The Charter Township of Orion Planning Commission held a regular meeting on Wednesday, July 19, 2023, at 7:00 p.m. at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

**PLANNING COMMISSION MEMBERS PRESENT:**
- Scott Reynolds, Chairman
- James Cummins, Commissioner
- Don Gross, Vice-Chairman
- Don Walker, PC Rep to ZBA
- Joe St. Henry, Secretary
- Kim Urbanowski, BOT Rep to PC
- Jessica Gingell, Commissioner

**PLANNING COMMISSION MEMBERS ABSENT**
None

1. **OPEN MEETING**
Chairman Reynolds opened the meeting at 7:00 p.m.

2. **ROLL CALL**
As noted.

**CONSULTANTS PRESENT:**
- John Enos, (Township Planner) of Carlisle Wortman Associates, LLC
- Tammy Girling, Township Planning & Zoning Director

**OTHERS PRESENT:**
- Tom Beauchamp

3. **MINUTES**
   A.  7-5-23, Planning Commission Regular Meeting Minutes

   Moved by Vice-Chairman Gross, seconded by Commissioner Cummins, to approve the minutes as presented. **Motion carried.**

4. **AGENDA REVIEW AND APPROVAL**
   Moved by Vice-Chairman Gross, seconded by Liaison Urbanowski, to approve the agenda as presented. **Motion carried.**

5. **BRIEF PUBLIC COMMENT – NON-AGENDA ITEMS ONLY**
   None.

6. **CONSENT AGENDA**
   A.  PC-21-90, Ridgewood Final PUD Plan, Plans Date Stamped 02-22-23 Approval of Destruction of Documents.

   Moved by Vice-Chairman Gross, seconded by Secretary St. Henry, to approve the consent agenda as presented. **Motion carried.**

7. **NEW BUSINESS**
   None

8. **UNFINISHED BUSINESS**
   PC-23-21, Dutton East Retail Revised Landscape Plan, located at 4898 Bald Mountain Rd. (parcel 09-35-477-003).
Chairman Reynolds stated that this was a case that they have seen in the past. There was a response letter dated yesterday in front of them. He asked for an update on where they were from last time.

Mr. Tom Beauchamp at 4865 Brookfield Way stated that he was representing the ownership group and tenant at 4898 Bald Mountain Rd.

Mr. Beauchamp said that they did make a valiant effort to meet all of the requirements in any way that they could with the latest submission. He thought there would be two minor variances that they are looking at. They have tried to meet the requirements as far as the ordinance is concerned.

Planner Enos read through his review date stamped received July 11, 2023.

Chairman Reynolds stated that in their packets the revised landscape plans as submitted were brought forth to their engineer and their Fire Marshal. They did review the plans and there were no immediate concerns with anything as submitted.

Chairman Reynolds asked if the applicant had any additional comments.

Mr. Beauchamp said with regard to the item with the parking lot islands, he personally went out to verify and there are two of them that do not meet the requirement. He thought it was part of the letter that he gave them. The two southern parking lot islands towards the Bald Mountain entrance there are two little finger islands that come in, they are 9-ft. instead of 10-ft. He scaled off the drawing. He hates to say that they just put in what they had on the drawings but when the site work guy was out there doing the concrete, he did it off the drawings that they did have as approved and somebody on their end obviously missed it. He didn’t know if tearing them out to get another foot is the right call on that so they are going to ask for a variance on that that those would be approved as installed.

Mr. Beauchamp stated he thought the other items kind of speak for themselves in that they are going to comply with all the ordinance requirements. If they do have the ability to submit to a tree fund for the 38 trees that they are not really able to get on site that would be preferred. He would look at the Dutton West property and Oakland Business Park which is on the other side of Premiere Drive if he had to find a place to plant trees. He thought the community would be better served if there were parks or different things that were going on. He lives off of Baldwin and Brown Roads, and they are doing stuff up and down that boulevard there to make that look nice. If there is stuff that makes the community look better, he was certainly open to funding that tree fund.

Planning & Zoning Director Girling said regarding the parking islands it appears that when the site plan was originally reviewed that it was not called out as an issue. They were granted site plan approval with that size. With the proposed waivers tonight if they are given those waivers then it trues it up for them on something that was missed.

Planning & Zoning Director Girling stated that on the tree fund she has researched and talked to the attorney and her recollection of needing to spend it in a very rapid timeframe. They said they are not aware of any regulations related to that. They can’t have the money out there forever, never dipping into it or using it. Her recollection was incorrect and so she has had internal conversations to go ahead and create that fund. The Parks and Recs Director has said that he could use that for landscape throughout the Township. They would keep an eye on it if they found that he couldn’t spend it as fast as they are granting this then perhaps other projects in the future. They all know that they are working on rewriting that section anyway so maybe
they can come up with some better language. Currently, she is working with accounting to go ahead and set up that fund, so it is an option.

