

**Charter Township of Lyon
Planning Commission
Meeting Minutes
February 11, 2008**

Approved: _____ March 10, 2008 revised

DATE: February 11, 2008
TIME: 7:00 p.m.
PLACE: 58000 Grand River

Call to Order: Mr. Barber called the meeting to order at 7:00 p.m.

Roll Call: Mike Barber, Chairman
Michael Conflitti
Jim Hamilton
John Hicks, Board Liaison
Laura James
Sean O'Neil
Carl Towne

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

Guests: 114+

1. APPROVAL OF AGENDA

Mr. Barber stated that they would table the public hearing for AP-07-34, regarding a text amendment for Senior Housing Regulations.

Mr. Hicks made a motion to table AP-07-34 Text amendment to the Zoning Ordinance regarding Senior Housing Regulations. Mr. Conflitti supported the motion.

Voice Vote:	Ayes:	All
	Nays:	None

MOTION APPROVED

Mr. Hamilton made a motion to approve the February 11, 2008 agenda as amended. Mr. O'Neil supported the motion.

Voice Vote:	Ayes:	All
	Nays:	None

MOTION APPROVED

2. CONSENT AGENDA

Mr. Hamilton made a motion to approve the December 10, 2007 meeting minutes as corrected. Mr.

Hicks supported the motion.

Voice Vote:	Ayes:	6
	Nays:	None
	Abstain:	O'Neil, due to absence at that meeting.

MOTION APPROVED

Mr. Hamilton made a motion to approve the January 16, 2008 meeting minutes as submitted. Mr. O'Neil supported the motion.

Voice Vote:	Ayes:	All
	Nays:	None

MOTION APPROVED

3. **COMMENTS FROM PUBLIC ON NON-AGENDA ITEMS** - No one wished to address the Commission.

4. **PUBLIC HEARINGS** - Tabled AP-07-34 Text amendment to the Zoning Ordinance regarding Senior Housing Regulations.

5. **OLD BUSINESS**

AP-07-25, Meijer, Inc., Commercial Site Plan Review, located on the east side of Pontiac Trail, north of Eight Mile Road.

Representing AP-07-25: Rich Rattner, Attorney
Mike Labadie, Wells and Associates Traffic Engineers
Mike McNoy
Anthony Mourand, Fishbeck, Thompson, Carr and Huber
Bob Dunstan

Mr. Doozan gave an overview of the McKenna Associates letter dated January 21, 2008. The following items were commented on:

1. Use of the R-1.0 Zoned Property.
2. Delivery Hours and Number of trucks.
3. Species of Plants in the Rain Garden.
4. Approval from the Gas Company.
5. Township Engineer Approval.
6. Widening of Pontiac Trail.

The following is a summary of other considerations identified in previous review letters.

1. Property size and legal description
2. Lot coverage
3. Setbacks
4. Screening
5. Building height
6. Exterior Lighting
7. Signs
8. Traffic impact
9. Parking
10. Utilities
11. Landscaping

12. Tree Replacement
13. Façade Evaluation
14. Combination of the three separate parcels into a single parcel will be necessary upon approval.
15. Right-of-way dedication to the Road Commission for Oakland County was required along Pontiac Trail so as to provide a 60-foot right-of-way.
16. Review and approval by the following agencies was required: Road Commission for Oakland County, Oakland County Drain Commissioner, Oakland County Health Division (for the well), and the Michigan Department of Environmental Quality.

Ms. Zawada stated that Giffels-Webster Engineers have reviewed the revised Site Plan and have recommended approval as noted in their January 17, 2008 letter. A few minor revisions would be required during the detailed construction review. The traffic impact study has been revised and approved as noted by Metro Transportation Group.

Mr. Rattner gave a brief power point presentation, which covered the following points:

The site plan was submitted to the Township in September of 2007, and the revised plan was submitted for review prior to the November meeting. It was tabled at that meeting. The detention pond issue and its placement, the delivery activity of the store, the species of plants in the rain garden, the approval of the gas company relative to the line going across the property, the Township Engineer approval, and the widening of Pontiac Trail are all issues they have been asked to respond to.

