

**SAGINAW CHARTER TOWNSHIP PLANNING COMMISSION
SAGINAW CHARTER TOWNSHIP HALL
MAY 20, 2009**

Members Present

A. Seaver
D. Emmenecker
J. Anderson
P. Brucker
E. Majask
C. Nolan
B. Nelson

Members Absent

Others Present

B. Smith, Planner
C. Edlinger, Recording Secretary
M. Mahlberg, Attorney

Mr. Brucker called the meeting to order at 7:00 p.m.

Approval of Minutes:

Motion by Mr. Anderson, supported by Mr. Nelson, to approve the minutes of May 6, 2009.

VOTE: 7 YEAS 0 NAYS 0 ABSENT MOTION CARRIED

New Business:

- A. **SUP-09-02 and S-09-09** – Faith Lutheran Church of Saginaw, Michigan is requesting a special use permit and site plan approval to construct an additional 69 parking spaces at their existing church located at 4432 Mackinaw.

Ms. Smith stated the project consists of constructing a parking lot for 69 additional spaces. The expanded parking area is located immediately east of the existing church and north of the existing pavilion. The development is located on a 5.19 acre site, just south of the intersection of Shattuck Road and Mackinaw Road, approximately 250 feet behind Case Funeral Home. The church has access from Mackinaw road and no additional access is proposed.

The landscaping provided within the site plan is consistent with the area. Three additional trees are needed to meet landscaping requirements. Staff recommends that these three additional trees be planted directly east of the expanded parking area and be evergreen so as to lessen the impact on adjacent residential areas. Staff has had

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conversations with residents adjacent to the existing parking area and agrees that additional landscaping could be planted to supplement the screening provided by the berm. Staff would like to meet with the applicant/owner to discuss alternative placement of landscaping to better shield residents on the south side of the existing parking lot without requiring additional quantities of landscaping.

Whereas Faith Lutheran Church is a permitted use after special approval within the R-1A, Low Density Residential-Transitional zoning district and the project complies with the general development standards of the Township, staff recommends approval with the four (4) conditions listed in the report.

Mr. Nelson inquired if the applicant proposed to install any berms? Ms. Smith stated three (3) berms are proposed between the residents to the east and the additional parking lot plus staff is requiring three (3) additional trees.

Mr. Brucker then asked for public comments in favor or in opposition to the proposed special use permit and site plan.

A Township resident inquired how far south the parking lot will go. Ms. Smith stated the three (3) trees would be planted directly east of the proposed additional parking lot.

There being no further comments, Mr. Brucker closed the public hearing portion of this proposed special use permit and site plan.

Discussion followed among the Planning Commission members.

Motion by Mr. Nelson, supported by Mr. Nolan, to recommend approval of the proposed special use permit (SUP-09-02) to the Township Board upon the following four (4) conditions listed below:

1. Approval of a final site plan by the Community Development Department, Fire Department, Building Department and the Department of Public Services.
2. A storm water management plan shall be submitted, along with the required checklist and calculations, and approved by the Township Engineer as part of the final site plan.
3. Submission and approval of a landscaping plan, showing type, quantity and area compliant with the Township's parking standards including the addition of three (3) trees. Staff would like to meet with the applicant/owner to discuss alternative placement of landscaping to better shield residents on the south side of the existing parking lot.

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4. On-site lighting should not exceed twelve feet (12') in height and be equipped with a cut-off fixture to prevent light trespass.

VOTE: 7 YEAS 0 NAYS 0 ABSENT MOTION CARRIED

Motion by Mr. Nelson, supported by Mr. Nolan, to recommend approval of the proposed site plan (S-09-09) upon the same conditions listed in the proposed special use permit SUP-09-02.

VOTE: 7 YEAS 0 NAYS 0 ABSENT MOTION CARRIED

- B. **Z-09-03** – Perfection Bakeries, Inc. of Fort Wayne, Indiana is requesting to rezone one (1) parcel of land from R-1A, Low Density Residential-Transitional to B-4, General Commercial located at 3800 Fashion Square Boulevard.

Ms. Smith stated the applicant is requesting to rezone one parcel known as 3800 Fashion Square Boulevard to B-4, General Commercial. The property is located on the west side of Fashion Square Boulevard and is directly adjacent to parcels zoned B-4, General Commercial. It has approximately 750 feet of frontage along Fashion Square Boulevard and is approximately 260 feet deep. It is located behind the former Value City stores and directly north of the entrance and outparcel at Stardust Lanes.

