Charter Township of Kalamazoo
Minutes of a Planning Commission Meeting
Held on October 6, 2016

A regular meeting of the Kalamazoo Charter Township Planning Commission was conducted on October 7, 2016 commencing at 7:00 p.m. at the Township Hall.

Present were:
Chairman Henry Dingemans
Tonnie Hitt
Fred Nagler
Bill Chapman
Steve Leuty
Jim Cripps

Absent was: Robert Talbot

Also present were Township Zoning Administrator Patrick Hudson; Township Attorneys Roxanne Seeber and Seth Koches and approximately 20 additional interested persons.

Call to Order

The Chairman called the meeting to order at 7:00 p.m.

Roll call and Recognition of Visitors

The Chairman noted that Mr. Talbot was absent. Chapman moved, supported by Leuty to excuse Talbot. The motion passed unanimously.

Approval of the meeting minutes for September 1, 2016

The first item on the agenda was the minutes of the September 1, 2016 meeting. Cripps noted two changes, which were accepted. Leuty moved, supported by Cripps to approve the minutes as amended. The motion passed unanimously. Cripps moved, supported by Leuty to authorize the Chairman to sign the August 2016 Planning Commission meeting minutes in Talbot's absence. The Chairman signed the minutes and provided them to the Zoning Administrator for transmittal to the township offices.

Approval of meeting agenda

There were no changes or corrections to the draft meeting agenda. Nagler moved, supported by Cripps to approve the meeting agenda as presented. The motion passed unanimously.

Public Hearing

The next item on the agenda was the request of Moe Alkhateeb for special use and site plan approval to operate a hookah lounge (restaurant) on the property addressed as 1747 W. Main St. (Parcel No. 3906-

17-435-663). The property is located in the RM-2 "Multiple Family/Mixed Use" District Zoning Classification. A restaurant and/or a carryout restaurant are special land uses in the RM-1 Zoning District. The applicant indicated a desire to operate a hookah lounge in the western portion of the building. The existing hydroponics store would remain. He explained that a hookah lounge is like a smoking lounge. The Chairman noted that he was not familiar with the hookah lounge concept. Attorney Seth Koches had done some investigation at the Chairman's request. First, he indicated that a hookah lounge is considered a "tobacco specialty retail store". It would sell tobacco and smoking products, some of it would be for on-site consumption. A hookah lounge, as a tobacco specialty shop, was not subject to Michigan's anti-smoking law which prohibited use of tobacco and smoking in public places in 2009. Food service was limited to pre-packaged items and there was no liquor license authorized with it.

Art Bates, 8921 East ML Kalamazoo 49048, architect, prepared the site plan and spoke as agent for the owner. He indicated that a restaurant appeared to be the closest application. The use would be for selling and smoking tobacco. There would be no food service and no alcohol sales.

The Chairman opened a discussion regarding whether the use should be considered as a restaurant or some other permitted or special land use in the zoning district in which it was located. Seeber indicated that the idea would be to compare intensity of uses. For restaurants, the number of parking spaces was calculated based on one for every three seats, plus a loading space and spaces for employees. The hookah lounge intended 60 seats, which would mean a need for 20 parking spaces, the loading area and spaces for employees. Considering the use as a "general retail" or as part of a shopping center resulted in a need for more parking spaces. Additionally, there was a special land use for a "club" or "fraternal organization" which often included the provision of food and liquor. The consideration of an application as a special land use provided the Planning Commission with the ability to place conditions to address the public health, safety and welfare, she said.

Leuty was not inclined to consider the use as a "fraternal organization" or general retail. He was more inclined to analyze the request under the "restaurant" special land use when considering the intensity and type of activity. Cripps indicated an understanding of how the lounge would function. Basically, he thought it was a "tobacco lounge". He considered this to be like a restaurant in which you can purchase a sandwich and eat it inside or take it with you. Nagler indicated that if the use was considered part of the shopping center and not a special land use, then the review would be for site plan only. Cripps and the Chairman agreed.

