

CHARTER TOWNSHIP OF HARRISON
HARRISON TOWNSHIP, MICHIGAN 48045
PLANNING COMMISSION MINUTES
THURSDAY, JUNE 19, 2008 – 7:00 P.M.
APPROVED PC MINUTES –JULY 17, 2008
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A regular meeting of the Harrison Township Planning Commission was held on **Thursday, June 19, 2008 at 7:00 PM** in Rosso Memorial Hall located at 38255 L'Anse Creuse, Harrison Township, Michigan 48045.

A. CALL MEETING TO ORDER:

Chairman Tomenello called the meeting to order at 7:05 p.m.

B. ROLL CALL:

PRESENT: Members Bill Fowke, Doug McDougal, Mike Rice,
John Swiatkowski, Maria Zingas and Chairman Lawrence Tomenello

ABSENT: Member Mark Bacha, Excused

ALSO PRESENT: Rosemary Davis - Township Attorney
Patrick Meagher -Township Planner
David Nummer – Township Engineer
Cynthia Chambos – Recording Secretary

C. APPROVAL OF AGENDA:

Chairman Tomenello requested to have Item J-10, Selfridge Air Base – Discussion, under Comments from the Planner, moved to be heard first as Item E-1-A, under Reviews.

Motion by Member Zingas supported by Member Rice to approve the amended agenda.

<u>Roll Call Vote:</u>	Member Zingas	Yes
	Member Rice	Yes
	Member McDougal	Yes
	Member Fowke	Yes
	Member Swiatkowski	Yes
	Chairman Tomenello	Yes

Motion Carried.

D. (A) APPROVAL OF MINUTES: May 15, 2008

Motion by Member McDougal supported by Member Swiatkowski to approve the meeting minutes of May 15, 2008, as amended.

<u>Roll Call Vote:</u>	Member McDougal	Yes
	Member Swiatkowski	Yes
	Member Rice	Yes
	Member Fowke	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried.

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(B) APPROVAL OF MASTER PLAN MINUTES:

May 22, 2008

Motion by Member Swiatkowski supported by Member Fowke to approve the Master Plan meeting minutes of May 22, 2008, as amended.

<u>Roll Call Vote:</u>	Member Swiatkowski	Yes
	Member Fowke	Yes
	Member McDougal	Yes
	Member Rice	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried.

E. REVIEWS:

1-A) Selfridge Air Base – Discussion:

Patrick Meagher, Planner, introduced Mr. Robert Salomon of Beztak Companies and briefly spoke about how he would be working with Mr. Salomon and the direction that the base was taking toward the future.

Mr. Robert Salomon – Beztak Companies - 31731 Northwestern Hwy, Suite 250W, Farmington Hills, MI: Mr. Salomon is with the Beztak Companies and one of its affiliates, Communities by Beztak, was designated back in September or October of last year as, for lack of a better term, the preferred developer of the **E.U.L.** – Enhanced Use Lease Area at Selfridge. We are a development firm with some 50 years of experience. We put together a team that the Army, the Air Force, the Corp of Engineers and the base and its consultants found fit to – and appropriate – and well qualified to tackle this difficult assignment in a very difficult economic environment.

Mr. Salomon stated he is here tonight to give a brief overview of this project. He was very adamant and stressed the fact that everything he says tonight is “conceptual only”! No hard line has been put on paper, there are no working drawings, we have not finalized our business arrangement with the Corp of Engineers or the Air Force with regards to what will happen at Selfridge. We want the input of the community and the stakeholders and this is part of our responsibility and part of our pledge to the Air Force and the Corp of Engineers to do. We need to be reasonably responsive to their concerns and desires.

As you probably know, the E.U.L. Area comprises about between 800 and 900 acres of land on the base. The base itself is probably about 3,500 acres. Our conceptual plans for the use or uses of those 900 acres include the following:

- 1) A hotel or motel with a freestanding restaurant and conference or seminar facilities at the northeast corner of the base.
- 2) Senior apartments – not only for military retirees but also for the general public. This would be independent living accommodations for seniors and we also see an expansion of that senior component to include, down the road, assisted living and perhaps a skilled nursing facility – what is commonly known as a continuum of care retirement community. We have a market study that indicates there is a significant demand for that type of housing and uses within the community that are currently not being served.

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- 3) The retention of the golf course under a new operator. The golf course is one of the areas on the base that is of prime concern to the military. We want to make it more accessible to the public; more so than it has been in the past.
- 4) We have identified a medical office building user for a portion of the process.
- 5) There will be some general office space – up to 300,000 square feet of general office space.
- 6) There is an area for approximately 600,000 square feet of research and development, light industrial, and high-tech office warehouse type of space.

The extent of what will be happening over there is obviously grandiose; its massive – it's huge – and it won't happen overnight, particularly in these economic times as I mentioned before. We see the build out of this over a ten (10) year period with construction starting as early as the spring of 2009.

What prompts all of this is the Army. The Army will be pulling out its garrison from the base effective September 30, 2008. Its withdrawal from the base creates a gap with respect to financial ability where we're allowed to maintain the base and the purpose of entering into this E.U.L. agreement is to generate consideration either in dollars or in time that will help fill that gap.

Right now, we're in the process of negotiating what is called a "Lease and Management" plan with the Air Force. The "Lease and Management" plan will serve as, for lack of a better term, "The Bible", for what will govern certain areas, what rents will be paid for those areas, when it will be paid, when areas will be taken down – because we are not planning to acquire all 900 acres all at once – its going to be done on an ad hoc basis premised on demand. The Lease and Management plan will be followed by a Master Lease Agreement with the Air Force and then individual lease agreements for individual parcels.

Mr. Salomon went on to state that this will be done in stages or phases. Certainly the first phase will be the golf course because it's already there. It will require some relocation of fencing and poles and also, most certainly, the main gate. Keep in mind, just as a reminder, the focus of the mission must be the security of the base. We will not be allowed to do anything without the consent of the Air Force, National Guard, etc., in any way, shape or manner that would in any way compromise the safety and integrity of the mission.

We are also hoping to preserve the Area 400 Housing. These are the brick colonial homes that were officer's homes. They appear to be in reasonably good shape and can be and should be restored, and perhaps can be put on the current historic register, and those would be available as rentals to not only the military, either active or retired, but also the general public. They are beautiful, beautiful homes and area.

The second phase would involve the hotel, followed by the senior apartments, the medical office buildings; there will be some other general office buildings built around the same time. And that is generally our plan.

We will work closely with the Township and Mr. Meagher, the Planner. Patrick knows how to get in contact with me. The base certainly knows where I am. And, when questions come up I hope the Township – its officials, representatives, consultants and so forth, feel free to call me, as needed.

This is a big project and a big undertaking. This is really an excellent opportunity for a public/private partnership and that's what its going to take. It's going to take us working together to make this happen. And, we look forward to causing it to happen.

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If there are any questions, I will try to answer them for you. Thank you for the opportunity to allow me to speak to you this evening.

Member Zingas: The Extension Educational center, will that also be available to the public?

Mr. Salomon: You mean the Child Development Center? Member Zingas acknowledged that is what she is questioning.

Mr. Salomon: We hope so. We will be looking to find an operator. We know that that's important to the community. We know it's important to the people who work on the base. It's very high on our radar screen. It's within the E.U.L. area and it's just a matter of identifying an operator with the requisite experience, qualifications and what all to come in and operate it. If you have any leads or suggestions, please let me know.

Chairman Tomenello asked if there were any other questions and hearing none thanked Mr. Salomon for coming here tonight and for the update.

- 1) **Case #18-08-SGN:** **Sign Review – Duroc's Meats – Ray Lane – Petitioner**
34427 Jefferson Avenue, Harrison Twp, MI 48045
(Zoned B-1 (Lot 1) & RM-1 (Lot 30))
Proposed Pole Sign

Ray Lane, 34427 Jefferson, petitioner, was available to address his case. Mr. Lane gave a brief overview of his sign project. Mr. Lane stated that he needs help from this Commission so that he may get his business, which is located behind his house, up and running again. So, he needs signage – and this type of sign is best for his business. He used to have one, but it fell apart over the years. He is looking at a date of September 1, 2008 as a start up date. He needs a sign with the arrow so people will know where the business is located.

A brief discussion took place between the Commissioner's and the petitioner relative to the sign, placement of the sign, type of sign, Planner's comments, length of time the sign could be put up if not permanent, requirements for sign relative to size, setbacks, the fact that he's requesting a ground level sign, and other small issues.

Mr. Lane stated he would be happy to work with the Planner so as to come to some sort of sign plan that would be preferred and work out for both the Township and his business.