Chairman Reynolds said he knew that Planning & Zoning Director Girling, staff, and himself have had some conversations over that leading up to some of these projects that they have had the last couple of months. Just as a note it is the discretion of the Planning Commission if they choose to allow the tree fund to be utilized. He thought that was one factor as it is written right now. Maybe moving forward there could be some language set forth of some parameters or something. He thought legally they needed to look at that and also some other tree ordinances on how they successfully utilize it. There are plenty of communities around them that do have tree funds. He thought it was important to balance out where the trees are going and whether they are just on public property.

Chairman Reynolds stated that he didn't see a major issue obviously with a small deviation and a landscape island. He appreciated the attempt to bring in some more landscaping and the deeper dive on really putting everything that was possible on the site within some of the restrictions. He appreciated the fact that there were some efforts made where there couldn't be trees planted and that there are plenty of shrubs and landscaping. He thought it was a much better compromise, collectively with the Township that they are going to proceed with starting the tree fund and essentially working with that. He thought what they saw was appropriate from his perspective.

Secretary St. Henry said he appreciated them going the extra mile to fill out the landscaping on the site. He knew it wasn't easy working with a tough site. Just looking through what you put together you listened, and they really appreciate it.

Vice-Chairman Gross stated it is nice to see somebody coming forward and saying that they can resolve this in other ways.

Moved by Vice-Chairman Gross, seconded by Commissioner Cummins, relative to the Landscape Open Space Tree Count Waiver (Ord. No. 78, Section 27.05A, 3, a ii) that in consideration of the overall design and impact of the revised landscape plan, that the Planning Commission approves a landscape open space tree county waiver on all boundaries for PC-23-21, Dutton East Retail Revised landscape plan, located at 4898 Bald Mountain Road, parcel #09-35-477-003 for plans date stamped received June 28, 2023, based on that the applicant did demonstrate the landscaping is in keeping with the intent of section 27.05 of the ordinance: and has indicated in his applicant compliance letter of July 18, 2023, is consistent with the review and report of Carlisle Wortman and there review letter of July 11, 2023.

Roll call vote was as follows: Gross, yes; St. Henry, yes; Urbanowski, yes; Walker, yes; Gingell, yes; Cummins, yes; Reynolds, yes. Motion carried 7-0.

Moved by Secretary St. Henry, seconded by Liaison Urbanowski, that the Planning Commission approve an interior parking lot island width waiver for PC-23-21, Dutton East Retail Revised landscape plan, located at 4898 Bald Mountain Rd., parcel #09-35-477-003 for plans date stamped received June 28, 2023. This approval is granted because the applicant demonstrated that: they were simply following the original site plan that was approved earlier, and that all of the things considered this is a minor waiver of one foot to the parking lot island; there does not appear to be any issues with regard to traffic on the site because of this minor parking lot waiver.

Roll call vote was as follows: Walker, yes; St. Henry, yes; Gross, yes; Gingell, yes; Cummins, yes; Urbanowski, yes; Reynolds, yes. Motion carried 7-0.
Planning & Zoning Director Girling stated that this suggested motion was done prior to the determination to create the tree fund, there is not a waiver listed here allowing them to contribute to the tree fund. Chairman Reynolds asked under landscaping approval motion number #3 if the condition is that they are asking for a resolution for the 38 trees that could be a contribution to the tree fund, do they need additional items for the motion? Planning & Zoning Director Girling replied yes, she thought they should bring it into the equation also in the ordinance when it talks about allowing it, it also says it has been determined that there is no other feasible area on site that was within the Planner’s review. Maybe within the motion in the findings of fact list that. She thought as long as they incorporated it, she felt it would take care of it.

Chairman Reynolds said they do findings of facts just to clarify the condition of why a deviation or variance is granted.

Moved by Vice-Chairman Gross, seconded by Secretary St. Henry, that the Planning Commission grants revised landscape plan approval for PC-23-21, Dutton East Retail Revised landscape plan, located at 4898 Bald Mountain Rd., parcel #09-35-477-003 for plans date stamped June 28, 2023, based on the following findings of facts: that the approval is based on the following conditions: the plans to show flattened berm that meets ordinance, that there is insufficient area on the site to accommodate the additional 38 trees, and that a contribution would be made to a tree fund to allow for additional trees to be planted elsewhere within the community.

Roll call vote was as follows: St. Henry, yes; Gingell, yes; Cummins, yes; Urbanowski yes; Walker, yes; Gross, yes; Reynolds, yes. Motion carried 7-0.