Chapman voiced concern about ventilation for tobacco smoking by 60 people in the building. He considered the use similar to a restaurant. Hudson read several pages of his review into the record. He noted that no exterior change was contemplated except for façade improvements and a change to the sign. The existing hydroponics store required 9 parking spaces. The 60-seat restaurant would require 20, with additional required spaces for staff.

In response to an inquiry from Hudson, the applicant indicated that the barber shop which had been identified during a fire inspection was closed and that part of the building would no longer be utilized.

Hudson indicated that three letters of opposition had been received. He read a general description of the area from his report. Hudson then read the special use standards from his report, as well as his comments that were contained therein. As for detrimental effects, he indicated that neighbors had expressed concerns about noise, music, smoke, fumes, odor and light emanating outside of the parking

lot. Hudson commented that the use would be an improvement over the vacancy that had existed on this property for a long time. The recording secretary noted receipt of letters in opposition from Emily Hauptmann and Erik Freye at 215 N. Berkley and from Patricia Boylan at 209 N. Berkley.

Chapman expressed concern about lighting and noise. The Chairman opened a public hearing on the request. Emily Hauptmann, 215 N. Berkley Street indicated that she lives across the street and south of the rear lot. She had provided a letter in opposition. She was concerned about the potential for noise. She had already been dealing with workers playing music and hanging out in the parking lot after dark. She voiced concern about the proposed hours of operation. 4 p.m. to 2 a.m., 7 days a week seemed like bar hours to her. The back lot from the proposed Hookah Lounge is 50 feet from their property line. She explained that there were "multiple" violations of their privacy in terms of noise and visual privacy. As a neighbor, she indicated that she sees a semi-truck in the parking for the hydroponics store blocking most of the parking spaces. Its hours were 11 to 7 Monday through Thursday and 12-5 Friday and Saturday. Hauptmann was concerned that her street would become a parking lot for the hookah lounge.

Hudson indicated that a third letter in opposition had been received. He would print it and put it into the meeting file. Patricia Boylan 215 W. Berkley complained that the lights, as changed, now shone directly into her house, making it hard to sleep. Construction was taking place on the building well after 11p.m. There was no additional public comment. The Chairman closed the public hearing.

Leuty inquired as to the proximity of the house immediately south of the property line. He felt that the neighboring properties were pretty close and wished the group to be mindful of the hours of operation, smoke fumes and odor and possibly second-hand smoke smell. He inquired as to whether the applicant had a way to manage the odors. Leuty further noted that most of the parking spaces are on the south side; which may create a rebound noise situation. He was also particularly concerned about the lighting. He inquired as to how the deliveries to each store would be addressed and how the applicant was prepared to address parking during the overlapping hours of operation.

Dingemans indicated that he had done some brief online research and that many municipalities are putting more restrictions on hookah lounges. He considered whether reducing the hours of operation would curb some of the problems. Chapman agreed, indicating that people could be unwilling to bring problems forward if they felt intimidated. Cripps inquired about the access door and loading area shown on the west side of the building. Bates stated that deliveries would go to the front door. The hydroponics store had a garage door on the east side of the building which would be used for larger deliveries. Bates indicated that there was only a slim likelihood of problems with parking when the overlapping hours of the entities were few. Chapman inquired about waste enclosures. Bates stated that it was on the diagram.

In response to an inquiry from Dingemans, the applicant indicated that he would have a maximum of two or three employees in the business at any given time. Mohmarr Alkhateeb 1747 West Main indicated that he is the landlord of the building. He also owns 1614 West Main, which contains a beauty shop. He has been in the area since 2009. He stated that there are smoke filters throughout the entire building. They had started working on the business in December. They were confused because they had spoken with former zoning administrator Nathan, who told them that all they needed was to ensure that they had enough parking. They pulled permits and have been undertaking renovations for the hookah lounge. They did not know that they would need a special use permit. It took a long time to get the lounge in order. They had soundproofed the entire building. A hookah lounge is a sedate operation,

