

**City of South Lyon
Planning Commission Meeting**

May 13, 2010

Chairman Weipert called the meeting to order at 7:04 p.m.

All present recited the Pledge of Allegiance to the Flag

PRESENT: Commissioners Kurtzweil, Mosier, Weipert, Lanam, Chubb, Culbertson, Chaundy and Leimbach were present. Commissioner Bradley was excused.

Also present were Ben Tallerico (Planning Consultant), Kristen Delaney, Director of Community and Economic Development, and Parvin Lee, City's Attorney.

APPROVAL OF AGENDA:

Motion by Lanam, supported by Culbertson

To change the order of the public hearings so 410 Pettibone would be first.

VOTE

MOTION CARRIED UNANIMOUSLY

Motion by Lanam, supported by Chubb

To approve the Agenda May 13, 2010 as amended.

VOTE

MOTION CARRIED UNANIMOUSLY

APPROVAL OF MINUTES:

Motion by Mosier, supported by Lanam

To approve the Minutes for April 22, 2010 as amended.

VOTE

MOTION CARRIED UNANIMOUSLY

PUBLIC COMMENT

There was no public comment.

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PUBLIC HEARINGS

410 Pettibone

Justin Shigley, Senior and Justin Shigley, Junior of 9694 Viking Road South Lyon

Mr. Shigley, Senior, reviewed the family history and the history of the property. They were misinformed on the zoning. Originally they were told the property was industrial but it was really RM-1. Shigley, Junior, stated he was informed by a neighbor that the zoning was changed without the neighbor's knowledge.

Shigley, Senior, stated the auto parts store serves as a buffer to the railroad track and this property would do the same.

Shigley, Junior stated he put a new roof on the building which was used for storage and cleaned the building and property out. He was working to make the property look better and was working with the neighbors.

Shigley, Senior stated the family-owned car wash has received people's choice awards and so has the landscape business for the past four years.

Chairperson Weipert called the public hearing open at 7:15pm.

Debbie Higgins, 607 Kestral Court, stated she has known the Shigley's since 1993 and they were a wonderful family and saw no problem with a change in the zoning.

Carol Nugent, 766 Townsend, agreed with Ms. Higgins and added the Shigley's care about the city.

Chairperson Weipert closed the public hearing at 7:18pm.

Tallerico reviewed his comments and noted if the property was non-conforming for an existing business and has been operable then the applicant was not in violation. The proposed rezoning would be in violation of the Master Plan.

Weipert reviewed when and why the entire area was rezoned to RM-1. The trend was for single family homes and not light industrial. The zoning was changed to support the developing neighborhoods.

Tallerico stated he was not the city's consultant at the time but the other issue was the legality of preventing spot zoning.

Weipert stated through the fall of 2003 there were a couple of meetings and a public hearing with the proper notification to the residents. The Planning Commission recommended to City Council for rezoning. The question that remains was there a piece that should have remained industrial.

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Mosier asked if there was a house on the property. Shigley, Junior replied there was a twenty-five foot pool barn. There was nothing that resembled a home. Mosier asked if they site has water and sewage. Shigley, Junior replied the hook-ups were there but both were shut off.

Kurtzweil asked who the applicant spoke with initially when he came to the city offices. Shigley, Senior stated, as best he could recall, he spoke with Joe Veltri in the Building Department in November of last year. Shigley was concerned whether or not this type of business would be allowed on the property. At the time he described to Mr. Veltri the type of business.

Kurtzweil asked when the applicant went onto the city's website to look at the zoning maps. Shigley, Junior replied in November, he had been working on this property for some time.

Kurtzweil stated the city made representation and communicated with this citizen. She asked what was wrong with the picture. The incompetence in this city drives her crazy. There was no excuse for the city to misrepresent the property. It was disgusting and she was not pleased. Weipert asked if Ms. Kurtzweil would speak with the building department and their boss after the meeting. Kurtzweil replied no, this was a public meeting and she was asking the Planning Commission to do what was right and allow him to be able to do what he was told. The property should be rezoned to industrial.

Weipert asked Mr. Shigley when he found out the property was R1. Shigley, Junior replied minutes before he closed on the paperwork. The realtor thought it was RM-1 and when they went to the city's website it showed it as I-1. Shigley, Senior stated the notice for the public hearing also shows the site as I-1.