Motion by Member McDougal supported by Member Rice to table Case #18-08-SGN, Sign Review – Duroc's Meats – Ray Lane – Petitioner, 34427 Jefferson Avenue, Harrison Twp, MI 48045, (Zoned B-1 (Lot 1) & RM-1 (Lot 30)), Proposed Pole Sign, date specific to August 21, 2008, for the purpose of having the petitioner meet with Mr. Meagher to work out an appropriate signage plan.

Roll Call Vote:	Member McDougal	Yes
	Member Rice	Yes
	Member Fowke	Yes
	Member Swiatkowski	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried.

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- 2) **Case #20-08-SGN:** **Sign Review – Sitto Sign Co, Inc. – Haitham Sitto – Petitioner**
8220 W. Nine Mile Road, Oak Park, MI 48237
For: Huron Pointe Party Store – Marvin Putrus – Applicant
29965 South River Road, Harrison Twp, MI 48045 (Zoned B-1)
Proposed New Pole Sign

Member Swiatkowski stated that correspondence was received from the petitioner asking to be tabled in order to allow him to go before the ZBA for variance issues.

Motion by Member Swiatkowski supported by Member McDougal to table Case #20-08-SGN, Sign Review – Sitto Sign Co, Inc. – Haitham Sitto – Petitioner, 8220 W. Nine Mile Road, Oak Park, MI 48237, For: Huron Pointe Party Store – Marvin Putrus – Applicant, 29965 South River Road, Harrison Twp, MI 48045 (Zoned B-1), Proposed New Pole Sign, date specific to July 17, 2008.

Cynthia Chambos, Recording Secretary, stated that the petitioner has asked to be tabled to August 21, 2008 in order to go before the ZBA for variances for the sign.

Member Swiatkowski amended his motion to the August 21, 2008 date and Member McDougal supported.

<u>Roll Call Vote:</u>	Member Swiatkowski	Yes
	Member McDougal	Yes
	Member Fowke	Yes
	Member Rice	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried.

- 3) **Case #17-08-APPEAR:** **Appearance Review – Phyllis Tierney – Clark Andrews, Attorney for Petitioner**
25125 Shook Road, Harrison Twp, MI 48045 (Zoned R-1-C)
Proposed Change of Use and Occupancy
Described Property – Supervisor’s Plat No. 2, Lot 9,
Harrison Twp, MI 48045
Property #0970-0018-00, Sidwell #17-11-25-453-028

Clark Andrews, 12900 Hall Road, Sterling Heights, MI, Attorney for Mrs. Tierney was present to address this case.

Mr. Andrews gave a brief background history on this property and the reasons why his client is here tonight.

Mr. Andrews went on to state that the property was purchased in 1996. His client and her husband made inquiries before purchasing the property and were told it was listed as a multi-tenant building and priced accordingly. They even made some inquiries through the real estate agent who in turn made inquiries to the Township to verify this information. They were of the belief that the documentation I submitted to you was a multi-tenant, multi-family dwelling. Since that time, Mrs. Tierney has been advised by the Township that may not, in fact, be the case. I contacted Vijay Parakh, the Building Official, with respect to this problem, and he suggested that we come before this Commission in order to discuss the situation. Mr. Parakh indicated he felt he could allow her to continue to use it in that fashion, but if she was interested in converting the property

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or selling it, that it would have to return to residential use. Mrs. Tierney is 70 years old and she's indicated to me that now since her husband has passed away, that keeping up that property and operating it, is more than she feels she can handle and is contemplating selling it. When I talked to Mr. Parakh about it, he indicated that the appropriate thing to do would be to come before this Commission.

There are some facts that I think are important that you know, besides what I've just indicated. The multi-listing indicated that the unit had two (2) – two (2) bedroom units and three (3) – one (1) bedroom units as well as listing what the gross rentals were at the time. In addition to that, the Township Assessing records reflect that one of the realtors involved went to the Township and discussed this with the Township about their belief that it was a five (5) unit rental before the time they ever made an offer or closed the deal. Nobody at the Township, at that point, indicated that that use was illegal. In fact, as Ms. Chambos can attest, I came over to the Township and spent a couple of hours, at least, going over the records that were available, to see if I could ascertain, maybe, what had happened. It wasn't an easy task because there was a gap in the records that was nobody's fault because the Township had a flood and there were some records that were destroyed. It appears from the records that were available, that the Township, in their records, has some notations that this was something that was being used as a multi-rental unit as far back as 1979; which was about 18 years before they purchased this property. They wouldn't have bought it, for the price they bought it, or had bought it as a rental unit, if in fact, it wasn't supposed to be used for that purpose.

Mr. Andrews went on to state that the Township records even reflect some notations about some issues relative to water meters that indicate that the Building Department knows that this property is nonconforming and that they weren't to issue any additional water taps or water service besides those that were already there for the five (5) units and that they were aware that it was nonconforming. At some point in time, the Assessing Department also received and processed a Homestead Exemption affidavit that reflected that only part of the building was being used as the principal residence and there was an indication that that was 55% percent of the building. If the Tierney's were occupying the building as their principle residence, obviously they would have 100% percent principle residence tax rate. At some point, I guess through an error in the Assessing records, they changed that to the 100% percent, through no fault of my client, and your Assessor, Ms. Ritter, later noticed that and she wrote a letter and said (which is in your packet) there was an error that was made and it was our mistake and we're now going to take it back to the 55% percent and we would like to be able to come out and do some measurements and verify that the measurements and determination that the 55/45 was correct. They did, in fact, do that and verified that the information was, in fact, correct. And, in addition to that, at some point, the Ordinance Enforcement people advised my client that she had to comply with the Multiple Family Rental Inspection Ordinance, which inspects multiple tenant buildings for compliance with the housing laws, so my client did that. They did ask that some corrections be made, and she did in fact take care of those items.

So, there are a number of things that are in the Township's treatment of this property that would seem to suggest that they knew, acquiesce, and went along with it being used as a multi-tenant building. Mrs. Tierney would like the Township's blessing with respect to this being treated as a nonconforming building that could be allowed to be used, continued to be used in a manner that it has been used for the last 30 years. That will do two (2) things:

- 1) If she decides to sell it, it will enable whoever is interested in buying it to be able to get financing because it's much more difficult to finance as a commercial property, if in fact, it's zoned residential and there's not any indication that it's a valid nonconforming use.
- 2) Mrs. Tierney obviously doesn't want to be in a situation where she's in violation of an Ordinance, not intentionally, but really through no fault of her own, in as much as both she and her husband tried to find out what the situation was before they bought it.

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Mr. Andrews stated he's talked to the Planner about this on a couple of occasions and he's talked to the Township attorney with respect to it and we are essentially trying to legitimize what's already there. We are not asking for anything more. Mrs. Tierney has advised me that she has not added any units during the time she has been there. She has taken what she and her husband bought and continued to use it exactly the way it was before. We are trying to get a concurrence from the Township so that in the event she decides to sell it, which she is considering doing, that she'll be able to sell it and hopefully be able to get what she paid for it. And, so that the new owner may be able to own it in the manner it was sold to her.

Chairman Tomenello brought the discussion back to the Commission for discussion and comments.

Rosemary Davis, Township Attorney, stated for the record that she has spoken with Mr. Andrews and Vijay Parakh, the Building Official, regarding this and we felt that it was appropriate that the Planning Commission make a determination on this because you do have the authority under your zoning ordinance to establish nonconforming uses. This was not done, and I cannot tell you why it was not done, it wasn't, and given the participation and the facts Mr. Andrews cited, the Township had acted as if this was a nonconforming use. But, it wasn't technically or legally classified as one; and, your ordinance provides the Planning Commission and/or the Building Department with the authority to do so. In speaking with Vijay, we felt that it was appropriate that the presentation be made to you and you be given the opportunity to do so if you so choose.

Chairman Tomenello: So basically we have the option to grant this as a legal nonconforming use which will stay with the property regardless of ownership, going forward. Is this correct?

Rosemary Davis, Township Attorney, stated that is correct, until it is discontinued, yes.

Member Rice stated he has received numerous calls on this property from residents and I have some discomfort with it. If it is allowed, I would first like to hear from the residents, if there are any here tonight.

Member Fowke stated that the Commission had a similar case to this, not long ago, relative to this issue, and he has some issues with this one, too. The building doesn't meet many of the ordinances, I can't vouch for what went wrong all those years, I see parking as a major issue for that amount of occupants, and lot size; everything about it is against the Ordinance book.

Rosemary Davis, Township Attorney, explained that that is exactly why something is nonconforming. When something has been established, and then ordinances change, they're not required to meet the standards of the ordinance because they were there prior to all these changes that have been made over 30 years.

