictly liable for the clean up. After June 5, 1995 the cost issue was still preventing people from buying contaminated property. This led to the passing of the Brownfield Laws, which provided a variety of financial incentives to developers and communities to get the contaminated properties back on the tax rolls. Mr. Jacobs focused on discussing the Brownfield Redevelopment Financing Act. This allows communities to take the new taxes that are being generated as a result of the redevelopment of a Brownfield property, capture them and reimburse the developer for the costs of cleaning up the contaminated property. The baseline taxes that are paid prior to development cannot be touched. If a new piece of property gets placed in a Brownfield program and the new taxes begin to become captured for payment of the investigation and cleanup costs the community continues to collect the taxes that were being paid prior to that time, until such time that the environmental expenditures are paid off. Mr. Jacobs explained that this way, the full benefit of the increased tax base is felt by the community. Mr. Jacobs explained that the program is administered by the Brownfield Redevelopment Authority (BRA). It can be created by the county or the local government. Once a Brownfield Authority is established, a Brownfield Plan is prepared. It is a document that explains why the property is eligible for Brownfield consideration and explains the redevelopment. Once the Brownfield Plan is approved, the developer and the community gather into a second agreement called the Development and Reimbursement Agreement. It is a detailed document that discusses the responsibilities of the developer, the cost the community will see, environmental expenditures, and how the community will use the taxes to reimburse the developers. The Brownfield program lets the community take new money and bring unproductive properties to use. Mr. Jacobs said that the current taxes being paid by this property is \$16,000 a year. The Orchard will continue to pay \$16,000 a year if the property were included into the Brownfield program until such time that the community began to realize the new taxes and the development started getting paid back. Because the only use for this property is residential and because it is currently not suitable for residential use, someone at some time will have to clean the property. Mr. Jacobs said that this property will be in use someday; the best tool to get it back in use is the Brownfield Program because it will get into use fast.

Ms. Carcone asked which portions of the parcel would be Brownfield. Mr. Jacobs answered that it could be done either way. The entire parcel could be Brownfield or just the portions that are going to be remediated. Ms. Carcone said that the Township gets to choose where the Brownfield is going to be. Ms. Carcone asked if taxes would be captured from just the Brownfield or the entire development. Mr. Jacobs said that "the statute that allows you to capture taxes from not only the impacted parcel, but also from adjacent and adjoining parcels, whose development contributes to the over all developments value. Mr. Young asked if the purpose was to pay off the development earlier. Mr. Jacobs said that the purpose was to promote development, not restrain it.

James Tischler, 302 Baptiste Ave, Economic Development for the City of Monroe- Mr. Tischler has worked for 50 Brownfield projects. He gave the example of Mason Run in Monroe. He said that it was close to the Erwin's project in size and dollar value in cleanup. It was a 55-acre site that at one time used to be a paper plant. Mr. Tischler showed before and after pictures of the site. Mr. Tischler was involved in the project planning of Mason Run and also the development of the Brownfield planning. He showed, by using power point, the cost of clean up on Mason Run. He said that the two large dollar ticket items were 1) there was a large amount of debris in the basement and 2) between 6 and 24 inches of cinder ash fill laid across the entire site. This is a similar scenario to the lead arsenic on the Erwin's site. They were faced with a cost of 6 million dollars to clean up the Mason run site. He continued to describe how Monroe put together the financing package for the project. He explained that it was a combination loan sources from The State of Michigan, or internally from the City, and other sources. He explained that the clean up for Mason Run was not done at one time, but in stages. The principal cost was 5.7 Million, but because it was paid over time, it really was close to an 8 Million dollar clean up project. He also said that it will take Monroe about 16 years to pay off the project. Mr. Tischler also said that a successful Brownfield project requires 5 things 1). Site with

control or ownership flow, 2). A Knowledgeable developer, 3). A supportive local government, 4). Economics, 5). Tracking principal past. Mr. Tischler presented the Board with a graph that compared Brownfield cost, Normal Revenue, and normal cost. He also showed a timeline of a Brownfield project. Mr. Tischler gave a summary of the Erwin Orchard Cost Comparison. The total Development is approximately 13 million. Clean up cost is \$6,806, 000. The Extraordinary cost percent is 52%. The jet average percentage is between 10-25%. The Erwin Orchard Project Premium will be 25%. Mr. Tischler said that he does not think anything can be built without the Brownfield. Mr. Tischler also summarized the cost of cleaning the site on a slide titled "Erwin Orchard's Response Activity Cost" (6.8 Million dollars).

Mr. Olson said that on the break down of the mediation costs there are costs that are for normal developments (removing trees, dust control, street sweeping, construction safety). He said that he saw a lot of expenses, which would be an expense for a normal development. He said that he was curious as to which expenses were environmentally related and which would normally be related in the course of development, were it not for the alleged arsenic situation.