Mr. Rattner stated that the detention pond was a permitted place to put that particular feature. There was going to be a detention pond on that property. If they look at the project they can see that it was heavily landscaped, open, and would be made to be a feature. It is the best way to treat rainwater. It is a perfect solution. It would not handle all of the residential that may be going on that property; it would have to be slightly resized.

The delivery activity would be minimal. During the day, there would be anywhere from 5-10 trucks from other vendors and roughly 6 trucks from Meijer. The fresh produce would be delivered overnight and there are not more than one or two of those.

Species of plants have been accepted, they were the proper type of plant and an important issue relative to the environment.

The Gas Company approval: They would let them do the moving, but the final location was something that would come later in the process when they have a more detailed set of drawings.

The Township engineer has approved the plans, and they would be slightly modified. Mr. Rattner continued that there is nothing remarkable about that and nothing that changes the substance of this project.

The widening of Pontiac Trail would be done. Oakland County has approved the concept plan.

Mr. Rattner concluded that the last six issues have been answered to the satisfaction of the Commission, and they would hope that they would approve this project.

Mr. Barber questioned the truck delivery and that they have an ordinance of no more than 62 decibels that runs from 7 a.m. – 6 p.m. Mr. Dunstan stated that he did not have the decibel amount but could get that information. Mr. Dunstan continued that most of the truck deliveries are semi container trucks, and there is a natural buffer that surrounds the store. He could not imagine that they could improve the location of the truck bays. The existing woodlot that sits all the way around that is very extensive.

Mr. O'Neil questioned if the truck bays would be *below the grade of the building*.. Mr. Dunstan stated they would.

Mr. O'Neil stated that they pointed out that lot 40 would be the closest home to the site, but there are homes that are not much further away. He questioned if there would be a wing wall to frame in the truck bay, as he felt it was necessary to have there. Mr. Dunstan stated that the worst-case scenario was right now, with no foliage on the trees. He didn't think they could even see the truck bay. Mr. O'Neil disagreed, and said he would want every precaution taken to buffer the sound and sight of the truck bays. Mr. Dunstan stated that they were not opposed to putting in a wing wall, and it was not an unreasonable request. Mr. Barber agreed with the wing wall; it would be a benefit.

Ms. James stated that she was concerned with a commercial development that has run out of room on their commercial property, and they bought the house next door, knocking it down, and were planning to use that residential property to expand. She was concerned about the injury that does to their Master Plan and the Township losing control of acreage allowed for commercial development in the Township. Mr. Rattner stated that he has respect for master plans, and it's a legitimate concern. The new environmental push was to put a detention pond with heavy buffering. The fact that they would be able to treat the water this way means that it was a self-sustaining type of project. If that were not there, the type and amount of commercial would not change; they would see the same thing. Now they would have a better treatment of a utility or an engineering requirement, which was that particular pond. When he heard Ms. James' concerns prior to this meeting, he wanted to bring up that there was nothing that changes about the plan or the amount of real estate which would be committed to commercial in the Township. What was zoned for that site was the installation that was shown. If they projected some type of residential on that site, the plan showed a detention area that could be used for that project also. They have the same amount of commercial, and the Master Plan is upheld. They are not rezoning property; they are putting a Meijer installation of retail in this community on B-2 zoned property. Even though the detention pond serving this was next to it, the installation was essentially the same installation if it was designed a different way with different design of engineering requirements.

Ms. James stated that he seemed to be suggesting if the Township did say they can't use any portion of the R-1.0 property, then Meijer could amend their site plan to have some sort of onsite drainage system that did not involve the Niles parcel. Mr. Rattner stated it wasn't as simple as that. His comment was that if they didn't use that detention pond, there would be a design on that site so they could fit the ordinance one way or another and the amount of commercial that they would put on that site would be about the same size. He thought this was a great solution from a buffering, ecological, and environmental standpoint. He stated that he believed it is a permitted use.

Ms. James stated that references have been made to the exact size of the detention pond, and she thought it would be fair to understand how much of the residential portion was rendered undevelopable. Mr. Rattner stated that there would be a slight increase of the detention pond, and it depended on how much development was on that property. Mr. Mourand stated that he believed they provided the acreage numbers in their response letters. Ms. James stated that she had seen some reference that there was some housing proposed along with this at one point. Mr. Mourand stated that there was in the original submittal 2 years ago but not now.