Member Fowke: Do you mean changes in the ordinances?

Rosemary Davis, Township Attorney: Yes, so that all of the structure and the parking are not going to meet the ordinances. That's why they are called nonconforming uses. They don't conform to the standards of the ordinances, but they're allowed to continue because they were there prior to the changes that were made to the ordinance.

Member Zingas questioned Counsel, relative to a similar situation that the Commission recently heard; regarding changing the zoning; but it's kind of parallel to what we are being asked to consider here - the change of use and occupancy of this building to multiple.

Patrick Meagher, Planner, felt he could answer this question. What you remember is the last one that was in was asking to legalize the use and legitimize it – not make it nonconforming. In that particular instance, the

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Township hadn't taken any types of action over the previous years to legitimize the use such as issue building permits or water and sewer permits, or water and sewer taps. They are a little bit different in those respects. In this particular case, what we found is the Township, I would hope unknowingly, issued permits when they otherwise probably shouldn't have been issued – whenever that happened.

Patrick Meagher, Planner, went on to state that it kind of falls into pigeon hole of “doctrine of latches” issue whereby you knowing allowed something to exist for numerous years, and, rather than legalize it at this point, because you kind of got yourself in a bind, you acknowledge it as nonconforming; if it were to burn down or otherwise be destroyed or discontinued, it would then have to come back to its original zoning in nature. In the other case, had the place burned down, it would have been rezoned had you approved it and they could have built a new multi-family structure and so forth. That's the difference between these two (2) cases.

Member Zingas: So basically, we kind of acknowledged the existence of it throughout the years, but we did not make it formal in the books.

Patrick Meagher, Planner. I think there was an incremental acknowledgment of the use, yes.

Member McDougal: When you talk about cessation of the use as terminating the nonconforming use – as I understand it there's five (5) apartment units there at this point – that's total cessation of the use. If one (1) tenant would make the use survive for a possible five (5) – am I correct?

Rosemary Davis, Attorney: That is correct.

Member McDougal: You would have to have no one there for a year, is that correct? I mean at that point that's a cessation - nobody other than the owner occupying the 55% percent.

Patrick Meagher, Planner: There would have to be no effort to rent those units. And, you would actually have to show intent of conversion to single family.

Member McDougal: That's likely. We do know that when you talk about a nonconforming use, there's really two (2) tracks for nonconforming use here:

- 1) The clear “textbook” version of nonconforming use: This piece of property (I'm taking it completely out of the residential apartment thing) if this piece of property was being used as a gas station, but it was rezoned to be residential, and it already existed clearly before the ordinance changed, that's one form of nonconforming use.
- 2) You are talking about a form of nonconforming use – something that has come about through lack of effective enforcement actions that were done over the years where it was created – maybe bits and pieces –but then, once it was created, it was allowed to exist for a period of time – and that's the nonconforming use side of this.

Rosemary Davis, Township Attorney: I'm looking at this, based on the facts, that this has been a multi-family for almost 30 years.

Member McDougal: The ordinance is more than 30 years old.

Rosemary Davis, True. But, we don't have records to verify or, unfortunately, the Township really does not have any records to verify where they've gone and classified anything throughout the Township. So, we're in

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a situation where it appears we have acknowledged it as nonconforming, and all of our actions are that way, but I have no verification of it because we don't have the records.

Member McDougal: We don't have an absolute timeline to deal with. Okay. I just wanted that to be put on the records.

Chairman Tomenello asked the Commission is there were any other comments and hearing none, opened up the floor to public comments.

Robert Roach – 25141 Shook Road: I live next door to Mrs. Tierney and helped build her place years ago. Before she bought, he noticed that Joe (previous owner) had put an ad in the paper as five (5) unit apartments. He questioned Joe about this and reminded him that this is a residential area and the response he got was that Joe acknowledged that fact and stated that he would have the realtor take it out of the paper. And then I came up to the Township and talked to the Clerk and someone else at the time and was told that it was grandfathered in. He again questioned how it got to be grandfathered in when no one ever knew about it? Mr. Roach stated, "It must have been under the table, back doored in". "It couldn't have been legal – somebody had to get taken care of", in order to get this through. All these years of going on the way it's been, two wrongs don't make a right. Somebody, somewhere, did something and that's why we're in this situation. And, if we could find any of the paperwork, which could trace it back to someone's name on this grandfather deal, then I'd like our lawyer to go after them and sue them for the pain and suffering and the loss of value on my home.

Jim Senstock – 31698 San Juan – speaking as a resident: Mr. Senstock made comment on the nonconforming use and how it cannot be changed and referred to specific ordinances from the Zoning Ordinance book.

Chairman Tomenello asked if there was any other public comment and hearing none brought it back to the Commission for discussion.

Chairman Tomenello allowed Mr. Andrews to speak to the Commission and respond to the comments.

Mr. Andrews: I'd like to say that Mrs. Tierney is really being punished as a result of the actions of whoever the prior owners were, the lack of forthrightness with respect to the real estate people involved – if in fact they represented that this was okay that this could be used for those purposes – and I think it's rather unfair to have the Township collect taxes on this property as if it was not a principle residence when in fact, subject her to the requirements of it being a rental property, a multi-family rental property, when in fact, they say that it is a single family use.

Mr. Andrews further stated that if the next door neighbor knew back in 1979 that this property was being used for multi-tenants he should have been down to the Township every single day, every single week, telling the people that he wants to prosecute these people. If they had been prosecuting the owner of that property from 1979, Mrs. Tierney in 1996 never would have bought this property as multi-tenant property, because there would have been a conviction on the records that indicated the prior owner couldn't use it for that purpose. But, for 18 years, it was allowed to be used that way. The Water Department indicated there were five (5) units there. They said they can't issue any additional permits for there. I don't understand why the Township wasn't vehemently prosecuting somebody for violation of the ordinances if this property owner, who lives next door, and helped, build this property, knew and knew for that many years, that this property was being illegally used. For him to appear tonight, after 30 years and say, I think she ought to have the consequences befall her because of the fact that the Township and the prior owner violated the law, I think that's seriously

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unfair. That's my opinion. I think that if the Township prosecutes her for that, that they will never win because the courts will say, "You know what, on numerous occasions you guys acquiesce, with respect, and there is no way in the world that we're going to find her responsible under those circumstances". It's your decision, but I think that would be highly unfair decision to her.

Patrick Meagher, Planner, stated that as a matter of clarification, the decision on this is either going to be made to stipulate that it's nonconforming; and if it's nonconforming, it would be designated Nonconforming B at this point in time. There has not been a request for Class A designation. The second part of that is if it's not deemed nonconforming, it will be deemed illegal. If it's deemed illegal, the house will then have to be converted back to a single family residence immediately. Ownership cannot be an issue with regard to this factor whatsoever.

Member Zingas: I have a question for Counsel. Under Section 14.01 it states, "All nonconforming uses shall be classified as class B nonconforming uses at adoption of this ordinance". Certainly we haven't done it on paper, but we have done it, perhaps, with our actions in issuing meter permits and our Building Department tracing the history of being a nonconforming.

Rosemary Davis, Township Attorney: That is what it appears from the records. I don't believe the Township has classified any nonconforming uses on paper. That's an area, I think, we would eventually need to address with our change in the ordinances and follow through the action plan. But, that's what we discovered in looking at this case. The Township's actions have treated it as a nonconforming use.

Member Swiatkowski stated that by the Township's own actions, we have created a past practice. Again, from a legal standpoint, again, this place has been operating for 30 years. And all of a sudden you say it's not. You can call it errors or omissions, whatever the case; the Township has sustained this as a nonconforming use, and as a multi-family use by issuing permits, water meters, separate things, etc.

Member Rice stated that the reason he sits in his very seat is because of a similar case. And, I battled it and battled it and I was everyday at the Township offices and to no avail until I ran for this job. I ran for the Township Board. I found out what I was fighting and why I was fighting it – and it turned up the Supervisor, that was elected to the Township, at that time, worked for the individual that was across the street from my home, which used to be a chicken farm. So, there were multiple indications that there was a lot of wrong that was there. And, it's almost impossible, at that time, for a resident to fight something of this nature. Maybe the records are lost, maybe they're not, maybe they're here maybe they're not, I don't know either. But I can tell you, that in those days, it was impossibility to come to the Township and accomplish what you suggested. I just want to make that a matter of record.

Member Fowke stated that Article 14, Section 14.00, states that any nonconforming use which cannot be proved conclusively to have been to have been existing prior to the enactment or amendment of this ordinance shall be declared an illegal use and shall be discontinued. When did this ordinance go into effect?