There was a general discussion regarding what was publicized and the dates of the maps.

Culbertson stated he heard two different things regarding the type of business Mr. Shigley wanted to conduct. He heard landscaping and then he heard snowplowing. He asked what type of equipment would be stored on-site and the hours of operation for the business. Shigley, Junior replied it was a lawn maintenance and light landscaping business. He did not store materials on-site. In the winter they snowplow but the plows fit into the building. Culbertson asked if he stored mulch or salt on the property. Shigley, Junior replied he did not store salt but kept some ice melt in the building. The bobcats used were not stored on this property. He does not own anything larger than a truck but he tries to keep everything inside the pole barn. They may see a couple of pick-up trucks on the property but most equipment fits inside.

Tallerico noted the Commissioners should remember that if the property was rezoned and if the applicant sold the property that anything under I-1 would be allowed on the property.

Chaundy asked if the applicant would need to add barriers between this property and the

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residential neighbors. Shigley, Junior replied the chain link fence had a lot of growth on it. Lanam asked if it would have to be a wall. Tallerico replied he could ask for a variance.

Leimbach asked if it were rezoned would it become an island surrounded by RM-1. Tallerico reviewed the map of the area and stated he would not consider it a spot zone.

There was a general discussion regarding the zoning of the area.

Culbertson asked, from a legal standpoint, does the website supersede the legal zoning. Mr. Lee replied the official record of the document approved by City Council and the map at the time was rezoned was the legal status of the site. Culbertson asked if the publication of the wrong map online had an effect. Lee replied what was passed by Council was the official zoning.

Lanam asked how long the property sat vacant before it was sold to the application. Shigley Junior replied he was not certain on the dates. There was a general discussion regarding the length of non-use.

Lanam asked if the property was idle for six months then it was legal non-conforming and was not in violation. Tallerico replied correct. There was a general discussion regarding non-conforming properties.

Lanam asked what sort of protection there was for the Master Plan in a situation like this. Tallerico stated this was a piece where all uses as an I-1 would be in a neighborhood. Shigley, Junior stated there was a property owner that was not aware the zoning had changed. Tallerico replied it was a short street. There could be a lot of noise depending on the I-1 use at the time.

Mosier asked if a special use could be used. Tallerico replied that was up to the applicant. He reviewed the application as presented.

Weipert noted the rezoning happened after the last Master Plan review. Tallerico stated the whole area was residential in the Master Plan. Culbertson asked if that included the property to the southeast. Tallerico replied yes. There was a review of the Master Plan map of the area.

Motion by Kurtzweil, supported by Culbertson

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To recommend approval to City Council to change zoning from RM-1 to I-1 for 410 Pettibone.

Chubb asked if the zoning changes did the buffering need to be upgraded. Tallerico stated they would have to meet the requirements of the ordinance.

Kurtzweil suggested the applicant include a landscape blend with the residential by adding evergreens. Chubb proposed that this be added to the motion.

Motion by Kurtzweil, supported by Culbertson

To amend prior motion and include recommendation to add additional natural buffering over and above the ordinance requirements.

VOTE

MOTION CARRIED UNANIMOUSLY

Oakland 40

Susan Friedlaender, 33493 West 14 Mile Road

Ms. Friedlaender was the attorney of record for the applicant. Friedlaender reviewed the conditional zoning history and provided conditions. She noted there seemed to be some confusion and explained the reasoning behind conditions. They were not asking for anything more than what was allowed. They would like to have seventy-eight single family detached units and twenty-two attached units in groups of two. They did not have wetland delineation. They would like to leave some parts somewhat flexible but they would like to have up to one-hundred units, knowing that it could be less. The table included in the conditions was only to show what would be allowed under current ordinances. If developed as a traditional plan there would be no requirement for open space but they were proposing to allow for open space. They also offered to connect the trail systems so that all adjoining neighborhoods would be able to access the trail system. Sidewalks would be all around the development and they would offer public roads. They were asked for the time length of development to happen in phases so it would not have to revert back to industrial. They were looking at extending the zoning. The plans would still go through the normal processes. The twenty-percent vested would be defined via the certificate of occupancy.