9. PUBLIC COMMENTS
None.

10. COMMUNICATIONS
None.

11. PLANNERS REPORTS
A. Discussion on Variances, Waivers, and Deviations
Planner Enos said what Planning & Zoning Director Girling and he have tried to do, and as he has learned the ordinance over the last five or six months, it seems like they always have a PUD on the agenda. One thing that he wants to do as he gets his reviews in a format that they are comfortable with is to better call out and ask for them to call out deviations and modifications. They have in the ordinance they have modifications or waivers for landscaping, parking, and other things. He will try to make sure that when they are requesting that or if they show that on a plan, they call that out so they as a Commission can read through that and say that makes sense or that doesn’t make sense, they are not going to provide that waiver.

Planner Enos stated in regard to the PUD and the terms deviations what he has noticed in some of their recent PUD plans is that the applicant has not done a good job of either showing those deviations in the table that is required or when they ask for those deviations’ layout to them as a Commission why they are asking that. They have had a lot of conversations over the first part of this year about the PUD is not meant to be a tool to get more density or closer to the property line. It is meant to be a negotiation to get a better project for Orion Township. He wanted to put the applicants’ feet to the fire a little better, in saying, if they are asking for a deviation for whatever within the ordinance that typically they would have to get a variance, their PUD allows for deviations to give them a table and tell them why they need that deviation.
Planner Enos said the project tonight the applicant did a nice job of why they couldn’t plant the number of trees where they needed them. He wants the applicants when they are coming into Orion, and they are putting together a PUD to give them the table of deviations and tell them why exactly they need that deviation. Then they as a Commission can decide if that makes sense, does it make for a better project or is it just because they want 19 units per acre instead the required 10 units per acre. This is just more his and Planning & Zoning Director Girling’s job to push the applicants but also to give them that homework when they get the plans, and they see that deviation table. He will lay it out in his review. Once they are all gone this is the record of this plan and why was this deviation granted, so if they want to make minor or major modifications, they will be able to come back to that. Plus, it requires them to think deeper into the factors for approval of a PUD, and why they are requesting that PUD. They don’t want it to be for more profit they want it to be for a better project.

Planner Enos stated that as they get reviews, they are going to be more careful regarding putting that required table in but also asking them as a Commission when they are looking at these deviations to say they agree or don’t agree with that.

Chairman Reynolds said he thought that would be helpful on his side. As an architect submitting plans obviously, they don’t always hit all of those factors. Various commissions will have different opinions on what is important, not that meeting the whole entire ordinance isn’t important. Especially points of discussion, like trees, have been a frequent topic. He thought it would be useful to have a system in place whether it be bold or a couple of colors so when they are going through a review, they can easily flag those things. When they are looking at a PUD with multiple components and phases, and as the Chair it is sometimes hard to make sure that all of them have hit those key discussion points. A PUD talking about the setback variances they need to make sure they are clear on those, a landscaping requirement, hours of operation, and things like that.

Chairman Reynolds stated that it is one thing to point out a point of discussion that if they like the color pallet it is another thing to actually say, hey they really need to make sure this is a waiver, deviation, or be clear that it is a condition of the motion that it goes towards a variance in the future. He knows they can’t catch everything but at least there is a system, whether that be a summary or through the report of those kinds of things if they were to thumb through it, they can highlight those items and make sure they discuss it as a Commission, or it is within a condition of the motion. So that it is very clear to not only them but to the applicant what they are expecting from them.

Planner Enos said if they were looking at a 22-page review, as he is writing a review, he might call on something on page 6 for them to take a look at, address, or revise. To get that on the last page whether it is a summary or however they end up doing it, that gives them a better idea to say I don’t remember page 5, but it is right here in the summary, why was it in the summary, why is it a modification, and do they grant that modification. They will work on that, and he has some ideas, and he has had a couple of different review formats.

Chairman Reynolds thought the other comment of that was the findings of fact component. Why are they granting that deviation or is there a solid reason? When they attend some of these Planning seminars and they get to see municipalities that get into some gray area it is because they are not clear on why this was treated one way and the other was treated another. Those are important and support the long-term vision of their ordinance.

Planner Enos said he was just deposed on a case and the Planning Commission had just denied a use. The applicant was going through the minutes, and he had reviewed the Planning
Commission meeting, and he basically said what was their bases for denial and it was hard to answer that question because the Planning Commission in that case didn’t give a good reason. In fact, they dug a hole by making some very subjective comments about the project. As a protection of the Township and themselves laying out those factors, if they ever get to that point, they will be able to say they didn’t meet the ordinance or they didn’t meet the ordinance based on these factors.

Chairman Reynolds said they are very good but there is definitely the opportunity to button their stuff up even further. There is always the ability to poke holes in stuff, it doesn’t hurt to make sure they are very clear on their intentions and why they are acting the way they are.