Patrick Meagher, Planner stated the ordinance went into effect in 1996.

Member Fowke asked if he was talking about the whole ordinance book or was this ordinance around in 1970. How would we know that?

Rosemary Davis, Township Attorney, stated this ordinance was in 1996. That is the dilemma that you are in. The Township has acted in a manner where it has treated it as a multi-family. Through requiring her to do housing inspections, water taps, permits, etc. And, the Township did not follow Section 14 to begin with.

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Member Fowke: My point being, when did Section 14 go into effect? You're saying that was it in 1996?

Rosemary Davis, Township Attorney, stated that was correct.

Chairman Tomenello: So reading that, it's telling me that if we had knowledge, and we treated it as multi-family, basically, that's what it is considered. That's the way I interpret it.

Member Zingas stated it can be proved conclusively that it existed prior to the ordinance.

Chairman Tomenello: And I'm thinking we're saying that it has been because of all the activity, relative to inspections, permits issued, etc.

Rosemary Davis, Township Attorney: At this point, we don't have any evidence to the contrary.

Member McDougal: At this point, do we know if Section 14.00 was new to our ordinance in 1996 or was it there prior?

Rosemary Davis, Township Attorney: I could not tell you that.

Patrick Meagher, Planner: My guess is, I believe your previous ordinance, and I don't know the date offhand, I remember looking at a zoning map dated 1977, and my guess is this provision would have existed at least at that time. I know you've had zoning ordinances dating way back and typically that do include a nonconforming section that would carry much of the same language that's included in this one today.

Member Fowke: That's my point. If what I just read was present in 1970, I don't know how we could give the okay on this. That's my point. If you read that paragraph that I just read.

Patrick Meagher, Planner: Right. We're saying exactly the same. If in fact everything was done properly and that the Township's actions were to follow through and enforce the ordinance going back to the 1970's, then there would be a legitimate claim to this ordinance. I think the argument the petitioner is making is the Township's actions were otherwise, and that they didn't follow the terms of the ordinance, and therefore, legitimized it through the Township's own action. And that's really what your decision as a Commission is, is it a fact or isn't a fact.

Member McDougal: I'm torn between two (2) thoughts on this:

- 1) I think the argument that there have been actions by the Township and they went on for a period of time, with the prior owner and all, I think is a very compelling argument that maybe the Township emasculated its own ordinance as to this particular piece of property.
- 2) On the other hand, with my real estate background, I have a very, very hard time with the concept that in 1996, the buyers weren't subject to basic caveat emptor, or buyer beware, and they had a responsibility and indeed a legal responsibility to check into the status of the property and learn what it was and they should have, in a reasonable due diligence, discovered that there were difficulties with the way this property was zoned.

That's the dilemma we've got here. And, a question as to which direction we want to go. In other words, I could argue for either way fairly strongly.

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Member Zingas: It looks as though, Mr. McDougal, that in 2006 our Assessing Department in reviewing the Occupancy Homestead Exemption Principals they went back and acknowledged it as 55% percent homestead. So obviously, the 45% percent was not.

Member McDougal: It's very clear that the Township has, in the recent past, treated this as a multi-family in several different ways.

Member Zingas: In 1977, Elections has it listed as six (6) families being registered. So obviously, in 1977, we have it listed as six (6) units.

Member McDougal: Under that section 14, I think the thing we need to have a motion that's made and make it very clear that this remains a Class B nonconforming as opposed, and I think that should be stated very clearly in the motion – if the motion were to be made in that direction. We don't want to slip over to a Class A.

Member Zingas: Counsel, Did we had any other cases where inadvertently or not inadvertently, we made acknowledgements of such nature and a judgment had to be made?

Rosemary Davis, Township Attorney: With being here for only two (2) years, I haven't experienced that yet. I don't know if anyone else has a different history. When I had first received notification of this I was actually surprised. I went right to the ordinance and thought I would just call up the Township and hey, it should be classified as such, that's when everything started snowballing and we determined that everything had been treated that way and there are lots of notes here indicating nonconforming, multiple housing, difference in the homestead exemption, but it was never formally cataloged as a nonconforming use.

Member Rice: I can tell you this! I created a form called the C.A.R.E. Form – Corrective Action Required Energetically – and it was presented to the Board of Trustees, adopted by the Board of Trustees and is supposed to be in the Building Department, Clerk's Department and Assessing Department. And, it was a form that had tails to it, and it would allow an individual to complain about something as this, and it would make it a matter of record and then faxed to the sitting Township Board members within 24 hours of the time it was received. And, because of the underlying responsibilities with it, the Township has not used that as it was intended. I created that solely for the purpose of stopping these kinds of rat holes that happen in our Community. If you have residents that get completely worn out from complaining and you don't have a record of it, you sit where we sit today, between a rock and a hard place. These functions are often overlooked and as a "sitting" Township Trustee, I feel that sometimes its on purpose – as indicated – because it's a friend of a friend of a friend. And I don't have any favorites – there's no such thing as my favorite. It's what the law says and what the law is. In this circumstance, when we even assessed it differently, our hands are almost tied. And that upsets me deeply because we have others in this community that are going on the same way and we have other people complaining about them, (and I can name you about 50 of them) but there isn't any paper trail. I don't know if that's on purpose or by accident, but I don't think that that form is too hard for somebody to fill out. It's supposed to be filled out by the Supervisor's Office of the Township not the Building Department. So, that takes them out – and it has not been done!

Chairman Tomenello, at this time, let resident Robert Roach speak, only if he had any new information to share.

Robert Roach – 25141 Shook Road: Mr. Roach stated that he was taken out of context when he stated that he helped build this house and knew it was apartments, no – that was not true. When he helped build it, Ross Focht was building it and said that he was going to make it a big house that was going to improve the value of our homes because it was going to be so big and that he was going to start his family there but then

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he got divorced. He then sold it to the next owner, and from that point on, I never stepped another foot in that house. When I did see that article in the paper that said they were selling it by the realtor, I came up to the Township, complained, and was told there was nothing I could do and that I should have come in before that when it was grandfathered in. I questioned as to why would we have? We didn't even know that it was done – we didn't know it was made into apartments. It was all backdoored. No one had any notice. I don't know what the rules and procedures are – from a residential to a multiple – but somebody's got to be able to say something. I mean, he lives right next door! I feel bad for Phyllis because she's caught in a Catch 22 position. She should be able to sell it and retire to Florida and live happily ever after! But, I don't want to get caught holding the bag and neither does my brother living on the other side of her.

Chairman Tomenello again brought this back to the Commission for further discussion and comments.

Member Zingas: I don't know if we will know the answer to this but one of the items under 14.01 (2) states "The use does not, and is not likely to, significantly depress the value of nearby properties". I'm not sure we have any data for that particular item to prove one way or another.

Member McDougal stated that that would be done if you were reclassifying it as a Class A non-conforming use , and I thought the concept here was that it was going to stay a Class B. That provision is for reclassifying as a Class A.

Member Zingas: That's true, but I suppose for the piece of mind for the residents, it would be nice to know that it will not depress the value of their homes. I don't know if we know that or if we ever will know that unless we compare comparables of the area.

Chairman Tomenello asked if there were any comments or if anyone would like to make a motion.

Member Swiatkowski mentioned that under the application, they are stating that there will be no improvements or changes proposed to be made. So, at the present time, they will be keeping it the way it is.

Member Zingas inquired from Member Swiatkowski that he is saying to consider approving the use as it is now but if it changed ownership that it will change?

Member Swiatkowski stated that ownership, as per Mr. Meagher, has no bearing on it. Is that correct, Mr. Meagher?

Patrick Meagher, Planner, stated that was correct.

Rosemary Davis, Township Attorney, stated that she thought as a condition, you could say that it's classified as a Class B, nonconforming use with five (5) units only as it is. Because, if you would increase it, then it takes away the nonconformity – you cannot increase a nonconforming use. So, the condition would be that it be maintained as a five (5) unit multi-family structure.

Member Rice: I have a lot of questions. Is this on a standard water system? Is this on a standard sewer system or on a septic tank? It's really six (6) units considering the owner/resident. Does it have fire alarms in it? There are a lot of reasons for these laws, they aren't crime and punishment, and it's to make adequate housing adequate. The things of this nature mean an immense amount of concern. If we give this a blessing, and this place goes up in fire, then who is responsible for the deaths – us (?) for failing to have adequate systems in place?

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Member Swiatkowski: The thing is they were requested in 2006 to have an inspection and I guess do we have any records of this? Of the inspections I mean? At that point, I would have to question whether or not there were any smoke alarms or anything. Was everything in conformance with applicable life-saving codes for multi-residential?

