

FAX 810-231-4295
PHONE 810-231-1000

P.O. Box 157
10405 Merrill Road
Hamburg, Michigan 48139

**Hamburg Township
Planning Commission
Wednesday, June 17, 2020
7:00 P.M.**

Electronic Meeting, pursuant to Executive Order 2020-75

1. CALL TO ORDER:

The meeting was called to order by Chairman Muck.

Present: Bohn, Hamlin, Koeble, Leabu, Muck, Muir & Priebe

Absent: None

Also Present: Scott Pacheco, Township Planner & Amy Steffens, Planning & Zoning Administrator

2. PLEDGE TO THE FLAG:

3. APPROVAL OF THE AGENDA:

Motion by Koeble, supported by Priebe

To approve the agenda as presented

Roll Call Vote: Ayes: 7 (Bohn, Hamlin, Koeble, Leabu, Muck, Muir & Priebe) Nays: 0 MOTION CARRIED

4. APPROVAL OF MINUTES:

a) May 20, 2020 Planning Commission Meeting Minutes

Motion by Bohn, supported by Muir

To approve the minutes of the May 20, 2020 meeting as presented

Roll Call Vote: Ayes: 7 (Bohn, Hamlin, Koeble, Leabu, Muck, Muir & Priebe) Nays: 0 MOTION CARRIED

5. CALL TO THE PUBLIC:

Chairman Muck opened the call to the public for any item not on the agenda. Hearing no response, the call was closed.

6. OLD BUSINESS:

a) Continued Public Hearing for HHPUD 20-001, SPA20-002 and ZMA19-002: Proposed amendments to the Chilson Commons Hardship Planned Unit Development (HHPUD) Agreement approved by the Township Board on December 17, 2002 and finalized as signed by both parties on January 28, 2004 and the Chilson

Commons Site Plan approved by the Township Board on November 25, 2003. Changing the zoning designation of the underlying property in the Chilson Commons Shopping Center from Water Front Residential to Community Service.

Mr. Ronn Nadis, attorney for Chilson Commons, 39395 West Twelve Mile Road, Suite 200, Farmington Hills, Michigan and Bill Watch and Logan Watch of Chilson Commons, First Commercial Realty & Development Co., INC., 27600 Northwestern Hwy, Ste 200, Southfield, Michigan were present as applicants. Mr. Nadis presented a Powerpoint Presentation of the proposed amendment to the Chilson Commons Hardship Planned Unit Development. He stated that this HPUD dates back to 2002. The center has faced some challenges over the years and continues to face challenges. He reviewed some of those challenges including the economic climate, pandemic and the orientation of the Kroger which faces away from the rest of the shopping center. These are the things that are out of their control. There are some things that they can control. He discussed the lack of visibility of the tenants and visibility of the signage. He stated that in their amendment proposal, they did not address the sign, and they would like to add that. They would like to make that sign more visible. Ultimately, there may be a need to reconfigure the center through the site plan approval process. The added units would play into that reconfiguration as well. They understand the goals of the Township's Master Plan to maintain the natural features of the area. Commercial is part of that plan, and they feel that what they are proposing is consistent with that Master Plan. They are trying to find that balance between maintaining those natural features while recognizing that this shopping center is in need of the internal expansion, and they need to create better visibility for its tenants. They have been asked by Kroger to expand their store to a 90,000 square foot facility. This is good in terms of tax base, success of the shopping center and is consistent with the Master Plan. The center is an important commercial node of the Township, and in order to benefit the community, they need to recognize it for what it has become and treat it like other commercial development. They are also asking for the flexibility for future out-lot development. Mr. Nadis presented pictures showing different views of the shopping center and entrances and surrounding areas. He outlined the key changes being proposed including a) Formally changing the permitted uses for the shopping center condominium to those permitted in the CS zoning classification, b) Expanding the shopping center condominium to the west of the condominium, c) Expansion of the Kroger store and facilitate the construction of a new detention pond area, d) Expanding the shopping center condominium to include what is now an undeveloped landscape buffer along M-36 almost directly in the middle of the center, e) Thinning, trimming and some removal of trees and shrubs on proposed Unit 10 to provide visibility for the tenants from M-36, f) Allow trimming or removal of trees planted near and at Chilson Road driveway to make the center sign visible to westbound traffic on M-36. He presented drawings and explanations for each of the items. He stated that 18 years ago when the plan was approved and the agreement was made, they were going from natural land, and we now have a completed shopping center. It is in the best interest of the community for it to succeed. It is going to need some visibility in order to do that. One of the challenges over the years has been the growth of the trees. When they are done, cars traveling westbound on M-36 will still see a tree lined street. There is competing goals of prioritizing the economic development of the corridor and revitalization of commercial properties. He further stated that the gun club is still in existence and remains a hardship for this development.