Whereas the proposed rezoning from R-1A, Low Density Residential-Transitional to B-4, General Commercial is supported by the Future Land Use Map, Comprehensive Development Plan and is consistent with the development trend in this area, staff recommends approval of rezoning request Z-09-03.

Mr. Brucker then asked for public comments in favor or in opposition to the proposed rezoning.

A Township resident requested if he could make a statement to the Planning Commission regarding information he gathered that would be pertinent to the Aunt Millie's rezoning request.

Mr. Jasienski read from a newspaper article the following, "For years, the owners of a former gasoline station failed to warn a neighbor that the ground water and soil beneath his house was contaminated with gasoline, a lawsuit alleges. Jeffery Wray, a computer technician at Ball Memorial Hospital, complains in the lawsuit that gasoline vapors entering his basement from leaking underground storage tanks forced him out of his home at 1821 S. Walnut Street in Muncie, Indiana. "The fumes were so bad I got a headache after visiting for 30 minutes," said Wray's attorney, Joey Davis.

The lawsuit names Portland-based Jay Petroleum, which operates three dozen Pak-A-Sak convenience stores throughout East Central Indiana and West Central Ohio; Sunoco, a leading manufacturer of petroleum and petrochemical products; and the estate of Kathryn McMahon.

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Jay Petroleum and Sunoco deny the allegations and filed cross claims blaming each other for the spread of the contamination, not only to Wray's residence but also to Aunt Millie's Thrift Store, a bakery at 101 W. Memorial Drive.

Sunoco operated a gasoline station at the northwest corner of Memorial and Walnut from 1953 until 1982, and Jay Petroleum operated the gasoline station from 1982 through 1988.

Jay Petroleum began assessing the site in 2001, when its engineering consultants detected total petroleum hydrocarbons in soil samples.

A ground water sample from a monitoring well just outside Wray's basement detected benzene levels of 4,160 parts per billion. IDEM requires closure of residential properties when benzene levels reach 5 ppb.

Wray's father who dies of cancer in 1993 and Wray's mother, who dies of cancer in 2002, both lived at the house for many years, according to the lawsuit. In addition, the couple's dog died of cancer in 1999. Wray's aunt, who also lived in the house for several years, died of cancer last year. Exposure to benzene can cause cancer."

Mr. Jasienski stated that benzene was a serious contaminant. He further stated he does not oppose the rezoning request but thought the Planning Commission should be aware of this lawsuit and Aunt Millie's is still shipping their products from that location.

Attorney Mark Mahlberg stated that his understanding was this was an environmental contamination lawsuit in Muncie, Indiana. It seems as if the property involved was an Aunt Millie's thrift store and Aunt Millie's was one of the victims of the contamination.

Gretchen Witherspoon stated Aunt Millie's has many distribution centers all over the United States and would not put a product on the shelf that could possibly be contaminated. That situation in Muncie, Indiana has nothing to do with Saginaw Township and that issue has been resolved.

Ms. Smith stated staff received correspondence from Tri-State of Saginaw, Michigan (see attached). Tri-State stated in their correspondence "We have developed the office building on the southwest corner of Fashion Square and McCarty Road adjacent to this site. Our tenants are general office and medical. A lease is presently pending for doctors office's on the south side facing this proposed Perfection Bakeries development. We have no objection to the B-4 zoning classification, however, per your previous law-suit against our company, a truck terminal is not allowed in B-4 zoning."

Ms. Smith stated staff had gone before the Zoning Board of Appeals on April 8, 2009 to request a rendering on how to classify Perfection Bakeries because it is both retail and wholesale with warehousing and it is not a truck terminal. The Zoning Board of Appeals stated that this is a permitted use in a B-4, General Commercial district by right.

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Mr. Sawyer from Tri –State disagrees with the decision of the Zoning Board of Appeals.

Attorney Mark Mahlberg stated Mr. Sawyer stored 18-wheelers at his site which was adjacent to the Meyers subdivision. He had no wholesale, warehouse or retail. They operated as a truck terminal. The trucks started their engines typically around 4:00 a.m. and were very loud and upsetting to the adjacent neighbors. Mr. Mahlberg stated he doesn't feel these situations are the same because Mr. Sawyer operated a "true" truck terminal. His activity was considered a "common law nuisance". Ms. Smith requested that the correspondence from Mr. Sawyer be attached and made part of the record of the meeting.

There being no further comments, Mr. Brucker closed the public hearing portion of this proposed rezoning.