Tallerico noted if the city's attorney was happy with the language then that would be ok.

Friedlaender stated they were agreeing to things that normally would not be included. This was a good development for the city. The city did not have much left to make residential. The property had been sitting and not generating a good tax base for thirty or so years. Nobody was going to develop it as industrial.

Weipert asked why approach it as a contract or conditional zoning as opposed to traditional rezoning. Friedlaender replied because the Commissioners were concerned about density and they were limiting density and making it more attractive to the city.

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Weipert clarified if they were doing this so the city had comfort in what would be on the site. Friedlaender replied yes.

Chairperson Weipert opened the public hearing at 8:18pm.

Patrick Nugent, 766 Townsend

Mr. Nugent stated he had two questions; he wanted clarification regarding traffic from Eleven Mile Road and noted the last time they were here the proposal was for low-income housing. If low-income housing was going to be developed then he would be against it. If it were for nice homes then he was fine.

Tallerico replied Ms. Friedlaender was referring his comment regarding Mill Street. There was no issue with traffic from Eleven Mile.

Lee replied the applicant was not asking to develop anything less than what existed in the area. The old plan with the low-income housing was long gone.

Carol Nugent, 766 Townsend

Ms. Nugent stated the Master Plan had this site as industrial and she always understood the wetlands made the site difficult. She asked how many wetlands they had to give up. Her husband was born and raised in this town and she asked to give the site a rest for ten years or so to see what happens. She does not think the city needs this development right now. She believes they need the wetlands more.

Mark Hipp, 691 Grand Court

Mr. Hipp stated his home abuts this property and this was his fourth or fifth time before the Commission. He chose his property knowing this site was zoned industrial and knew it would not be developed. If it was rezoned he feels his rights would have been violated because he thought it was industrial. For the property to be used as light industrial maybe the owner needed to reduce his price. Maybe this was just a bad business decision on his part. Putting home in that they may not be able to fill would be a disaster. He believes this property already went to the state Supreme Court over the issue of the Master Plan and the court sided with the city.

Debbie Higgins, 607 Kestral Court

Ms. Higgins stated she was proud to live in South Lyon and always wondered what would be built on this site. She stated it was an eyesore. She asked how big the homes would be and what they would like. She hoped the Commission would do the right thing for the community.

Weipert stated the size of the homes depended on the size of the lots. There was a general discussion regarding set-back requirements.

Higgins asked what open space was and who would use it.

Weipert replied open space would be for the development but they are proposing

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connecting trails that would be available to the entire community. Tallerico noted the wetlands come out of the open space calculations if they are over five acres.

Glen Kivell, 235 West Lake

Mr. Kivell stated there had been comments that this site could never be developed as industrial but he did not think it had ever been properly marketed. There was enough proximity to University of Michigan and Michigan State University as well as smaller plants moving into the area. The city wants to diversify its tax base. Industrial would be less of a caretaking burden for the city than residential. He would like to see it properly marketed.

Chairperson Weipert closed the public hearing at 8:38pm.

Tallerico stated he appreciated Ms. Friedlaender's clarification in response to his comments. This application was contrary to the Master Plan. The time for the build out seems significantly long. He would not be in support of tree clearing and asked who would build the trails. The vagueness needed to be addressed so there would be no confusion down the road.

Friedlaender replied the tree clearing would be for no more beyond what would currently be allowed, meaning they would take out less. The length of time would allow for market fluctuations.

Weipert noted they could not clear cut trees without replacing them. Tallerico stated he wanted to be sure they would follow the ordinances. Friedlaender replied they would.

Lee explained the contract zoning rules and noted that Ms. Friedlaender was trying to address all concerns to make everyone happy. The Planning Commission's role in the process was ambiguous but all parties agreed to bring to the Commission so they could make a recommendation. Whatever suggestions or ideas they have could be incorporated into a motion.

Culbertson asked if Mr. Lee would review the contract before it was presented at City Council. Lee replied the document presented to the Commission was not a contract it was only proposed conditionals. The formal document would be drafted after it went to Council. Leimbach stated that did not mean the city had to enter a contract. Lee replied that was correct. The decision was, ultimately, belonged to City Council. Leimbach asked if they could suggest conditions. Lee replied as a matter of law the city could not demand conditions but you could say it would be more favorable if a suggestion was offered as a condition.