Mr. Nadis discussed the CS zoning and stated that they feel that the CS zoning is appropriate and is designed to facilitate the kind of development this has become. If we are going to have this cluster commercial development, then we need to do what we can to make it successful. He stated that one of the goals in both the 2011 and current Master Plan is to cluster and contain future commercial development around existing commercial areas in the Hamburg Village, Village Center, M-36/Chilson Road, Lakeland, and the M-36/Pettysville areas and enhance and serve the residents of the surrounding neighborhoods and motorists on M-36. This area should get attention and recognize it as a commercial development, not waterfront residential. Furthermore, on the Existing Land Use Map of the Master Plan, it calls for these areas to be commercial. He discussed the proposed Unit 9, the land fronting on M-36 between the existing Kroger Gas Station and the commercial development to the west, which is currently Allstate Insurance. They do know that there are wetlands on part of Unit 9 and would deal with that during the site plan review. The area around the trail will remain the same. He discussed the Kroger expansion. He stated that they would maintain the buffer area between the development and the gun club and some of the area may be used for some flood mitigation. The proposed retention pond would remain natural lands. He discussed the proposed Unit 10, which is utilizing the M-36 frontage. If the future goal of the Township and the developer is to have a successful

development, they think that this is an appropriate development. He discussed the landscape buffer and the problems with visibility. They are asking the Township to approve a concept to allow them to trim and remove, as necessary, trees and shrubs so that the shopping center can become visible from the roadway. They are talking about working with the Township to manage the two goals which are visibility and maintaining natural features. He discussed the visibility of the signage and noted that the trees around the Chilson Road entrance have grown up over the years. They were planted as part of the original landscape plan, but they are now blocking the view of their signage. They are seeking approval to trim or remove the trees, again working with the Township.

Mr. Nadis addressed a few of the Planning Staff's suggestions. He would suggest that some of these items be put on hold until further down the road. He discussed the access points, existing vegetation on units 9, 10 & 11, and building orientation. He would like to leave these issues for site plan approval. He further stated that they take issue with the suggestion that competition with the Village Center should be a significant consideration. He stated that they are talking about two additional users on out-lots, which is different than in-line users. As the Township grows, there will be retail interest in the Village, but until you have more residential development, you are not going to have a lot of commercial development in that area. He does not feel that their development should come second. It is the main commercial node, and we need to get it as successful as possible. They are proposing to leave 85% of the frontage along M-36 as screening. The changes over the years necessitate the proposed changes. Changing the zoning classification simply recognizes the existing uses. Allowing proposed units 9, 10 & 11 are reasonable modifications and with the expansion of the original HPUD, over 40 acres will remain preserved for natural lands. The thinning, trimming and removal of trees where necessary balances the developers needs and the Township's stated goals. Finally, the proposed changes are consistent with the letter and spirit of the PUD ordinance and the Master Plan, and signage visibility is critical.