Discussion followed among the Planning Commission members.

Motion by Mr. Nolan, supported by Mr. Emmenecker, to recommend approval of the proposed rezoning (Z-09-03) to the Township Board.

VOTE: 7 YEAS 0 NAYS 0 ABSENT MOTION CARRIED

- C. **S-09-10** –From Bud's to Bloom's of Essexville, Michigan is requesting site plan approval to have an outdoor greenhouse located in the Fashion Square Mall, north of Firestone and south of the southwest entrance drive off Bay Road, that would operate for 70 days where 30 days are permitted by right.

Ms. Smith stated this request is similar to the request that the applicant made last year. In 2008, the applicant requested a display and was approved for a total of 170 days of outdoor display. In winter 2009/early spring, staff received an inquiry from management at Fashion Square Mall regarding the process for approving Buds to Blooms as a temporary use again this year. At that time, staff informed the mall of the previous year's approval and that the Planning Commission wanted to encourage the applicant to establish a permanent location. Staff provided the mall a copy of the minutes of the meeting stating the same. The applicant initially applied for a temporary business license in early April. At that time, staff wrote a letter to the applicant stating again the Planning Commission's desire to see the business establish itself not as a temporary business but as a permanent business within the Township. In early May, staff received a request from the applicant to seek additional time for display. (Please see attached letter) Part of the submittal was the request from the applicant to the Planning Commission to approve this extended display for a period of five (5) years. Staff has found that, although we appreciate the desire of the applicant to demonstrate a long term commitment to this temporary location, the zoning ordinance does not provide staff or the Planning Commission to make such a decision. While the zoning ordinance provides standards for review, it is the Township's general ordinance (Chapter 46,

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Peddlers, Charitable Solicitors and Temporary Businesses) that dictates other, additional standards for businesses such as Buds to Blooms. In this particular instance, the Planning Commission does not have the authority to over-ride, alter or otherwise impact the general ordinance requirements listed below:

Sec. 46-153. Location restrictions.

- (a) Persons licensed under this article shall be allowed to operate only in community commercial and general commercial zoning areas on Bay Road, Midland Road, Gratiot Road, and State Street.
- (b) Persons licensed under this article must meet all zoning ordinance regulations applicable to businesses operating within the township.
- (c) Persons licensed under this article must operate completely within the setback requirements; 30 feet behind the township established right-of-way.
- (d) Persons licensed under this article shall not sell products or provide services within 2,000 feet of a parcel on which those products or services are provided by a permanent business.

It is because of Section 46-153.d, that there is no way to approve an application such as this for more than one season at a time. At any point in the future if a building is occupied by a use that sells flowers and/or plants, this use would not be permitted. Currently there are no other businesses within 2,000 feet of this parcel selling similar goods.

For this reason, the Planning Commission should consider this application to be a request for an additional 40 days of display time for this calendar year only.

Mr. Brucker inquired if we received any complaints last year. Bridget Smith stated "no". Mr. Brucker stated there would be only two reasons not to approve it, one reason being if they were not a good neighbor and the second reason would be if another business was operating a year round business and complained about the temporary business.

Mr. Chuck Moulds, a representative from Buds to Blooms, was present to answer any questions. Mr. Moulds presented an overview of his business Buds to Blooms to the Planning Commission. He stated they are a 12 month business with a permanent location in Bay City, Michigan. From December to January they are placing their orders, February to April they start their planting, and May through June is when they have their highest sales volume (70%). July to August they are still selling but not at as high a rate as May through June and typically they are selling mums. August through October they sell their perennials and in November they clean and sterilize their buildings in preparation of the following growing season. This temporary location for Buds to Blooms is well received by Fashion Square Mall, Firestone Tires and they have received positive responses from their customers as well. They have received no complaints or had any issues with business neighbors or township officials. Buds and

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Blooms is trying to establish a footprint and customer base to potentially consider a permanent location if economically viable. They have 3-4 permanent employees and 25 seasonal employees with over \$120,000 paid in wages, \$40,000 in advertising and \$20,000 in state sales tax revenue.

Mr. Moulds introduced Bill Johnson who is a business partner with Buds to Blooms and is also manufacturing a new potato chip product to be introduced to the public in the future.

Mr. Brucker then asked for public comments in favor or in opposition to the proposed site plan.

There being no comments, Mr. Brucker closed the public hearing portion of this proposed site plan.

Discussion followed among the Planning Commission members.