Culbertson asked if the two year extensions were based on certificates of occupancy. Lee replied that was correct and noted there was always a tipping point that they could not come back from. In his viewpoint it would have to be certificate of occupancy.

Lanam stated the original reason the recommendation was to deny was not based on the

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application but was in order to support the Master Plan. He feels this contract was a way to circumvent the normal process and did not support the Master plan. Understanding this document was not a contract, the language was ambiguous. The contract would need to state what was going to happen. It would need to be as specific as possible so there it was not open to interpretation. He feels the cluster option should not be mentioned. And any sketches should not be part of the contract. If the final contract was created he feels it should come here for review or, at least, have Chairperson Weipert involved in the contract process.

Mosier agreed with Mr. Lanam regarding the protection of the Master Plan. The extensions would be very troubling and he would like to see more specifics if this did move forward.

Lanam noted once development began it would be difficult to revert back.

Leimbach agreed it would be very dangerous to go against the Master Plan. He believes the contract zoning was a way to develop around that. He was not in favor of deviating from the Master Plan.

Chubb stated a lot of his thought had been stated. Part of the strength of the city was to develop the Master Plan. He thinks the detailed land survey was worth the investment to know the site and market it properly. The extensions and who defines the market data, where the market data comes from, are all open to interpretation and could change based on who was reading the conditions. He agreed that if this moves forward the cluster option should stay out of the contract.

Kurtzweil stated she found it interesting that last time the applicant was here there was a discussion regarding market data. She believes what they presented at that time was misleading and outdated. The position at this meeting changed and the applicant acknowledges the market data did not support the need. She has a problem with this proposal and feels this was speculative zoning and not contract zoning. The applicant's attorney stated "whoever builds this development". She suggested either they have a market and build it or they leave it alone. She did not support moving forward with this proposal.

Chubb stated he strongly believed a conceptual plan should be left out of the contract. If they had time to create a concept plan then they could complete the site survey.

Weipert agreed to protect the Master Plan. She was very concerned about the fifteen years of extensions because it was way too long. She was also concerned with the vagueness of the language even though she understood this was not the final wording. The criteria needed to be very specific for market data and finance conditions should this move forward. She did not see where the city gains anything from this process. The conditions proposed were the things that good developers do to make the property attractive and marketable. She did not think they were offering anything special.

Motion by Culbertson supported by Lanam

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To recommend contract zoning for Oakland 40 not be approved by City Council.

VOTE

MOTION CARRIED UNANIMOUSLY

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

TABLED ITEMS

Medical Marijuana Dispensary Ordinance (Will be on May 27, 2010 agenda)
Lee stated he was presented with two different options for wording and he would recommend the second option.

Blight (Vacant, Abandoned and Foreclosed Structures Registry) (Public hearing will be May 27, 2010)
Weipert provided Mr. Chaundy a brief review of this issue.

Annual retreat

Wind Energy Ordinance (Will be on May 27, 2010 agenda)
Weipert reminded everyone the last issue of "Michigan Planner" had an article regarding this topic.

STAFF REPORTS

Delaney apologized for the confusion regarding the zoning map on the Pettibone property. It was posted online long before she began working for the city. From this point forward all maps would include a date. Kurtzweil noted her comments were not directed at Ms. Delaney and that it was not her mistake.

Delaney stated Downtown Saturday Night began this weekend and the Farmers' Market kicks off on May 27.

Culbertson asked for an update on Joe Veltri's retirement. Dave Murphy stated Mr. Veltri's last day would be June 30, 2010 and the city has contract with the city of Novi to use their building inspectors.

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Delaney provided an update on the lumber yard and Cross Roads. Lee provided an update on Gateway Condominiums.

Weipert provided a City Council update.

ADJOURNMENT

Motion by Culbertson supported by Lanam

To adjourn the meeting at 9:35 p.m.

VOTE

MOTION CARRIED UNANIMOUSLY

Pam Weipert, Chairperson

Jennifer Knapp, Recording Secretary

Keith Bradley, Secretary