Rosemary Davis, Township Attorney, stated it was her understanding that they were required to comply with the Housing Laws for Multiple Units and be reinspected on a bi-annual basis. I don't have the report and I don't know if Mr. Andrews had that in his records when he reviewed them.

Mr. Andrews stated that he might have had them, but it was, in fact, inspected and, any deficiencies were noted under the Multiple Rental Housing Law, which is designed to have exactly the protections that Mr. Rice has indicated to protect those residents. Any deficiencies that were noted were in fact taken care of to the satisfaction of the Township. Mrs. Tierney is here and can attest to that – she allowed them into the house to do the inspections.

Member McDougal: On that topic, Mr. Chairman, I would note that was September of 2006 and that she is due for another inspection within 90 days assuming that first inspection was done reasonably timely after the letter we have in here (in the records).

Member Rice: Another one is 5/8" fire rock drywall for separation of the units. These are the things that I think about and I've seen so many of them. You take in old Detroit and Hamtramck and other areas where they go up like gasoline. And that's what scares me the most. The laws are provided there – when there's multiple units there's two layers there of 5/8" fire rock drywall.

Member Zingas: I think no matter which way we look at it, our hands are tied, because the Township in essence acknowledged it. Whether they considered the welfare and the safety throughout the years, seriously or not, I don't know, but it looks like we have accepted it. We did an inspection September 15, 2006 and I don't see any violations and I don't see any issues. Do we have any records, Counsel that these inspections revealed compliance at all, other than what they are claiming?

Rosemary Davis, Township Attorney, stated that she did not and asked Cynthia Chambos, Secretary, whether she did or not.

Cynthia Chambos, Recording Secretary, stated she did not have that information. She also stated she does not have privy to the Ordinance files.

Member Zingas: If this proceeds, of the fact, that we have acted throughout the years as if we have accepted as nonconforming, but it doesn't really, as Mr. Rice pointed out, have the thickness of the walls, and the separation and the parking, its nonconforming. It impairs and puts the safety and welfare of the public in danger.

Rosemary Davis, Township Attorney, stated that an interesting point about the parking, and again it's a lack of records, that is quite a large parking structure that might of, would of, been approved somehow for parking. You are in a precarious situation where you don't have the records, but on the other hand, the Township acted in the manner that it has. It either was approved and that record was lost or it wasn't and it slipped through the cracks. But we have acted towards allowing it to continue as a nonconforming use.

Member Zingas: If it's a serious health and safety issue....

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Rosemary Davis, Township Attorney: I think that would have been noted in a housing violation because the Building Department has been treating it as a multi-family and it has to meet the rigorous standards of the Housing Law.

Member Zingas: So, we will have to assume that at least it meets the minimum and that it is safe and by accepting it further, from this point on, and putting it in the books as nonconforming we will not extend the possibility of not being safe.

Rosemary Davis, Township Attorney: That is correct – and they cannot enlarge it.

Mr. Andrews: Here is a copy of the inspection report that was done at the time they did it and the first page says apartment one (1), okay; apartment unit two (2) says okay; apartment number three (3) and common areas says to secure fencing; apartment number four (4) says okay; number five (5) says three-four (3-4) G.F.I. Kitchen and Bathroom; those are the notations. I'd be happy to submit this to you to review. Mrs. Tierney has indicated that she has taken care of the G.F.I. plug issues and has repaired the fence, I'm sorry she has gotten a new fence.

Member Swiatkowski: Just the things you mention, Mr. Rice, are on here. See, I guess, it's given a general okay. But, usually on an inspection form, these things would be checked off on an individual basis.

Member Rice: That's a first time for that inspection in this Community.

Member Swiatkowski: Normally, this would be..... It says three (3) units, exit door – 24-hour lighting; mechanical room storage – one (1) hour fire rating; sprinkler may be required and usually are and either the storage area or the furnace room; 12 plus units lighted, exit signs required, 24 hour lighting in common area and so forth. There are eight (8) sections on this and

Member Zingas: We don't have any notes?

Member Swiatkowski: All is says on here is "okay".

Member Zingas: So that is what it means – that everything is okay?

Member Swiatkowski: It appears that way.

Chairman Tomenello: I think that's the only thing we can assume.

A brief discussion took place among the Commission members and what is usually required to be in compliance in these multi-family inspections.

Member Rice referred back to the C.A.R.E. Card again, for the record, that if you don't have a matter of record, you're in the hanging tree. We don't have a matter of record. I felt that's the same reason why the C.A.R.E. card wasn't used.

Mrs. Phyllis Tierney, 25125 Shook Road: Mrs. Tierney stated for the record that Erin and another lady came out and she thought they were beautiful and in perfect shape. She was surprised from the places she had been when she saw mine.

Member Zingas: Aesthetically pleasing, Mrs. Tierney, or structurally, or both?

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Mrs. Tierney: Aesthetically, yes, when she inspected the apartments. I keep my property beautiful. I invite all of you to come and see my property – it's beautiful compared to what it was when I moved in.

Member Zingas: That's great, Mrs. Tierney, we're just questioning some of the items.

Rosemary Davis, Township Attorney: My experience, so far, with the housing violations is that Erin and other members of the Building Department inspect the multi-family units on a bi-annual basis. The housing units are required to pay an inspection fee, for that inspection, they come out and inspect the unit according to the statute and that form, and if there is a deficiency, they mark it and give it to the owner of the multi-family unit and give them a period of time to correct it and then they come back and make sure it is corrected. If it is not corrected, they pay another fee. It appears, and I cannot see the form, but basically from your conversation, that other than the GFI, that was the only thing that needed to be corrected and apparently it was corrected because Mrs. Tierney would be able to tell you if she did have to pay another fee.

Chairman Tomenello: So, looking at this, this is an official document with an official signature on it. Further than that, what I am looking at we really cannot dissect any further. None of us are experts relative to inspecting a house and we're not going to go in there and tear the drywall apart. So, I guess it's my conclusion that I would use that as a document that we need to use going forward as our source of truth. Is that correct?

Rosemary Davis, Township Attorney responded that this was correct.

Member Rice: I am uncomfortable with this inspection report, not to do with the candidate here, but when I see a line off the parking area and the walkways, that should have initials or it should say okay or no it's defective. I mean, to print this form in the position its in, and just to put okay on the sheet without any initials on it or who did it (initials are not acceptable to me), you need to have a signature on it.

Member Zingas: To move things along, Mr. Chairman, may I recommend: It looks like an inspection is due, quickly upon us, I wonder if the owner would be willing to have an inspection done, table the case and have an inspection done so we have a better idea as to how the units are to date, and perhaps the inspection form can be followed more carefully with more notes to the Commission.

Chairman Tomenello stated that that is certainly an option, Ms. Zingas.

Patrick Meagher, Planner, stated this: At the risk of hurting a potential case, wouldn't we be further legitimizing the use by putting it through another multi-family inspection if in fact we are determining that it is not multi-family?

Member Zingas: We would but at least we would know if it is safe.

Rosemary Davis, Township Attorney: It's going to go through that inspection in 90 days no matter what. And, it has to be safe according to the Housing Law. Otherwise, they'll get cited and have to make the corrections.

Member Swiatkowski: Even if you did the inspection under deficiencies, and they were corrected, you're in the same position.

Member McDougal: Just following up on having looked at this form and having read the letter that accompanies it, dated in February of 2007, enclosing this as the results of the inspections and addressing some of Mr. Rice's comments on the form, I think the letter is pretty much inclusive indicating finding the results of the inspection and the only thing somebody looking at some of these forms would come up with as

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a result that is negative or that requires action, if you will, is the one where it talks about the GFI's and the note about the fencing. There's nothing else on here that requires action. It's kind of a form that I've seen used in many applications in the real estate field, particularly the disclosure type forms that are in the world today. You don't need to necessarily fill in the blanks – that's a matter of how the Township runs – it's a matter of procedure. I think the supervisor's of the departments of the Township should probably be in charge of that level of quality – but I'll be very frank in saying that it is the Township Board that has to set the standard for the individual department supervisor's and how they operate – and if we want to micromanage how the departments operate, the Board certainly can do that. Otherwise, I think you have to rely on the professionals and their bottom line and look at what has been said here in terms of whether they comply with the requirements of the multi-family inspection law. Whether that's adequate inspection or not, it's something that needs to be done.

Member Rice referred to an aircraft that is being worked on. Whether you look at a situation or not, you don't leave an area blank. All areas on the sheet must be filled in. When the investigation or inspection is completed, all the blanks should be filled in and not left empty. That is the intention of this rule.