Scott Pacheco, Township Planner, stated that the applicant has done a good job explaining the project and agrees with much of what has been said. In 2002, the Township developed the Hardship Planned Unit Development Regulation which he has never seen before. It was designed with good intention. This development was designed so that you drive into the development and create a town-like area. A lot of the design failed. Maybe if it had been completed in 2002 when the economy was different, it may have developed into more of a downtown or main street development. The gas station also changed the dichotomy of the entire project. What we have in front of us now is a request for an amendment to an HPUD, which is an agreement between the developer and Township. The developer would like to amend that agreement to make the project more viable. The center has had some vacancies over the years. Visibility has always been one of their main concerns. That is because we tried to create a different type of development. On the original proposal there are two out-lots, one is now the gas station and the other is currently owned by TCF bank. They are asking for the three additional outlets, units 9, 10 & 11. He described the location of each and stated that unit 11 has been restricted to be used in association with Unit 1, which is Kroger. They are also proposing to open up some of the allowed uses to those allowed in the CS district but were not allowed within their project. He described the uses allowed in the CS district and through Special Use Permit. With the addition of these out-lots it does reduce the amount of natural area that was preserved under the original HPUD. With this request, they are also asking that the underlying zoning be changed from Waterfront Residential to CS. The property is already used as commercial and is regulated under the HPUD requirements, not the underlying zoning. The only time you would look at the underlying zoning is if the HPUD agreement is silent on an issue. The HPUD has been silent on their signage for their tenants, and as a Planner, we have been using the commercial service district regulations for the size of the sign. The intent of the proposal was to allow commercial use of this area, and to only allow a 6 square foot sign on a building would look out of scale. He reviewed the area to be rezoned, which is all of the area of the development. All of the natural areas that would remain would stay Waterfront Residential. He stated that the Township did approve this development, and we do not want a commercial development to not thrive.

Pacheco reviewed the project analysis. He stated that the Planning Commission is being asked to review a HPUD amendment. This is a major change, therefore it is required to meet all of the standards of the original HPUD regulations. He stated that these are discretionary type standards and reviewed each of the applicable standards as well as staff suggestions as outlined in his memo to the Commission. He stated that the other issue to be looked at is the amendment to the site plan, which is the addition of the out-lots. He outlined the site plan review standards and stated that a lot of these items will be looked at when there is a site plan that comes through as part of the project on

those out-lots. The last item the Commission will be looking at is the zoning amendment. He discussed the wetlands area. As the applicant indicated, they would have to go through EAGL for approval. He discussed Unit 11 and the flood plain mitigation as well as the changes in the retention area. Pacheco discussed the standards for review for the zoning map change. He discussed the Future Land Use Map. That map was developed in 2011 and this site had already been developed as a commercial site. He discussed the criteria in reviewing the zoning change. The Planning Commission shall consider each proposal for amendment in terms of its own judgment and particular factors related to the individual proposal, the most likely effect on the community's physical development, and conformance with the Township Master Plan. The Planning Commission may recommend any additions or modifications to the original amendment proposal. The physical development will be minor and there is commercial all around. The Future Land Use Map had considered those areas to be commercial, with the exception of Unit 11. He discussed the Master Plan Goals and the M-36 Corridor Plan Goals. He further stated that the 2020 Master Plan is currently out for review, and whatever the Commission decides, we will probably change that Master Plan. Even with the zoning change, the HPUD is the overriding document. With the amendment that is proposed, all of the uses allowed in the CS district would be allowed in the existing and proposed development. Currently, there are some slight restrictions, mostly dealing with the out-lots. He discussed drive-thru and walk up service and the need to look at these at a much more reasonable location because of COVID. He discussed the change in our code to allow automobile service facilities within the CS district.

Pacheco stated that the three most significant concerns that the Planning Staff has with the proposed project are 1) Adding additional commercially zoned property to this area will detract from future potential commercial moving into and revitalizing the Village Center Area and filling other existing vacant commercial sites and developments. 2) To allow additional expansion of the commercial developable area on the property will have a greater impact on the existing wetlands and floodplain areas. 3) Allowing the additional expansion of the commercial developable area will reduce the natural open space preserved as a part of the original HPUD and reduce the buffer areas from the property to the east and west and from M-36 to the north. He explained each of his concerns. He stated that the Planning Commission needs to determine if they are amenable to the changes to the HPUD being the additional out-lots and the addition of certain businesses in the development along with the removal of some trees. The Commission needs to determine if they are amenable to the zoning change from WFR to CS. You may agree with some things with the proposed change and maybe not others or agree with the changes to the agreement but not the zoning change. We brought this forward to the Planning Commission to see how the Commission feels about this project and how we can move forward. We wanted to make sure that we were all on the same page before we requested a full master deed and by-laws from the developer. Those would be required before Township Board approval along with any other conditions that the Planning Commission may make.

Amy Steffens, Planning & Zoning Administrator, gave instruction for those individuals wishing to speak during the public hearing.