Commissioner Cummins said the benefits to the community, sometimes it is nice to see exactly what they feel is the benefits that they are providing in the PUD that allows them to get something that someone else would not be getting. Where is the benefit to the community and how exactly is that being done?

Chairman Reynolds said his thoughts with this topic was they tend to have some applicants who are trying to deliver this amazing product and they are so passionate about it that they are missing those criteria on which they are acting upon. He thought they all get emotional no matter if it is in their backyard or just in their community, stick to the facts and saying they agree or not it doesn’t meet the criteria. Something like the tree ordinance is not hitting their intentions they need to talk about that being an ordinance section they revise, versus steering away non subjectively on things that they have an ordinance to follow.

Planning & Zoning Director Girling said she knew that most of them take out the suggested motions when they are at that point after deliberation but keep in mind that when they formulate the suggested motions for them that they have pulled from the ordinance what they are supposed to be using. It would be a very good crutch as they are trying to listen to what they say and have them meet this criterion to look at that suggested motion because it is going to have bullet points on those things that they are supposed to be looking at. They can be gathering their thoughts on whether this impacts traffic or does it impact essential services, all of that is formulated in their suggested motions.

Planner Enos said the deviations for the PUD they will make sure they layout modifications like they did this evening for whether that is parking, special use, or simply a site plan, they still have some flexibility with landscaping and parking. They want to lay those out for them too to give them that flexibility or understanding that there is an easement he doesn’t need to put landscaping in, or he doesn’t need that much parking.

Planner Enos stated that if they can’t give a deviation for a PUD, or a modification for a special use or site plan per the ordinance, then their option is the ZBA, they have to ask the ZBA for a variance, which is a change in the law of the ordinance.

Planner Enos said those are the three options, modifications for special use of the site plans, per the ordinance. PUD has a lot of flexibility for those deviations in almost everything if they can address them and support them. Variances and that is going to be up to the ZBA.

Planning & Zoning Director Girling said on the modifications realize that with waivers, PC is the only one that can give it. There have been some in the motions that are, it is a conditional approval, they think that the consultant can work and come up with something satisfactory. If it is a waiver, they cannot give it, it has to be PC. If they want the consultants to work with them that may be some guidelines, work with the Planner and for example they are granting a waiver up to a 2% deviation in the number of trees. If they are truly working with the waiver, it cannot
be subjective like that it has to be something that they can show that they have met. Chairman Reynolds said a deviation of a setback no greater a than 10-ft. or something like that.

12. COMMITTEE REPORTS
None.

13. FUTURE PUBLIC HEARINGS
None.

14. CHAIRMAN’S COMMENTS
None.

15. COMMISSIONERS’ COMMENTS
Commissioner Cummins said he thought it was great how the applicant came back and addressed the problems they had at the last meeting.

Commissioner Walker thanked Planner Enos and Planning & Zoning Director Girling for the hard work they are putting into this very important project.

Planning & Zoning Director Girling said in the past when they talked about pre-app that they have asked them if they wanted to sit in on a pre-app. She is going to send an email to each one of them and they simply have to reply yes or no. If they say yes and they want to be involved in the pre-app process, then they will rotate through those who say yes, and they will then be scheduled to partake in a pre-app process.

Chairman Reynolds said a pre-application is something that the Township does for any applicant. It doesn’t always mean that it will be a project that will proceed all the way to the Planning Commission, but everyone gets one initial meeting with the Township. Sometimes it is highly preliminary, sometimes there is a pretty well-thought-out plan, and they are engaging their consultants. Typically, a rep from Planning & Zoning is there, the fire department is there, the Planner, and also their engineer. They typically bring a member of the Planning Commission forth just as a point of reference. Today it was general discussions about PUDs echoed a lot of stuff that they have discussed in the Planning Commission during the Master Plan process. They are usually held on the day of their PC meetings, at 2, 3, and 4 p.m., so everyone gets an hour.

Planning & Zoning Director Girling said they would reach out to them about a week before. That is when they get the plan that they are going to be discussing. Keep in mind they are looking at the ordinance and how they are or not meeting the ordinance, and that is what they have to follow when they are talking to them.

Planner Enos said they get the plans a week before and sometimes they are protecting the applicant because he will tell them if they bring this plan to the Planning Commission they will not be pleased with the response. Whether it is an incredible amount of density or uses that don’t fit. He thought they should see the early stages of how they start the process.

Chairman Reynolds said it is not meant to be any deliberation it is just an open discussion.

Planning & Zoning Director Girling said it is 100% confidential.

16. ADJOURNMENT
Moved by Chairman Reynolds, seconded by Liaison Urbanowski, to adjourn the meeting at 7:40 p.m. Motion carried.
Respectfully submitted,

Debra Walton
PC/ZBA Clerk
Charter Township of Orion

August 16, 2023
Planning Commission Approval Date