Robert Jacobs, Attorney with Jackier Gould, 121 West Long Lake Road- Mr. Jacobs said that one item that was not mentioned is, "what is the communities responsibility if a Brownfield Project were developed?" If they go with the county Brownfield, Beztak cannot impose a financial obligation. "Those financial obligations are in the means of the letters of credit and back the credit of any bonds, which are county bonds for the redevelopment of this property." He stated that the obligation does not fall on the community, which is important. This also assures that the development plan is going to be followed and there is security and financial resources to do so. Mr. Jacobs also said that if there was a shortfall, the shortfall goes to the developer who is the responsible party. He said that this is a wonderful opportunity and could serve as the gateway to the community. He also said they believe that this is a working relationship. He said that they would like to look into grant opportunities without taking away the revenues from the Township, if at all possible. Mr. Jacobs said that they will be funding the roundabout and they can explore different ways to do that (grant or SAD) but ultimately that responsibility is something that they would like to do. He said that they would like to explore the financing possibilities for the Kent East Private Financing and the Sanitary Sewer, but all of those things can be explored and done. They ask that this be approved as a conceptual plan. Mr. Jacobs also explained that they believe this is an exceptional opportunity for Beztak and the community.

Mr. Hemker commented that he was on the planning commission when this first came through. He said that there are way too many units and in the beginning he said that he did not want any commercial here. They have had long meetings and discussions about it and he does not feel that it is the right place for commercial. Mr. Hemker also commented that in regards to Brownfield, he personally cannot burden the current Township residents with the cleanup for these parcels. The Township is struggling to get a library mileage passed and the budget balanced. It does not make sense for him to burden the residents.

Mr. Hicks said that Mr. Jacobs mentioned they took the Boards considerations into account, but he did not see it. The density is considerably higher then they discussed. The subcommittee agreed to some commercial, and some multi family, but not in the kind of numbers on the plan. He did say that Beztak did a nice job isolating the development from existing residents.

Ms. Johnson said that she could not see putting a tax burden on the residents, especially with increased demand for services from the township.

Mr. Young commented that his concern is with the request for the Brownfield. He feels that it totally violates the intent of the law. The intent of the law was to provide a means to develop orphaned property that would not be developed otherwise and Mason Run was an example. Mason run used to be a paper factory, which is one of the filthiest industries there is. No one wanted to take the project on because the clean up cost would cost more then any development. Relief was needed. We have a developable piece of property that understandably has an environmental clean up. If you look at the value of the land after the cleanup, it will be very suitable for development. Mr. Young also said that he would never support a Brownfield on this property because it is not what the law was intended for. He also said that the

development could be cleaned up and line up better with Township ordinances.

Mr. Schilling commented that he agreed with Mr. Young.

Mr. Olson commented that he spoke with the school in regards to the school tax capture and they would get reimbursed under the Brownfield for their operating taxes, but not for their debt levy. The federal aid, as far as the road improvements in the June 5th proposal, indicated that they would like to use as much grant dollars as possible. The Township is part of the Huron Federal Aid Committee and monies are spoken for through 2008. He was not sure if the committee members could be convinced to vote for a project to benefit a development coming in at twice the density allowed on the Master Plan. He also said that there are 217 90-foot lots coming into a market that is already full of lots of that size and 100 condo units in a saturated market. As far as residents, there will be 600 residents in the single-family home area and 200 residents in the condos. He also commented that in terms of sanitary sewer, he does not think it can accommodate this development. The also proposed to pay for a small portion of an outdated special assessment district that is not there anymore. The 2003 special assessment does not exist. Mr. Olson also pointed out that the environmental numbers have gone from 1 Million to 5 Million, then to 8 million to 12 Million and now 7 Million in two years.

Mr. Young moved to "deny this conceptual presentation including the Brownfield with the presented documents." Mr. Hemker supported the motion.

Mr. Tischler clarified that it is common practice in many communities that a Brownfield tax capture is not 100 percent of the taxes but a portion. That is done in order to support public service provision in new areas or other area in the communities. Mr. Tischler also commented that the school millage that was referred to was identified as not reversible and is the school debt millage, which cannot be captured and will not be in the numbers that you have seen.

Mr. Jacobs said that the real issue is that the property cannot be used without a cleanup. Unfortunately Beztak would like to provide the roundabout, but it is very expensive. After they met with the subcommittee, they had to go back and determine how much density they needed that could facilitate all of the improvements. He also asked the Board to consider the current state of the market and what is going to sell. They produced what they felt would allow them to make a return. Mr. Jacobs said that the Brownfield was designed to help aid and clean up properties that have environmental deficits due to past use. Mr. Jacobs said that it is a good plan and it works.

Ms. Carcone commented that she was on the subcommittee and they spent a lot of time on the Erwin's piece and discussed what they thought would be good for everyone. She said that she could have probably gone for the cleanup had they listened to the members of the subcommittee. The subcommittee told Beztak all of the things that they thought would be beneficial for the Township. She explained that larger lots are needed; this is a Township and not a city and the residents want to keep it that way. She said that she likes the market idea and could have agreed on the 100 unit condos, but the Township did not get any of the setbacks or lot sizes that were discussed.

Roll Call Vote: Ayes: Carcone, Young, Cash, Hicks, Schilling, Hemker, Johnson
 Nays: None

Motion approved.

8. ADJOURNMENT

Mr. Schilling moved to adjourn the meeting. Mr. Hemker supported the motion.

Voice Vote: Ayes: All
 Nays: None

Motion approved. The meeting was adjourned at 8:27PM.

Respectfully Submitted,

Catherine Culver
Recording Secretary

Pamela Johnson
Clerk