Ms. James stated that if Meijer was to be approved despite the understandable concerns, she wondered if they would consider conceding the remaining 30 acres for public use to soften the blow of this development to the residents. She stated that she said that without consulting anyone on that idea.

Ms. James questioned the actual consumption of residential land. Mr. Rattner stated that they don't believe that particular question was answered. There may be no effective taking away of land with the design, if it were done in a certain way.

Mr. O'Neil asked that if in the future the detention pond was expanded, do they know which way it would be expanded? Mr. Mourand stated that if the residential would be developed on the current Master Plan, the pond would increase by about 20%. It would expand it north/south.

Mr. Dunstan confirmed that they did agree to do the wing wall, but they need to review it as it was being installed to make sure it was working well and have the engineer approve it.

Mr. O'Neil questioned the sign; it looked to be a metal box sitting in a concrete slab. They are locating along the main commercial corridor, and he would like to see more attention *paid* to the sign *and suggested* brick or stone. Mr. Dunstan stated that they could apply a decorative veneer, as long as it does not decrease the 48' sign. The applicant agreed to make the sign more appealing and to match the building colors.

Mr. O'Neil stated that they have spoken about a row of pine trees, and he would like to see some of those trees clustered together. Mr. Towne agreed with the clustering of the trees.

Mr. O'Neil requested the applicant to confirm the amount of parking spaces. Mr. Dunstan stated it was 769, which would still meet the ordinance.

Mr. O'Neil stated that Mr. Nowakowski had stated that if the Township had felt that there was a more appropriate location for some landscaping, even off-site in the Mulberry Park area in order to help screen it, would they be willing to do that? He did not have a specific request other than to look at that Mulberry Park area to place some trees, and that would be up to the residents to approve that.

Mr. O'Neil stated that there were some comments about them losing some points for lack of windows on the front of the building. He questioned if the applicant had considered using spandrel glass to give the appearance of more windows. Mr. Mourand stated that the objective was to exceed the Township Ordinance on landscaping. They are buying larger trees, and if they wanted to move some trees around to other locations, they would be willing to do that. The architectural plan does incorporate a number of spandrel glass windows, but to get out of the negative regarding the architectural score card on the size of store that Meijer has here was just too difficult. They placed them where they looked good. Mr. O'Neil stated that it looked bare where the Meijer sign was; it's a large span, and the entrance to the right (south) looked plain.

Mr. Conflitti questioned the applicant to see if they were aware that the Brighton store donated 5 acres for a skate park on adjacent land. Mr. Dunstan stated that long after the store was built, the City of Brighton came to them and offered to build the skate park; he explained that Meijer may have been the one to go to the City of Brighton, but they were not clear on exactly how it happened.

Mr. Conflitti referred to the Meijer in Auburn Hills, and he questioned if there was an A plan vs. a B plan depending on where the store would be located. Mr. Dunstan stated that they have strived to create an A or a B plan, but they have a variety, and it has been a consistent evolution. They are focused on trying to create an elevation that was consistent.

Mr. Conflitti requested that the applicant review the traffic flow again. He was concerned regarding only one entrance. Mr. Labadie stated that the site does work, and the improvements that are made on Pontiac Trail and the intersections also allow the site to have one entrance.

Ms. James stated that the Road Commission told them that the 8 Mile Road entry was cancelled due to cost, but Meijer told the Township that the DEQ denied it. She would ask that the applicant submit the denial letter from the DEQ so they have that on file. Mr. Mourand stated that was a misunderstanding and that the DEQ would not allow that based on other projects that they are currently working with the DEQ on and having difficulty getting permits for wetlands and floodplain delineations from the DEQ. It was their professional opinion that they don't need to submit a permit application for that site. It would not be approved, as it was not a permit that they could get.

Mr. Hamilton asked for clarification regarding the 4500 vehicles per day traveling egress and ingress. Mr. Labadie stated that the trip generation for the weekday peak hour would be 9460 so half of that would be in and half of that out so 4500 would be close. Mr. Hamilton asked what would happen to the supporting roads when 4500 cars would be coming in and out. Mr. Labadie stated that he did not have that study, and it was not accepted practice to study it for 24 hours what they have was a study of the peak hour worst time of the day during the week and the Saturday peak hour, and they have information for that. There was information in the study about the levels of service.