Pacheco stated that we received a letter from Clyde & Linda Schultes of 5859 E. M-36 which is across the street from the Kroger Parking lot. They are objecting to the changes to units 10 and 11, which are the buffer sites. Mr. Schultes came out during the original proposal. He was concerned about the lighting and that remains his main concern as well as reducing the buffer areas. We received a letter from Bob Finn of 8610 Tamarack who is also in opposition to the changes. He would like to keep as much natural property as possible and does not want to see expansion into those natural spaces. He is also asking do we really want a McDonalds or car dealership. Finally, we received a letter from James Clement of 9361 Silver Maple who is also opposed to the changes. His argument is that there is already commercial vacancy in the area so why would we want to allow more development if there is existing vacancy. He is also concerned that we are re-opening the HPUD agreement. It was further stated that Mr. Clement understands that while there may be community support for the expansion of Kroger, it may be more reasonable to work within the existing structures rather than adding structures.

Chairman Muck opened the public hearing. Hearing no public comment, the call was closed.

Commissioner Bohn stated that there are very few large lots available, and this is an active commercial area. The expansion of Kroger would be welcome. He would be very concerned with an additional access point. Currently

there are two access points with one regulated with a light and the other is not. This currently can be a problem. He does want to make sure that out-lot 11 is tied to Unit 1.

Commissioner Hamlin stated that most of our local residents patronize this development. A lot of time was put into making this a good development. There are many existing commercial vacancies in the Township and he does not see a need to construct more at this time. He is sure that the majority of residents would agree that giving up preserved land and buffer and making the development more visible from M-36 is not beneficial to them. In the existing agreement, it states that ordinances and standards may be waived or modified by the Township at its sole discretion. The Township currently has the ability to grant modifications for specific needs. At this point, the only specific need he heard was thinning and trimming of trees and potentially an expansion of Kroger. He would rather that the applicant come in with their specific need rather than granting them a new zoning.

Commissioner Koeble agreed that we have a lot of empty spaces and she would be hard pressed to approve more development. She stated that people know where that Kroger is located. You can see the parking lot full at all times. We have not seen a site plan and we need more factual information.

Commissioner Leabu stated that he was here when the original project was approved, and it was the most contentious and difficult project. Visibility does not work for several of our shopping centers. He is open to thinning and trimming trees. He is open to a sign change. He is completely uncomfortable rezoning the property. He does not see a need for Units 9 and 10. He is grateful for Kroger and is sorry that the rest of the development is not that successful. He is open to listening to what Kroger's needs might be since they are an important part of our community.

Commissioner Muir stated that he would support the expansion and modernizing of Kroger so he is in favor of Unit 11 provided that it is strictly designated for Kroger. He would support trimming the trees so that you can see the sign. The original landscape plan did not provide for all of the underbrush and this should have been taken care of over the years. It would depend on what kind of business that would be proposed for Unit 9 whether it would enhance that area. He agrees with no additional road cuts. He would agree that the zoning should remain as is and have the HPUD cover the restrictions.

Commissioner Priebe stated that she appreciates all of the hard work that has gone into this. She too is in favor of the trimming and thinning of the trees. There is an issue with the signage. She would agree with Unit 11 for Kroger as it is the main draw of the center. She is not opposed to Units 9 and 10 either, but we do need more specifics as to what is being proposed there. At some point, she would consider the CS zoning because that is what the use is and that is what the Master Plan has it designated. There is a lot of work yet to be done. She does want to see the development prosper and be successful for our community.

Chairman Muck stated that like the other commissioners, he has concern about additional entrances, and would not support that. He has concerns about the wetlands and the buffers. His understanding is that the Kroger expansion is not a guarantee. He could consider the zoning change, but he is not there yet. He could also support some changes to the signage and tree trimming.

Pacheco stated that he is hearing that the Commission is not in favor of the request in front of them tonight, but if the developer would want these out-lots, they would come forward with a site plan showing what is being proposed on that spot and ask for the out-lot at that time. He stated that the vegetation around the sign was vegetation that was required as part of the site plan review. The trimming of the trees on what we are calling unit 10 was parcel 2 on the original site plan, and it states that no vegetation is to be disturbed. He questioned whether that would be something that the Commission would allow the developer to work with staff or not for those two areas.