Motion by Mr. Majask, supported by Mr. Anderson, to recommend approval of the proposed site plan (S-09-10) upon the following six (6) conditions listed below:

1. Said outdoor sales area will not be used for more than 70 days.
2. All outdoor sales/activity area must remain clean and clutter free. The greenhouse, shade structure and any associated materials must remain neat and presentable and may not become neglected, damaged or in disarray. Any structure must also comply with Article 32, of the Uniform Fire Code. They will have to obtain a Business License from the Township Clerks office.
3. Use of temporary storage containers is prohibited.
4. Permits required for water and/or electrical work shall be obtained and the work shall be approved prior to operation.
5. The area, structure and associated goods will be inspected during operation to ensure conformance to the requirements contained in this report and the general requirements of all structures and businesses within Saginaw Township.
6. This approval in no way confers or implies future approval of extensions of time for outdoor events, sales or displays.

VOTE: 7 YEAS 0 NAYS 0 ABSENT MOTION CARRIED

- D. **S-09-08** – Kroger’s of Saginaw, Michigan is requesting site plan approval to have an outdoor display on property owned by Centro that would operate for a total of 61 days located at 4672 State.

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Bridget Smith stated the applicant applied for and received approval from the Township for an outdoor display for thirty (30) days to be conducted from April 14, 2009 to May 14, 2009. The applicant is seeking to extend the outdoor sales by an additional thirty-one (31) days. This would result in an outdoor display from April 14, 2009 until June 16, 2009 (which would equate to a total of 61 days when 30 days are permitted by right).

Ms. Andrea Sickles, store management for Kroger's, was present to answer any questions. Ms. Sickles stated this is the first time in the Michigan Division for Kroger's to operate a temporary outdoor display for seasonal flowers, etc.

Mr. Brucker then asked for public comments in favor or in opposition to the proposed site plan.

There being no comments, Mr. Brucker closed the public hearing portion of this proposed site plan.

Discussion followed among the Planning Commission members.

Motion by Mr. Emmenecker, supported by Mr. Nolan, to recommend approval of the proposed site plan (S-09-08) upon the following three (3) conditions listed below:

1. The applicant should seek a more permanent solution to seasonal displays as there is no guarantee of extended outdoor display each year; this is especially true as tenant spaces lease and parking becomes more scarce.
2. The display shall be removed on June 17, 2009.
3. Provide written permission from the property owner for the extended outdoor display.

VOTE: 7 YEAS 0 NAYS 0 ABSENT MOTION CARRIED

Receive and File All Correspondence:

- A. A copy of the May 13, 2009 Board of Appeals meeting.

Other New Business: Mr. Brucker presented Mr. Emmenecker with a plaque for his ten years of service and read the following:

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**RESOLUTION
in honor of
Daniel T. Emmenecker**

***WHEREAS**, Daniel T. Emmenecker served on the Saginaw Charter Township Planning Commission from October 1, 1998 to May 20, 2009; and*

***WHEREAS**, during his ten years of service Mr. Emmenecker helped shape our community by participating in the planning of many of the Township's development projects including the Tittabawassee Road Access Management Plan; Cardinal Square; Bay Road/M-84 Access Management Plan; the Campus Business District and the 2007 Comprehensive Development Plan update; and*

***WHEREAS**, the Planning Commission appreciates Mr. Emmenecker's competence and dedication to the work of the Planning Commission, and Saginaw Charter Township through his thoughtful action and dedicated and professional demeanor both as a Planning Commissioner and Township resident.*

***NOW THEREFORE BE IT RESOLVED**, that the Commission hereby expresses its gratitude to Daniel Emmenecker for his outstanding service to the Planning Commission and the Saginaw Charter Township community.*

***BE IT FURTHER RESOLVED**, that this Resolution be spread upon the Minutes of this Commission and be presented to Daniel Emmenecker and forwarded to the Saginaw Charter Township Board of Trustees.*

The above set forth Resolution was unanimously adopted by the Saginaw Charter Township Planning Commission at a regular meeting of the Commission held on Wednesday, May 20, 2009.

*Peter Brucker, Chairman Ed Majask, Vice-Chairman John Anderson, Secretary
Clayton Nolan Barry Nelson Amy Seaver*

Mr. Emmenecker thanked the Planning Commission and stated it was a privilege serving with them.

Old Business:

Adjournment:

Motion by Ms. Seaver, supported by Mr. Nelson, to adjourn the meeting at 7:50 p.m.

VOTE: 7 YEAS 0 NAYS 0 ABSENT MOTION CARRIED