Member McDougal: That isn't the standard that is being administered in the department, quite clearly, by this form. It's not what has been historically administered. I don't think we're in a position here to raise that as a barrier to anything that we might do as a Planning Commission. If that needs to be done, that's fine, but that needs to be done by the people who sit here on every other Monday night.

Member Rice agreed with Member McDougal.

Member McDougal: In telling the Supervisor's and the people in the Township, the employees, how they want the jobs done. That's not something this Planning Commission needs to do.

Member Rice agreed with Member McDougal. That's my first business is to that form.

Member Zingas: One can look at the form in different ways. Obviously the Supervisor has a procedure and that form has been filled out and it's recorded and it's been filed.....

Member Swiatkowski: The form reflects what the inspector found.

Chairman Tomenello: Again, as I stated, I think we need to look at it as a source of truth and I don't think we can question it about the use, how it was intended, or how the department uses it; it's just their policy. We have a document that says it's been inspected.

Member Swiatkowski: And it is in compliance.

Member Fowke: Question for Mr. Meagher. Can you find out for us, if this home was built in I believe in 1977, I'm sorry, 1971, what was the nonconforming ordinance in 1971? I have a hard time getting over this in black and white in front of me that says, "If it was nonconforming at the time it was issued, then it would be illegal then and it's illegal now". This Ordinance book is what I'm supposed to follow. And if that ordinance was then, it was in there then and was illegal, then I don't know how I..... Personally, I can't sit here and say I want to side for the applicant if it's in black and white. And that's the way it is. I can't see through that. Is there anyway you can go back in time and find out what the Ordinance was in 1970?

Patrick Meagher, Planner: We can certainly check with the Clerk's Office and see if there's an Ordinance that's on file. I think I checked at my office but I can double check in the archives and see if we have one

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from back then. I would guess one way or another there must be a copy on file, either here or at the county; or, at my office. I will do my best to locate that.

Member Fowke: That would make me feel more comfortable.

Chairman Tomenello asked if there were any further comments or would someone like to make a motion.

Member Zingas: From Mr. Fowke's comments, it sounds like he recommending proof of the adoption of this ordinance back in 1971, and without it we cannot prove legal use of this building.

Member Fowke: Based on Article 14.00, Section 14.00.

Chairman Tomenello: So, if that's your thought, would you like to make a motion to table until we get that information, Mr. Fowke?

Motion by Member Fowke supported by Member Rice to table Case #17-08-APPEAR, Appearance Review – Phyllis Tierney – Clark Andrews, Attorney for Petitioner, 25125 Shook Road, Harrison Twp, MI 48045 (Zoned R-1-C), Proposed Change of Use and Occupancy, Described Property – Supervisor's Plat No. 2, Lot 9, Harrison Twp, MI 48045, Property #0970-0018-00, Sidwell #17-11-25-453-028, date specific to July 17, 2008 Planning Commission meeting, subject to the following:

Pending review of the Zoning Ordinance of 1970 / 1971, to see what the verbage is there.

Chairman Tomenello asked if there was any discussion on the motion.

Member McDougal suggested the pending review be pending review of the status of the ordinance by our Planner, Mr. Meagher, just so we know where it's coming from.

Member Fowke amended his motion to include the Ordinance shall be reviewed by Mr. Meagher, Township Planner. Member Rice supported the amendment.

<u>Roll Call Vote:</u>	Member Fowke	Yes
	Member Rice	Yes
	Member McDougal	Yes
	Member Swiatkowski	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried.

Member McDougal: Mr. Chairman, for the record, I am going to pass this inspection report back to the applicant's Counsel.

Member Rice requested Counsel's business card which Mr. Andrews gladly acknowledged.

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- 4) **Case #21-08-APPEAR:** **Appearance Review – Mark Tremberth – Petitioner**
39852 Cannon Drive - Harrison Twp, MI 48045 (Zoned R-1-C)
For: Brigantine Estates – Site Condominiums
Proposed Gating at Cannon and W. Offshore Street Entrances
Sidwell No. 17-12-18-404-001 through 140

Mark Tremberth – 39852 Cannon Drive, was present to address his case. After receiving a letter pertaining to his proposal this evening, he requested to have his case tabled in order to address this letter and situation.

Cynthia Chambos, Recording Secretary, reminded the Commission of the case load on the table for July.

Chairman Tomenello stated he would address the Recording Secretary regarding the case load and will see what they can do to get him on the July docket.

Motion by Member Swiatkowski supported by Member Zingas to table Case #21-08-APPEAR, Appearance Review – Mark Tremberth – Petitioner, 39852 Cannon Drive - Harrison Twp, MI 48045 (Zoned R-1-C), For: Brigantine Estates – Site Condominiums, Proposed Gating at Cannon and W. Offshore Street Entrances, Sidwell No. 17-12-18-404-001 through 140, per applicant’s request, date specific to August 21, 2008.

<u>Roll Call Vote:</u>	Member Swiatkowski	Yes
	Member Zingas	Yes
	Member McDougal	Yes
	Member Rice	Yes
	Member Fowke	Yes
	Chairman Tomenello	Yes

Motion Carried.

F. PUBLIC HEARING:

- 5) **Case #15-08-SLU:** **Special Land Use and Site Plan Review –**
Douglas Hamborsky – Petitioner for Crew’s Inn
24098 Country Squire, Suite 224, Clinton Twp, MI 48035
Proposed Parking Lot and Deck Expansion at Crew’s Inn
Property in Question: Crew’s Inn, 31988 N. River Rd,
Harrison Twp, MI, Lot 29 of Belvidere Subdivision part of Private
Claim No. 323, Harrison Twp, MI 48045 (Zoned WF)
Property #0080-0025-00, Sidwell #17-12-15-156-027
(Deck Expansion)
Property in Question: Crew’s Inn, 32003 N. River Rd,
Harrison Twp, MI, Described Property part of Lot 55 of
Supervisor’s Plat No. 9 of Part of Private Claim 373,
Harrison Twp, MI 48045 (Zoned WF)
Property #1040-0031-00, Sidwell #17-12-15-155-030
(Parking Lot)
(Tabled at the May 15, 2008 PC Meeting, date specific to June
19, 2008 PC Meeting, in order to notice as a Public Hearing.
Case was changed from a Site Plan to Special Land Use, as the
reason for the Public Hearing).

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Chairman Tomenello requested the applicant to step up to the podium. He then addressed the audience and spoke of the Public Hearing and gave some guidelines on how a Public Hearing is held and what is expected. The petitioner will speak first and give some background information on his project and then the public will be invited to speak and there will be a three (3) minute time limit per person. After the public speaks, the hearing will be closed and the Commission will take all the comments from the public along with other information provided and the case will be tabled to the next PC meeting at which time a decision may be rendered.

Chairman Tomenello then asked for a motion to open the Public Hearing.

Motion by Member Zingas supported by Member McDougal to open the Public Hearing.

<u>Roll Call Vote:</u>	Member Zingas	Yes
	Member McDougal	Yes
	Member Rice	Yes
	Member Fowke	Yes
	Member Swiatkowski	Yes
	Chairman Tomenello	Yes

Motion Carried.

Douglas Hamborsky, representing Crew's Inn, addressed the Commission and gave a brief update on the project. The following information reflects some of the issues and concerns brought up at the last PC meeting and how we have addressed them to date:

- 1) The Planners comments have been addressed relative to turning radius and parking spots, employee signs on the Johnson's property, landscaping issues relative to tree sizes, lighting issues and future signage (which we are not asking for).
- 2) The fact that this is now being addressed as a Special Land Use directs them to address the Eight Standards of a Special Land Use. Mr. Hamborsky included in his package to the Planning Commission a handout that addresses these eight standard issues.
- 3) The Engineers comments, which there were no concerns about, are Engineering in nature and will be addressed at a later time and will fully be in compliance with the Townships requirements.
- 4) As for the Fire Marshal's comments, he was glad to see that there were no comments or issues to be addressed. He accepted the project as submitted.
- 5) The cross-walk issue that was discussed at the May meeting was addressed and Mr. Hamborsky presented handouts to show the information needed and assured the Commission that they will be working with the Macomb County Road Commission to come up with a safe solution.
- 6) There was discussion about the dumpster and they have since cleaned up the area and are looking into the suggestions given to them by the Planner relative to relocating the dumpster.