Mr. Nadis addressed some of the concerns of the Commission. He stated that they believe that although the visibility of the site as well as the signage are challenges of the site, they would like to have a game plan and amend the HPUD agreement once. They believe the proper zoning of the site is the CS and would like the flexibility to go out and look for tenants to use these spaces. The idea is to give the developer some flexibility. They would like to include units 9

and 10 so that they can be part of the planning. They are not proposing buildings at this time, and the Commission will be able to weigh in on users that come in. You will be able to accept the site plan or not. You can change the zoning to what the Master Plan contemplates. They are talking about uses that are already in place across the street. They cannot market without the first step, which is a zoning classification to allow them to do that. They need the zoning change in order to bring a site plan to the Commission for consideration. As far as access roads, they have not done any study and he doubts that they would need it. That is not a major concern of theirs. He understands that there are vacancies in other developments, but he does not know how they are operated, etc. They can only be concerned about what is happening in theirs. He would also like to note that some of the trees that they are talking about trimming are growing into the wires and would have to be trimmed by DTE anyway. He understands that everyone knows where Kroger is, but there are other businesses and they are trying to have a successful shopping center.

Mr. Bill Watch stated that since 2012, Kroger has come to them three times about expanding this store, and all three times they decided not to do it. This proposal would give them a competitive advantage when they come back. This is a good store and has been on their list for expansion. We want to be ready when they come back. They have done some preliminary engineering including the floodplain mitigation, retention basin, etc.

Commissioner Muir stated that as he stated he is in support of the expansion of Kroger, but he opposes Unit 10 because it will no longer look rural. If you put a building there, you would not be able to see the other businesses.

Commissioner Hamlin stated that rather than re-write the amendment, at this point he would like to deny the presented request. A specific site plan amendment could be brought forward at the same time as a specific amendment to the agreement. If we proceed, he feels that we are giving up Township control without any specific requests.

Motion by Hamlin

To recommend to the Township Board denial of the proposed amendments to the Chilson Commons Hardship Planned Unit Development (HHPUD) Agreement approved by the Township Board on December 17, 2002 and finalized as signed by both parties on January 28, 2004 and the Chilson Commons Site Plan approved by the Township Board on November 25, 2003 changing the zoning designation of the underlying property in the Chilson Commons Shopping Center from Water Front Residential to Community Service.

Motion died due to lack of support

Commissioner Leabu stated that he is open to the expansion of Kroger, but he is not ready for units 9 and 10. We could consider conditional rezoning. If they brought a site plan agreeable to the Planning Commission, then it would be re-zoned. He does not support approving it. He would agree to denying the request but would like to give the developer some indication as to what they should bring back.

Commissioner Bohn stated that we have identified the actual use and the Master Plan designates its future use. However, he does understand the comments that have been made. He is concerned that we are picking and choosing when we have a zoning classification that would fit.

Motion by Bohn, supported by Priebe

To allow Planning staff to work with the developer, without having to bring a request back to the Planning Commission, to amend the HPUD agreement to allow trimming and thinning of the vegetation to address visibility and recommend approval of the amendment to the Township Board

Roll Call Vote: Ayes: 6 (Bohn, Koeble, Leabu, Muck, Muir & Priebe) Nays: 1 (Hamlin) MOTION CARRIED

Commissioner Muir stated that his main concern is to that the Planning Commission would lose its control with the re-zoning and asked if the HPUD agreement could be amended to include other options rather than re-zone the property. Pacheco stated that the developer is asking to eliminate the use restrictions in the agreement and just allow the uses within the CS district. He reviewed the restricted uses in the current agreement and asked what of those uses would the Commission like to include. Further discussion was held on the options.

Pacheco stated that they are asking that the entire underlying zoning be changed. The question is if Units 9, 10 and 11 are eliminated, would the Commission be in favor of changing the underlying zoning. He stated that from the discussion it sounds like the Commission would not support the existing HPUD Agreement to be amended changing the uses allowed. If the Planning Commission says "No", the Township Board can still say "Yes". Discussion was held on the approval of the gas station.