Alkhateeb stated. They planned no DJ's and no music. He did not have a lot of control over the construction contractors, but he would over his guests and employees. They were not seeking a liquor license. His plan was to have free wifi access and a number of televisions. Patrons could relax and do homework, visit or just "chill out." He indicated that the hookah lounge on campus had been implemented in 2009 and that there were no problems. This was confirmed by Attorney Koches, who indicated that he had spoken with the City of Kalamazoo's zoning administrator, Pete Eldridge. Alkhateeb continued that enormous smoke filters had already been installed. They were really just looking to create a quiet, comfortable place for people to relax.

Alkhateeb continued that the building had passed the electrical inspection. The building inspector had indicated that the applicants needed to contact the township for zoning approval when he noticed that the parking areas were not striped. The fire marshal had approved the building. He stated that men's and women's bathrooms had been installed. He was confused about why they had to go to the planning commission. They had been ready to open since July. They are simply waiting for zoning approval so that they can obtain a certificate of occupancy. Bates confirmed that he had requested an occupancy permit, at which time he had been told by the building department that there was no zoning approval on record. He had spoken with Nathan at the township, who had never indicated that the hookah lounge would constitute a "change in use" which would require an improved site plan.

Cripps noted that the overhead door appeared to be on the neighboring property. In response to an inquiry from Cripps, Bates indicated that there was no easement. It had just always been used without a problem.

Dingemans inquired as to the number of parking spaces that were needed. Hudson indicated that twenty spaces were needed for 60 customers. The group discussed whether additional parking was needed for employees. Hudson indicated that the hydroponics store needed 9 spaces. Seeber noted the requirements for employees contained in the footnotes. The group calculated a need for 32 or 33 total parking spaces. Bates indicated that the site plan provided that amount. Hitt suggested that a restriction for a special use approval could be "no music". Nagler inquired about the stoop on the east side of the building. Bates indicated that the stoop was needed for a fire exit. The trucks, he said, would need to maneuver around it. Hitt voiced additional concern about noise. In response to an inquiry from Nagler, Bates stated that the dumpster would remain in place, although some repair work would be required on the enclosure.

The group considered the sidewalk situation with Nagler voicing concern that the sidewalk on the south side is actually in much worse condition. Bates voiced a willingness to trade those off. Nagler inquired about the handicapped parking space and whether there was a typographical error on the grading drawings. Bates confirmed a numerical error and indicated that it would be changed.

In response to an inquiry from Cripps, the applicant indicated that the driveways and entrances are pre-existing. Trucks, Bates stated, had no problem getting in and out of the driveways.

Dingemans was concerned about the lighting. Cripps inquired about exits on the south side of the building. Bates indicated that two of the exits were for emergencies only, but that one would be for general use. Nagler pointed out a need to correct the site plan to show single doors instead of double doors on the south side. Cripps inquired about eliminating the south exits. Bates indicated that customers would use it anyway and the fire department would be toned out every time. No new doors were being added, Bates said.

Leuty commented that there were a lot of positives on the plan, such as the plantings along Berkley and the exterior improvements. He wished to ensure that all of the sidewalks would be repaired. He had walked past the hookah lounge on Western's campus for several years and never noticed any smell, noise or untoward activity. He wished to get a handle on the site drainage. Nagler pointed out the proposed dry wells. Nagler wished to ensure that the light was not deflected to adjoining properties.

Tim Deyoung, 3081 Brookmont noted that he is familiar with the applicant. He spoke in favor of the request and indicated that it would be an improvement to the area. He urged the group to think of the activity as a "cigar lounge". He had been inside of the building and it was "top notch".

Bates stated that enough parking was supplied, no matter whether the hours of operation overlapped with the hydroponics store. He understood that lighting standards had to be met and he would provide a photometric if one was required. In the meantime, they would make an effort to direct the rear light from Ms. Boylan's windows.