Mr. Hicks stated that he has noticed a lot of overnight semi parking in other locations, and he would like to see signs that prohibit that, since it is so close to residential. Mr. Dunstan stated that they could do that.

Mr. O'Neil asked if the front of the building where the signage was if there was a break in the material or if it was a flat area. Mr. Mourand stated that it was colored panels that project in and out of the front, but he was not sure where the projections occur.

Mr. O'Neil asked if the mechanicals in the back of the building were screened. Mr. Mourand stated that it was taken care of in the last revision; the pilaster was revised 4' for that purpose.

Mr. Barber stated that the Meijer people have gone a long way in giving them whatever they have asked for, the property is zoned for it, and it is a nice looking building.

Ms. James stated that the arguments made from Meijer were very compelling but it was not quite enough for her, she wished that they could speak with one voice for something that would impact the Township so much. She wished it had been framed as a zoning request and presented to the Board. She remained concerned about the zoning.

Mr. O'Neil made a motion subject AP-07-25 subject to the applicant addressing concerns regarding the wing wall, the entryway sign along Pontiac Trail as was discussed and agreed upon by the applicant subject to review and approval by the Township Planner and Engineer. Also, contingent upon them reviewing the landscape plan around the basin to ensure that when the time comes to expand the basin that the mature landscaping not be disrupted because it was so important for screening purposes as well as exploring the issue of potentially clustering or arranging landscaping along the rear (east) property line to further buffer the residential property to the east and also subject to confirmation that the façade truly has some depth and was broken up as was discussed at various points and was it was not indicated on the elevation he was looking at, it was important to require some depth along the façade. No overnight parking of trucks with the appropriate signage installed and approved by the Township along with any other conditions that staff and consultants have noted in their letters. Mr. Towne supported the motion.

Mr. Barber allowed the public to speak at 8:25 p.m.

Brian James. Mr. James stated that this item was tabled at the last meeting. Mr. O'Neil stated that they could go back and take it off the table to make it official. Mr. James stated that he was not related to Ms. James. He stated that he was representing Winding Creek Association, Lyon Trail Association and the Park Woods Association; they have filed a lawsuit about this issue. They have asked the Oakland Circuit Court for a declaratory judgment relative to the procedure. He continued that Mr. Rattner believed that the use of this detention pond was all right and he stated that Mr. Quinn has advised the Township that the use of the residential zoned portion of this property was acceptable and that he believed it was acceptable because the Township Planner and Engineer said it was acceptable. He did not think it was acceptable. He was not saying that there was no set of circumstances under which a Meijer could be constructed on this property, but under the circumstances that the Commission was presented with, it was inappropriate, and they should not do it. They want to use residential zoned property for a detention pond that is accessory to a commercial use.

Mr. Barber stated that it seemed like they were in court. Mr. Quinn stated that they could allow up to 3 minutes for people to speak and they could move on to the next speaker. Mr. Barber explained that he had opened it to the public for 15 minutes and he would like to hear what other people have to say. This is not a court, and they could try the case in court.

Mr. James stated that it was straightforward; the zoning ordinance is a permissive ordinance, the ordinance does not say but precludes using residential property for a commercial purpose, and there was only one time in the Township ordinance that was allowed, and that was relative to a septic field, and that was called out in two occasions. They have been told there are 3 reasons. One was from the minutes of the November 26, 2007 Planning Commission meeting, which indicated that the Commission was advised

that this would not go to the Township Board of Trustees because pursuant to Article 5, there was an exception for a single building. He stated that was not true. He continued that the second reason that was offered was that Mr. Doozan had said that the detention basin has never been considered as an accessory use within the Lyon Township Zoning Ordinance or actually in an industrial use it was an accessory use. The last reason was that they have an affidavit from the Township Engineer that indicates this was an accessory structure, and the storm water management standards apply. They were being told that the detention pond on a residential property was an accessory use for a 575,000 s.f. parcel with 192,000 s.f. building; that was absurd. He noticed in the 11-26-07 meeting minutes that there was supposed to be legal opinions provided, and he has a FOIA request, and he has not seen a response from Meijer attorney. The lawsuit would continue until they step back and look at the commercial use on residential property, not on any on this parcel, but on every other parcel in the Township. He asked them to vote no.