Commissioner Priebe stated that we can look at the issues separately. As far as the rezoning to CS, that is what the use is. Some of the uses probably would not want to go there anyway. Commissioner Muir stated that if we are taking this in pieces, we could put some more energy into Unit 11. Commissioner Hamlin stated that we have nothing specific from Kroger about expanding. He is not in favor of Unit 11 not being protected without a specific request. Pacheco stated that the underlying zoning would not affect Kroger. It is an allowable use.

Discussion was held on conditional zoning. Pacheco stated that the way that it was discussed earlier would be through the HPUD process. Conditional Zoning would be where you come in with a site plan that would restrict the zoning of the lot to the site plan that is approved. This would be similar to what they went through for the original HPUD.

~~Motion by Priebe, supported by Muck~~

~~To recommend approval to the Township Board an amendment to the Chilson Commons Hardship Planned Unit Development (HHPUD) Agreement approved by the Township Board on December 17, 2002 and finalized as signed by both parties on January 28, 2004 and the Chilson Commons Site Plan approved by the Township Board on November 25, 2003 changing the zoning designation of the underlying property in the Chilson Commons Shopping Center from Water Front Residential to Community Service.~~

Motion by Priebe, Support by Muck

To recommend approval to the Township Board the rezoning of the underlying property where the existing developed area for the Chilson Commons Shopping Center exists and in the area shown as unit 9, unit 10 and unit 11 in the amendment to the HPUD agreement from Water Front Residential to Community Service.

After further clarification and comments from the Planning Commissioners the motion was revised as follows:

To recommend approval to the Township Board the rezoning of the underlying property where the existing developed area for the Chilson Commons shopping center exists from Water Front Residential to Community Service.

Steffens stated that we are talking about changing the underlying zoning in the area that is currently developed, where the existing structures are. This would not include the additional out-lots or the entire property. It was stated that they can then come back with a site plan and request for expansion.

Roll Call Vote: Ayes: 2 (Muck, & Priebe) Nays: 5 (Bohn, Koeble, Hamlin, Leabu, Muir) MOTION FAILED

Pacheco stated that the motion to approve failed, therefore it is denied. We can move forward to the Township Board. He will discuss it with the Township Attorney to verify.

Commissioner Leabu stated that he feels that the developer could come back and there might be some common agreement, and the majority appears to want to work with Kroger.

Clarification was made as to what was recommended for approval. Pacheco stated that the Commission has approved the developer and staff working together prior to the Township Board meeting to revise the HPUD Agreement to allow trimming and thinning of trees for visibility of the site and the signage.

Motion by Priebe, supported by Koeble

That the Planning Commission is recommending approval of modifications to the HPUD Agreement for the landscaping and trimming only. The developer and staff will work together to revise the language of the Agreement prior to consideration by the Township Board

Roll Call Vote: Ayes: 7 (Bohn, Hamlin, Koeble, Leabu, Muck, Muir & Priebe) Nays: 0 MOTION CARRIED

7. NEW BUSINESS:

- a) Initial Review of ZTA20-002: Proposed zoning text amendment that explains the locations where ADUs are allowed on properties within the WFR and NR districts that abut a waterbody or have access to a water body.
- b) Initial Review of ZTA 20-003: Proposed zoning text amendment to Section 11.3.1., permitted expansion of residential buildings, to permit second story additions over nonconforming dwellings without variance approval.

Motion by Priebe, supported by Hamlin

To table Review of ZTA 20-002 and ZTA 20-003 until the next meeting

Roll Call Vote: Ayes: 7 (Bohn, Hamlin, Koeble, Leabu, Muck, Muir & Priebe) Nays: 0 MOTION CARRIED

ZONING ADMINISTRATOR'S REPORT: None

8. ADJOURNMENT:

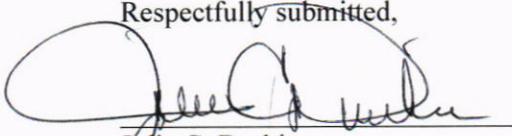
Motion by Koeble, supported by Muir

To adjourn the meeting

Voice Vote: Ayes: 7 Nays: 0 MOTION CARRIED

The Regular Meeting of the Planning Commission was adjourned at 9:53 p.m.

Respectfully submitted,


Julie C. Durkin
Recording Secretary

The minutes were approved as presented/Corrected: 7-15-20



Jeff Muck, Chairperson