The group discussed the proposed hours of operation. Nagler indicated that the planning commission has the ability to limit the hours of operation. He inquired as to the other types of uses in the RM-2 district. Hudson read them from the ordinance. Cripps noted that the township has a noise ordinance. Further, he said, the gas station was open all night. Bates indicated that before the new zoning ordinance was adopted, there was no limit on the hours of operation for a retail business. Cripps inquired about the sign. Nagler indicated a desire to remove the existing sign. Hudson noted that it was not in a conforming location. Cripps indicated that it could not be placed 12.5 feet from the right of way without having a sight distance issue. Nagler indicated that the applicant may need to check with MDOT and the road commission to see if they have an objection to it.

Alkhateeb indicated that he did not want to lose the existing sign. The goal was just to change the sign face. He wasn't going to "change" anything, just add landscaping. He wants a nice looking, classy business. He was concerned that no one told him that he would lose the sign. He did not want to have to replace the pole sign with a monument sign. Bates indicated that no additional signage was proposed.

Cabell Young, 2103 North Court spoke favorably on the application. She stated that there is sometimes a language barrier and that the planning commission should not take Alkhateeb's words as offensive.

Nagler spoke favorably on the application. He stated that the change in use triggered site plan review and therefore the need to change the sign. Dingemans was appreciative of the use of the building; however, he was concerned that a hookah lounge is somewhat of an unknown. He did not like having the activities so close to the residences. He indicated that there may be some way to reduce the impacts on the adjoining properties. He was concerned about noise, particularly from the parking lot. Cripps indicated that some of the parking lot and noise concerns could be addressed by requiring all patrons to exit the property on the north side of the building. Bates indicated a willingness to place "no loitering" signs in the parking lot.

Hitt stated that his biggest concern was the noise potential. He felt that it could be adequately addressed by requiring patrons to use exits on the north side of the building only. Chapman voiced concern about lighting. He was appreciative of the changes to the area. He wondered aloud whether operations could be restricted to midnight. Leuty was in favor of Cripp's idea to funnel all patrons to the front of the building. Bates indicated that he can "live with" the north side ingress/egress only.

However, the hours of operation were set in a purposeful manner and in order to be able to attract customers when they got off of work. It would be a less rambunctious and quieter crowd than a bar. Patrons would come in later in the evening when they got off of work or when they decided to start studying. Alkhateeb confirmed that "no loitering" signs would be posted. He further stated that there would be no noise emanating from the building. Patrons were looking for a quiet, cozy place. There were no other questions or comments from the planning commission.

Nagler then moved, supported by Cripps to approve a special use hookah lounge (restaurant) with the following conditions:

- The pole sign is to be removed and a monument sign shall be shown on the drawings and placed in the landscaping strip on the northwest of the property. If approval for this monument sign location was not forthcoming from MDOT or KCRC, then the applicant may request administrative review to change the sign face and retain the pole sign.
- Driveway access is approved as shown on the site plan, pending review and approval by the County Road Commission and the MDOT.
- The site plan shall be modified to show ingress/egress by patrons on the north and west side doors.
- The site plan shall be amended to show dimensions and uses of all interior spaces.
- A photometric plan or other approved lighting plan shall be submitted to the township zoning administrator for approval. Light shall not shine beyond the perimeter of the subject property.
- Hours of operation are limited to no later than 2:00 a.m.

The motion passed unanimously.

Cripps moved to approve the site plan in accordance with the restrictions and conditions of the Special Exception Use approval. Additionally, the applicant shall file a copy of an easement to allow it to access the overhead door on the adjoining property. The site plan shall be amended to show improvement to the north sidewalk instead of the east one. The owner shall replace all damaged sidewalks. The owner shall place "no loitering" signs in the parking area. Chapman supported the motion. The motion passed unanimously.

Old Business – Pizza Hut, 1930 West Main

Hudson indicated that the applicant had asked to return to the Planning Commission for approval of site plan changes and for consideration of a security deposit for items that it could not implement at this time. Hudson indicated that in order to obtain approval for a security deposit, the applicant was to have an itemized cost-list prepared. Dingemans assumed that this meant that all of the requirements had not been met. Hudson indicated that Pizza Hut just wants to open. The building is done.