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Chris Labelle – Builder of this proposed project once it is hopefully approved. Chris gave a brief update relative to several of the following issues:

- 1) The dumpster issue has been addressed and cleaned up.
- 2) The Johnson's building will be demolished shortly and all the permits have been pulled. At this time they are waiting on Detroit Edison, who of course are behind due to the recent storms and outages, but as soon as they can, they will take care of disconnecting the electric and the building will come down. Contractors are ready to go and there is a trailer out back to use for storage of some of the items in the old building and contractors items.

Doug Hamborsky, again, addressed the Commission on parking and deck issues. He investigated an issue that was raised at the last meeting relative to whether or not parking could be used across the street from an establishment on a major road. They found that according to 6.01 parking ordinances page two (2) paragraph two (2), it addresses this issue. (Chris gave handouts to all PC members for their reference). Mr. Hamborsky addressed these parking issues relative to this ordinance and request.

Mr. Hamborsky then brought up another issue of parking relative to the Planners comments of June 6, 2008 which have to do with parking scheme. He referenced Article 6.02 parking ordinance and had Chris hand out information. Mr. Hamborsky then went on to address issues of the deck expansion and the relativity to parking spaces needed. He spoke of several methods of figuring out parking spaces.

Mr. Hamborsky stated that the whole intent of this entire project is for the Crew's Inn to provide the Community, consistent with the Master Plan goals, an amenity of outdoor dining. It's a popular item in waterfront communities and they just want to be consistent with that and provide that. They don't intend to have what they call a "Tiki bar" environment, similar to Gino's Surf, that's not the intent, and if you look at whether there's a bar facility out there – there's a grill out there and the majority of the space is for dining and seating. One driver, from a business perspective, that is driving the need for this, is where within hours, days or weeks of having a no smoking ban in the State of Michigan. For bars and restaurants, it will put an undo hardship on those businesses. If this facility were in place, there would be an opportunity, without "raining" on them, for people to enjoy food and beverage outdoors in the bulk of this dining/deck area, and still be in conformance with the yet-to-come "no smoking ban".

Mr. Hamborsky continued by saying that when outdoor dining is available, just a matter of practical experience, people eat outside, and as a result they are not inside. The odds on a July afternoon or evening, of both the inside and the outside of the restaurant being fully "packed to the gills", if you will, is very unrealistic. People will gravitate outside if the facilities are nice – and that is what the intent of this project is – to provide a really wonderful dining environment.

Mr. Hamborsky stated that since Mr. Metry has been at that location, 1976, they've managed the existing parking, which is 27 parking spots less, with no problems. They just want to expand their dining and beverage service a little more. They have a great management system. We are almost doubling the parking spaces.

We believe we are in compliance with the parking, especially if you review the information we passed out earlier to each of you, and with that they don't think they need any variances to be approved tonight. Mr. Metry is looking forward to making this huge investment in the community at a time when that's very rare in southeastern Michigan.

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Mr. Hamborsky made some general comments relative to other restaurants and establishments in the news lately and is looking forward to being approved and moving forward with this project.

At this time, Chairman Tomenello opened up the discussion for Public Hearing.

Jim Senstock – 31698 San Juan – speaking as a resident: Mr. Senstock made comments relative to the great job Mr. Hamborsky did on his presentation tonight and the parking lot issue – he really did his homework. He agrees that they meet the Eight Standards of the Special Land Use and has never seen or heard of any problems there and would like to see the Planning Commission move forward on this project and approve it.

Roger Petri – 38997 Parkway Circle: Thanked Mr. Senstock on his comments. I am a resident of Harrison Township and have been in the restaurant business for 44 years. I have been a regular customer of the Crew's Inn and feels it is one of the finest establishments in our community. Mr. Petri praised Mr. Metry for a well respected and well managed business. As far as he knows, Mr. Metry has always followed all the rules and regulations and liquor laws and we need this business in this community at this time. He feels that this project should be approved.

Chairman Tomenello asked if there was any other public comment and hearing none asked the Commissioners if they had any comments.

Member Swiatkowski: Made comments on the parking spaces and the calculation methods.

Member Rice: Made the suggestion to add a bike rack. He's been seeing more and more families using bikes to get there. He appreciated the dumpster being cleaned up. He is in favor of this project and hopes that this project is approved.

Member McDougal: Made comments to a fire lane that used to exist. Is it still there? And, there was questions relative to where the major road ends and the local road begins. I think we need some real definition of how accurate this drawing is before we jump too far on the separation by a major thoroughfare of the parking issue. Maybe Mr. Meagher can help us with that.

Patrick Meagher, Planner: The line clearly shows that it stops at what used to be some type of a right-of-way and I believe it still is, in fact. The owner has some type of use for lease or common use. I went back to the previous parking lot that was approved on this site, and at that time, they broached on that same issue, and our first comments indicated that yes, this was divided by a major road and because the master plan designates it as such, and he doesn't have any records of it, but it obviously disappeared in follow up reviews, so it got resolved by the Commission, at that time. It seems to me that we looked at this as a generalized planning document, then, and at that time we said that it made sense to stop at Conger Bay Road rather than after Conger Bay.

Mr. Hamborsky addressed the parking issue and the fire lane issue.

Patrick Meagher, Planner, stated that at one time, the major road ends at Conger Bay Drive.

There was a brief discussion relative to where this major road ends and the local road begins.

Chairman Tomenello asked if there were any more questions or comments and hearing none asked for a motion to close the Public Hearing.

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Motion by Member Zingas supported by Member Swiatkowski to close the Public Hearing.

<u>Roll Call Vote:</u>	Member Zingas	Yes
	Member Swiatkowski	Yes
	Member McDougal	Yes
	Member Rice	Yes
	Member Fowke	Yes
	Chairman Tomenello	Yes

Motion Carried.

Chairman Tomenello stated that they would see the applicant at the next Planning Commission meeting for a decision.

Motion by Member Zingas supported by Member Swiatkowski to table Case #15-08-SLU, Special Land Use and Site Plan Review – Douglas Hamborsky – Petitioner for Crew’s Inn, 24098 Country Squire, Suite 224, Clinton Twp, MI 48035, Proposed Parking Lot and Deck Expansion at Crew’s Inn, Property in Question: Crew’s Inn, 31988 N. River Rd, Harrison Twp, MI, Lot 29 of Belvidere Subdivision part of Private Claim No. 323, Harrison Twp, MI 48045 (Zoned WF), Property #0080-0025-00, Sidwell #17-12-15-156-027, (Deck Expansion), Property in Question: Crew’s Inn, 32003 N. River Rd, Harrison Twp, MI, Described Property part of Lot 55 of Supervisor’s Plat No. 9 of Part of Private Claim 373, Harrison Twp, MI 48045 (Zoned WF), Property #1040-0031-00, Sidwell #17-12-15-155-030 (Parking Lot), date specific to July 17, 2008, for Planning Commission case decision.

Chairman Tomenello asked if there was any discussion on the motion.

Member McDougal inquired as to what this would do with the status of the demolition for the old Johnson’s building and was assured by Chris Labelle that this had no bearing on it.

<u>Roll Call Vote:</u>	Member Zingas	Yes
	Member Swiatkowski	Yes
	Member McDougal	Yes
	Member Rice	Yes
	Member Fowke	Yes
	Chairman Tomenello	Yes

Motion Carried.

G. UNFINISHED BUSINESS:

- 6) **Case #11-08-APPEAR:** **Appearance Review – Mt. Clemens Metal Recycling – Steven Hurd – Petitioner**
41495 Irwin Drive, Harrison Twp, MI 48045 (Zoned M-1)
Proposed Fence around Property.
Property #0910-0003-00, Sidwell #17-12-18-102-004
(A) Tabled at the April 17, 2008 PC Meeting, date specific to June 19, 2008, PC Meeting, in order to allow applicant to apply to ZBA for variances needed relative to fence issues).
(B) Applicant applied and was heard by ZBA on June 10, 2008 – Tabled by ZBA to allow applicant to have a property survey done).

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Chairman Tomenello stated that they received a request to table this case until the applicant addresses all ZBA issues and requested a motion to do so to August 21, 2008.

Motion by Member Zingas supported by Member Rice to table Case #11-08-APPEAR, Appearance Review – Mt. Clemens Metal Recycling – Steven Hurd – Petitioner, 41495 Irwin Drive, Harrison Twp, MI 48045 (Zoned M-1), Proposed Fence around Property. Property #0910-0003-00, Sidwell #17-12-18-102-004, (A) Tabled at the April 17, 2008 PC Meeting, date specific to June 19, 2008, PC Meeting, in order to allow applicant to apply to ZBA for variances needed relative to fence issues).(B) Applicant applied and was heard by ZBA on June 10, 2008 – Tabled by ZBA to allow applicant to have a property survey done), date specific to August 21, 2008, per applicant’s request.