Michelle Wilson. She stated that if the road was increased to 5 lanes, she was concerned with the kids going to Meijer and the kids crossing 5 lanes of traffic to get there. She wondered what kind of crosswalks would be there for the safety of residents. She addressed the garbage trucks that come to Kroger and the noise that causes, she questioned how and when the garbage would be picked up for Meijer; obviously it would be a lot more garbage. She stated that even using 1% of the 4500 cars that didn't want to go to 8 Mile and Pontiac Trail to miss the traffic light that would cut through her sub would be 45 more cars that would be in her neighborhood around the kids riding their bicycles when their subdivision has no sidewalks. There are no sidewalks when they need to go along the road. Were there any proposed sidewalks? Her street dead-ends at the horse farm, and if there was residential, was there going to be something that stopped an entry into Meijer? She commented that 8 Mile and Pontiac Trail was their congested area, and she heard rumor that a Home Depot may go in by the library, which would turn this into another 8 Mile and Haggerty area with the congestion. She expressed concerns with their home values and if Meijer would take that into consideration.

Abe Ayoub. Meijer's attorney stated that they were putting the retention basin there for the residents; they were putting it there because it can't go on any other parcel. This was for a commercial use. At the last meeting Mr. Quinn and Mr. Doozan stated that they had no problem. First thing that was done was the structure was removed; they were wrong then, and they are still wrong. They are charged with the residents' health, safety, and welfare. If they donated a parcel, then they would be setting them up for a lawsuit. He expressed that he thought there was influence from the Board of Trustees. He asked that they do what they are charged with.

Robert Smith. He thanked the Commission for allowing them to speak. Since October of 2005, he felt the residents were invisible during this entire process. None of the parties in this development have listened to any of the concerns of the residents. They have sent emails to every person at Meijer, and they get no response except from the PR person's assistant, which says the same thing every time. They have never addressed them directly or offered answers directly. It's obvious why they hired an attorney. It should be obvious to all of them that this was not right for their community. He thought they were afraid of what the Township Board was influencing them on and what was written in the paper. He has spoken to many Board members since 2005, and they have told him that it was not good for their Township and that they can't understand why Meijer is building here. The moving of the structure was wrong. He thought the Board was hiding behind the Planning Commission and thought that they should deny it and let the Board vote on it. The noise was a very big concern to him. The residents would hear a door slam on the trucks and the trucks idling. He lives by Walgreens and stated that he could see it and hear it. They have no problem with the commercial zoned property, but this commercial property doesn't fit. He stated that they never answered Ms. James' question about how much land was left to develop. What happens if there was only 5-7 acres left, how many houses would they allow on that and what would they do with that property? It would look different if the commercial development was half the size, it would fit and look good, it would be appropriate.

Jeff Shschondar. He lives on lot 41 and would have an unobstructed view of Meijer's. Two years ago he felt that they were quite clear that the residents did not want them here. He felt it was a case of corporate greed. He has lost all respect for a company that would indulge in illegal activities to get people recalled from the Planning Commission in Putnam Township, and they would stop at nothing to build their store

and sell their cheap products. He saw no benefit at all to the community. It looked like a foregone conclusion, and they keep coming out to the meetings, and he felt that the idea was to wear the residents down. The elation that everyone felt when they were turned down two years ago was great but now he was very disappointed.

Mr. Barber closed the comment from the public at 8:48 p.m.

Mr. Barber questioned if residents could use the traffic light to cross the street? Mr. Labadie stated it would be timed for pedestrians to cross. Mr. Barber questioned the cross entrance from the future residential sub, they don't have anything on this sub, there was nothing planned. When it came up in the future they would consider that then. Meijer was turned down before because it was a rezoning, this was not a rezoning now; it's what the land is zoned for.

Roll Call Vote: **Ayes: O'Neil, Conflitti, Towne, Hicks, Barber**
 Nays: James, Hamilton

MOTION APPROVED

6. **NEW BUSINESS** - None

7. **ADJOURNMENT**

Mr. Barber adjourned the meeting at 8:53 p.m.

Respectfully Submitted,

Kellie Angelosanto
Recording Secretary