Howard Kahne, 685 W. Main St., Benton Harbor spoke on behalf of the applicant. He introduced Mr. Cronkite of Trigo, who had been at the meeting in September. He provided a new site plan showing the revisions required by the Planning Commission at its meeting of September 1. Kahne explained that he had contacted attorney Kaufman and that a meeting had been held with Hudson, Kaufman, Supervisor Ron Reid and himself. He recalled that this was the planning commission's first review under the new ordinance. He wished to revisit some of the conditions, saying that he didn't believe some of

them were possible or, in the alternative, that the ordinance did not create the requirements that the planning commission implemented.

In response to an inquiry from the Chairman, Seeber indicated that site plans can be amended without the necessity of a public hearing. Hudson confirmed this, indicating that the new ordinance did not require a public hearing for site plan approval. Kahne continued that he had two basic arguments. First, under the prior zoning ordinance, the Pizza Hut was a permitted use. They had undertaken significant reconstruction of the building and made a huge investment in the site. As such, he felt that the prior "permitted use" was the one that should have been considered by the planning commission. In other words, a special land use would not have been required because they were operating under the "old" ordinance and the use was "permitted" and not a "special land use" in the C district zoning classification. In short, he said, the Pizza Hut had a "vested right" in its use.

Kahne went on to explain that he had provided case law to Attorney Kaufman regarding this "vested use" argument. The first argument, then, was they had a vested right so they didn't need a special use. The second argument was that the conditions were not reasonable. He stated that the two blocks on which the Pizza Hut is located are commercial in nature. He had read the report and minutes from the September 1, 2016 planning commission meeting. The conditions placed on the special use and site plan were not in alignment with the Zoning Enabling Act and the Kalamazoo Township Zoning Ordinance. The standards addressed public services, traffic congestions, screening and the like. None of the conditions of approval related to standards which the planning commission could consider.

Kahne wished to address the monument sign. He was in favor of retaining the pylon sign. The location of the monument sign was to be 12.5 feet from the right-of-way. The monument sign would be 5 feet in width and no more than 6 feet in height. His concerns were that the adjoining property owner will have a parking space directly in front of their monument sign when someone is traveling west on West Main. There would be no visibility for traffic from that angle, he said. While they understood the desire to make the area more attractive, they did not want to have a visibility issue. Further, there is a Dominos pole sign just down the street. If Dominos doesn't have a visibility problem, neither should Pizza Hut. Finally, he was unsure as to whether Pizza Hut (corporate) could approve a monument sign in the dimensions authorized.

Kahne indicated that there is no need to take out asphalt and replace it with grass. There is no existing natural environment on the site. Pizza Hut also does not want to have to extend the sidewalk on the Dartmouth side of the building. It would be a "sidewalk to nowhere", he said. It will run right into the fence. He read Article 7.04 C to mean that only new construction required sidewalks. This was not a new development or a new building. It was repurposing an existing building. Finally, Kahne indicated that the numbers were economically burdensome. He passed out the estimates. He indicated that they were prepared to start working on the $45,000 dumpster area and drainage improvements. The total cost of all improvements required is $82,000. This is a 33% overage on the cost estimates and a 25% overage on equipment. Kahne provided a report detailing the issues.

Kahne reiterated that they wished to eliminate the sidewalk extension on Dartmouth because it goes nowhere. He asked the planning commission to allow Pizza Hut to use striping and signage to effectuate the parking. Kahne had spoken to the permitting agent at the Kalamazoo County Road Commission. The driveway has always been in its present location. He wished to have it striped. Next, he said, they wished to eliminate the greenway requirement on the West Main side. He asked to be able to use planters instead, and to make the frontage look decent. Next, Kahne wished to have the

monument sign addressed. He desired to at least be able to move it to the west in order to obtain better visibility from the east. He asked the Planning Commission to reconsider its requirements in light of the Zoning Enabling Act's parameters. He said he was "trying to get some consideration on these issues".