<u>Roll Call Vote:</u>	Member Zingas	Yes
	Member Rice	Yes
	Member McDougal	Yes
	Member Fowke	Yes
	Member Swiatkowski	Yes
	Chairman Tomenello	Yes

Motion Carried.

H. NEW BUSINESS:

7) Recommendation to Board of Trustees requesting a new Liquor License relating to Gowanie Golf Club, 24770 South River Road, Harrison Twp, MI 48045.

A) Request from Gowanie Golf Club, 24770 South River Road, Harrison Twp, MI 48045, for a new Entertainment Permit on 2007 Club Licensed Business with Dance Permit.

Wayne Babbish, Petitioner, was present to address this request. Mr. Babbish stated that he had an existing license that was put in escrow at the time of the fire, but now they added the dance floor and so now they are adding some space and would like the entertainment license added to it.

Motion by Member Rice supported by Member Swiatkowski to recommend approval to the Board of Trustees for a request for Liquor License relating to Gowanie Golf Club, 24770 South River Road, Harrison Township, MI 48045, relative to a new Entertainment Permit on 2007 Club Licensed Business with Dance Permit.

<u>Roll Call Vote:</u>	Member Rice	Yes
	Member Swiatkowski	Yes
	Member McDougal	Yes
	Member Fowke	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried.

I. CORRESPONDENCE:

Chairman Tomenello stated that we received correspondence from the City of St. Clair Shores relative to their preliminary draft of their Master Plan and also from Chesterfield Township relative to their intentions of drafting a new Master Plan. Receive and file this information.

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J. COMMENTS FROM THE PLANNER:

Pat Meagher, Planner, gave a brief update on requests for Fireworks Permits.

8) Permission to sell Fireworks – Gasper Rosolino – Jefferson Avenue/Shook Road Area.

The applicant, Gasper Rosolino, is requesting to sell fireworks at a temporary facility at Jefferson Avenue and Shook Road. The location of this facility is in a road right-of-way, which they did receive approval from the Macomb County Road Commission, or at least a signature that appears to be from the Road Commission, to vend there. However, the Township Ordinance does not allow for retail sales within a right-of-way and recommends denial of this request - which would simply be, the Planning Commission, on their end, sharing with the Clerk that it does not meet all the standards of the Ordinance.

Chairman Tomenello stated that what the Planning Commission is looking at tonight, is to see if the actual use falls within the harmony of the district, that they are requesting approval for. He did not want the Commission to get into a lot of the permissions, issues with signage, setbacks, or the way things are stored. Basically, that is our roll here as a Planning Commission and then we make recommendations to the Clerk to either accept or deny the petitioner's request. Is that correct, Mr. Meagher?

Patrick Meagher, Planner, responded that this was his understanding of the request from the Clerk.

Member McDougal made a brief statement relative to this process and the amendments made to the Ordinance last year.

A brief discussion took place between the Planning Commission members relative to the process and changes made to the Ordinance and why this Ordinance has not been adopted by the Board of Trustees.

Patrick Meagher, Planner, stated with what the terms of the Ordinance say, regardless of what the intent was, if the Planning Commission will give him the Blessing, he would be willing to go ahead and make an amendment to that provision – even if there was some type of a “hold up” at the Board because of the whole content that we had changed, and he doesn't know what happened to the Ordinance, but we can at least change that one sentence to clarify that it is coming to the Commission only to determine whether or not the use is consistent with those of the Zoning District.

Member McDougal stated that frankly, and he has had several conversations with Mr. Meagher relative to this issue, Mr. Parakh can determine if a proposed site is zoned for business. It really doesn't have to come to this Commission to make that kind of decision. The intent last year was to get it away from the Planning Commission altogether. Once you say you're not going to deal with density and parking issues and setbacks and the things that we're here to deal with, that's an administrative issue that should be administratively.

Chairman Tomenello stated that although this may not be the time, under Public Comment, would you (Member McDougal) like to make a motion to ask Mr. Meagher to rework the Ordinance – that would be proper.

Member McDougal acknowledged that he would be happy to make that motion.

Chairman Tomenello asked if there was any further comment on this case.

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Member Rice addressed his concerns that this area has been freshly seeded recently and would like to know how the applicant will handle restoring any damage to it – if any.

Gasper Rosolino, 25924 Ashby Drive, stated he would be more than happy to reseed the area if necessary. He has never had any violations relative to his facility, and he has been there for 23 years now, and he has never left it a mess. He tried to get it in the parking lot, last year, at the Beachway Party Store, and was told there was a parking issue, according to the square footage of the building.

Member McDougal noted Mr. Meagher's review of the subject and letter of today indicating that our Ordinance prohibits retail activities and/or structures in the right-of-way, whether we did it last year or not, that appears to be what the ordinance says, and he is therefore recommending of the proposed permit for this location.

Member Zingas asked for clarification – did she hear correctly that the applicant does have permission from the Road Commission – to be in the right-of-way?

Patrick Meagher, Planner, indicated that Ms. Zingas was correct. He does have approval from the Road Commission. However, the Road Commission will send a letter to us indicating this approval, to the Clerk's office.

Member McDougal stated that our Ordinance says no sales in a road right-of-way.

Patrick Meagher, Planner, stated to the Commission that they need to keep in mind that they are not approving this license. They are merely one of the agents that are reporting on whether or not it's consistent or inconsistent with your review parameters. The Fire Department will submit a letter, the Road Commission already has, the Building Department, and so forth. I believe all the Departments are required to respond to this. Your input is just one of several that the Clerk's office has to consider when determining whether to issue a permit or not.

Motion by Member McDougal supported by Member Rice that the proposed site of this fireworks display – sales facility – is located within an area that is zoned properly for fireworks sales, in the Township, but that we call to her attention (the Clerk's), the part of the Ordinance that prohibits retail activity and structures, in the road right-of-way, and recommend to her that she investigate whether this facility and all associated parking spaces, that would be required under our Ordinance, are located outside of the road right-of-way, suggesting that a correspondence to that effect from the Road Commission be sufficient evidence.

Member McDougal stated he would like to amend his motion – slightly. The correspondence from the Road Commission should be based upon a staking of where these facilities will be.

Member Rice agreed to amend his support.

Chairman Tomenello asked if there was any discussion on the motion and hearing none asked for a roll call.

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<u>Roll Call Vote:</u>	Member McDougal	Yes
	Member Rice	Yes
	Member Swiatkowski	Yes
	Member Fowke	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried

**9) Permission to sell Fireworks – Priscilla Tipton – Beachway Party Store
35409 Jefferson (At Shook Road)**

Motion by Member Swiatkowski supported by Member Rice that the proposed retail use is consistent with the uses permitted in the B-3 Zoning District and that the Building Department and Fire Department will confirm all other locational and operational requirements are in compliance with the Township Ordinances.

Chairman Tomenello asked if there was any discussion on the motion and hearing none asked for a roll call.

<u>Roll Call Vote:</u>	Member Swiatkowski	Yes
	Member Rice	Yes
	Member McDougal	Yes
	Member Fowke	Yes
	Member Zingas	Yes
	Chairman Tomenello	Yes

Motion Carried.

K. COMMENTS FROM THE FLOOR:

Patrick Meagher, Planner, spoke quickly on the Master Plan density issues. He will email the information to each of the members and stated that if anyone had any questions to please call him and he would be glad to address them.

Member McDougal made comment relative to Gloucester on the Clinton and specifically a certain boat that was moored where he explicitly stated no boats could be moored at. He stated he did speak to Mr. Parakh about the issue and he is aware of the situation and will have it checked out.

Member Rice spoke of additional expenses that may be incurred by the Planning Commission relating to Selfridge issues especially meeting costs and legal costs. Planning Commission must make sure that these costs are included in the budget.

A brief discussion took place relative to the plans about Selfridge amongst the Commissioners.

Jim Senstock – 31698 San Juan, speaking as a resident. Mr. Senstock made comments relative to the Appearance Review for Phyllis Tierney, 25125 Shook Road. He is very upset with many of the comments that were made relative to this case and cited Article 14.00, Section 14.05 (6). He stated that this should not be allowed and not even considered. This was illegally put in. It should be put back to what it originally was zoned. Make her follow the law.

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L. **NEXT MEETING:** July 17, 2008 at 7:00 pm in Rosso Hall.

M. **ADJOURNMENT:**

Motion by Member Swiatkowski supported by Member Rice to adjourn the meeting at 10:10 p.m.

Ayes: 6

Nayes: 0

Motion Carried.

Mark Bacha, Secretary
Harrison Township Planning Commission

Cynthia Chambos, Recording Secretary

Dated: _____