Seeber indicated that the first time Hudson had heard about the Pizza Hut moving was when he had received a sign permit request. No one had considered that a site plan would be required, under either the old ordinance or the new one. Somehow, she said, the applicant had thought that its receipt of a building permit for interior remodeling meant that no changes would be required on the exterior. With the "change in use" from a used car dealership to a restaurant, at least a site plan would be required. Hudson had also sent them a letter which he had located earlier in the day detailing that the new zoning ordinance would be effective around September 1. That letter was sent at the end of July. Kahne stated that the building department never asked for zoning approval.

Seeber continued that the building department should not accept an application until a zoning permit was obtained. That is the only way to ensure that zoning is approved before someone makes substantial changes to a building or parcel. Finally, she indicated, that a variance could be applied for if any of the parameters, including the sign, were not practical.

In response to an inquiry from Cripps, Kahne indicated that their first argument was that the special use would not be required. Kahne stated that if the planning commission believes that the special use was necessary, then he wanted the planning commission to consider its requirements. Cripps indicated that the special use gave them a lot of flexibility. He had checked the old ordinance and the site plan review requirements under it were much more difficult. For example, he said, the old ordinance required trees and shrubs based on the number of parking spaces and the amount of asphalt coverage. He felt that the applicant was better off under the new ordinance than the old one. Further, Cripps noted that the Township had adopted a sidewalk ordinance in 2010. For all new construction, the sidewalks needed to be installed. He recalled that a couple of months ago the zoning board of appeals had granted a variance on a "sidewalk to nowhere" situation. However, it required that the sidewalk be constructed as soon as the adjoining sidewalk was implemented. Cripps indicated that the location of the sidewalk could be shifted so as to place it into alignment with the right of way. That way, he said, there would be no conflict to the north. He recalled that parking spaces had been added on Dartmouth when a parking space was lost for the dumpster. Cripps also indicated that the planning commission had "let him skate" on the loading area. He knew that they were in a rush. Cripps outlined the delivery location and indicated that parking spaces would be taken up when a delivery truck was present.

Kahne disagreed with much of what Cripps said. He said that the building was purchased in 2015 as an existing building. They had worked diligently to prepare it for the Pizza Hut. Seeber indicated that the Township was not prohibiting the use as a Pizza Hut or a restaurant. The change in use is what triggered the site plan review/special land use requirement. Hudson agreed. Kahne indicated that he had not heard of such a thing. If the use is a permitted use, they can just go ahead and do it without going to the planning commission. Kahne went on to explain that when the building was purchased in 2015, they talked to Greg Milliken about the use of the building. It was only changes to the interior. Greg told him at that time that site plan approval would not be required. Kahne indicated that they had their use approved, they had pulled their building permits and all that was needed under the old ordinance was administrative review. They didn't have any warning that the new ordinance would have such onerous requirements.

Hudson indicated that there was nothing in the township's files regarding Kahne's conversation with Milliken. Chapman was concerned that there was nothing available in the township's records. Leuty indicated that a lot of this was water under the bridge. The group needed to figure out how to move forward. He could appreciate the arguments on both sites, but the issue really was whether the Planning Commission had any desire to change some of the requirements. Hudson had conducted a brief review of the plan handed out by Kahne, indicating that it appeared to meet all of the requirements of the planning commission. Kahne indicated that he did not want to abide by it. Seeber checked the ordinance and found that the parameters of a special use can be changed by the agreement of the applicant and the planning commission without the necessity of a public hearing. Kahne indicated that the Pizza Hut was scheduled to open on Tuesday. If that didn't happen, employees would be laid off. They did obtain a short extension from their existing landlord, but it was due to expire very shortly and their location had already been let.

In response to an inquiry from the Chairman, Seeber checked the ordinance and determined that in accordance with Section 26.03.8 both the Special Land Use and the site plan could be modified by mutual agreement and without the need for a public hearing. In response to an inquiry from the Chairman, Cripps indicated that the ZBA had permitted a property owner to delay implementation of a sidewalk until such time as an adjoining sidewalk was constructed. He indicated that the goal was to have sidewalks when and where they were needed. He did not have a problem with delaying the implementation of the sidewalk. Leuty indicated a desire to get the sidewalks going in order to improve connectivity throughout the township. He didn't have a problem with postponing the installation of the sidewalk with the understanding that it will be done at some point in time. Cripps continued along, indicating that one of the things that the planning commission was trying to push was the monument sign. This, he said, would improve the neighborhood. He thought that it would be appropriate to allow it to be pushed further to the west in order to open up the visible sight line from the east. Leuty and Cripps were both in favor of retaining the grass front area along West Main. Not only would this be an aesthetic improvement, it would also align the landscaping with the property owner to the east. Cripps understood that the grass implementation at this point would have to wait until the spring.

Dingemans indicated that the grass in front and the sign were more important to him than the sidewalk. He considered that the frontage along West Main with grass would blend nicely with the property to the east, which had grass in the front. Dingemans felt that there was some room to modify the decision of the prior meeting somewhat. Dingemans wished to ensure that the handicapper accessibility was appropriate. Leuty considered the sidewalk an invitation to walk up into the business. If the asphalt were retained, it would not last as long as the concrete for a sidewalk would. There will be a need for a sidewalk eventually, Leuty noted. He voiced concern over the handicapped parking situation. Hudson indicated that it would be handled by the building code. Leuty thought that perhaps 60 feet of sidewalk could be required, as opposed to the 100 that is now part of the consideration.

The Chairman requested public comment. Zig Cositas spoke as the person who sold the property to Pizza Hut. He was adamant that the sidewalk was irrelevant. He thought all of the hoops that the planning commission put the applicant through was a crime. Cositas indicated that people cut through the parking lot and that no one ever used the sidewalk. Further, he stated that every inch of the property would be needed in order to pile snow on. "What you are asking these people to do is ridiculous", he said. "These are business people. They are trying to do a business. It is just crazy. They are just trying to open and do business." He inquired as to the point of the sidewalk. People would not use it anyway, he said. He goes out two and three times a day and picks up trash that is coming from the gas station. People told him all the time how nicely he kept the building looking. Cositas continued,

indicating that he understood the need for improvement along West Main Street. The Halloween shop is a dump, he said. The building in question is one of the nicer ones. He thought that the planning commission should just leave them alone and let them run their business. He indicated that there are a lot bigger problems in the area, such as weeds. There are already catch basins on site. He was on the property for eleven years and no amount of catch basins will address the issues when a lot of rain falls quickly.

Kahne indicated that the only reason for the grass along West Main was because of that on the adjoining property to the east. Nagler indicated that if the grass is not implemented one property at a time, it will never get done. Kahne pointed out that the building was previously a permitted use and that now it was another permitted use. There was no need to make the applicant go through all of these hoops. "Now we have conditions attached", he stated. Kahne indicated that both the Zoning Ordinance and the Zoning Enabling Act have standards for conditions. None of those standards was served by the conditions that the planning commission had set in September, 2016. Chapman interjected that we were talking about visual improvements. Kahne inquired as to whether the property along Dartmouth could be striped. Chapman was inclined to consider that, so long as there was an understanding that when the sidewalks are changed it would be with planning commission approval. Chapman stated that it is the responsibility of the property owner to maintain the sidewalks. Kahne indicated that Zig had been at the property for 10 years and Mike had been at the property next door for 30 years. He inquired as to whether the asphalt on the Dartmouth side could be retained and the greenery requirement eliminated. The parking could be addressed with striping and signage. Cripps and Chapman considered this. Kahne indicated that he would also need to "sell" any changes to the owner of the business. He indicated that he was willing to implement a sidewalk with the connecting sidewalk to the north was constructed. Dingemans was okay with this. Nagler questioned the effectiveness of the striping. In his experience, it tended to be ignored. He did have some sympathy with the snow removal situation. Cripps did not wish to eliminate the monument sign requirement.

Cripps was concerned with maintaining handicapped accessibility. He needed to ensure that the striping was effective and provided a clear delineation for handicap access. He was additionally concerned that any temporary approval /change would not be followed through with. Dingmans considered the cost of over $80,000 to the property owner which it did not anticipate. He thought that the planning commission could make an accommodation on some of the parameters of the prior approval.

Cripps was inclined to maintain the requirements along Dartmouth. He was willing to allow the temporary change as requested and to revisit the issue in the spring. If order can be maintained, then he would consider amending this requirement in a more permanent manner in the spring. He wanted to ensure that the traffic would remain where it belonged. Bruce Snow, from the audience inquired about decorative chains. Nagler liked the thought, but indicated that the road commission would never allow it.

Nagler <u>moved</u>, <u>supported</u> by Leuty that the special use be amended as follows:

1. The special use is modified to allow striping and signage on a trial basis along the Dartmouth side of the property. The Planning Commission will review the effectiveness of the striping and signage on Dartmouth at its March, 2017 meeting.

2. The sidewalk along Dartmouth need not be implemented until such time as a connecting sidewalk to the north is installed. No bond shall be required for this deferment.
3. The monument sign is required. It may be placed in the front yard of the property in a location that will allow for and/or improve visibility. The site plan will show the location of the sign.
4. The Planning Commission will require the greenery on the West Main side of the street. A bond in the amount of 125% of the cost of improvement will be accepted and the Township will require the greenery to be placed by no later than June 1, 2016.
5. The applicant will commence the improvements to the rear yard drains and trash receptacle enclosures at its earliest convenience. No bond will be required for this improvement so long as the improvement is underway.
6. The planning commission authorizes the building official to grant an occupancy permit so long as the building code requirements can be met.

There was no discussion on the motion and it passed unanimously.

The Chairman indicated that modifications to the site plan were also up for consideration. Cripps moved, supported by Nagler to amend the site plan approval as follows:

1. The striping and signage along Dartmouth is permitted in lieu of greenspace and sidewalk so long as the applicant can meet the building code's handicap access requirements. The temporary striping and signage will be reviewed for effectiveness in the spring of 2017.
2. The monument sign shall be shown on the site plan in the landscaped area on West Main.
3. The applicant shall commence improvements to the site drainage and dumpster enclosure as soon as possible.
4. The Township will accept a bond in the amount of 125% the cost of improvements for the landscaping and green space along West Main. If the applicant wishes, it may implement the monument sign in the spring.

The motion passed unanimously.

Superior gravel compliance review

The next item on the agenda was the continued compliance review for Superior Gravel. Hudson read his report into the record. Wes Smith from Superior Gravel indicated that the property had been inspected on September 29. He had received a letter of inquiry regarding some of the remaining issues. Smith indicated that the west side of the property was now seeded. Hudson indicated that former Chairman Bob VanderKlok had concerns about the Azon property and the south anchor tier. Smith indicated that no mining was taking place in that location any more. Smith had indicated that he would move rapidly on the reclamation of the Azon corner. The company had started its reclamation there; however on June 2 Smith had spoken with Bob Kuiper at Azon. Azon had objected to their plans based on some activity that they had going on their own site. Superior had done a lot of reclamation on its own site, and along the south tier. There was no more mining taking place in that direction. In response to an inquiry from Hudson, Smith indicated that the stakes on the corner were for the property boundary. Azon had forwarded a letter asking to have the activity near their property eliminated until their work was completed. Hudson had received a copy of that letter; however it was not available at the meeting.

Hudson indicated that there were three main areas of concern, which were the reasons for the return to the planning commission for further review. He was satisfied that the three return criteria had been

met by Superior Gravel. Smith indicated that Superior Precast is the actual owner of the property. Superior Gravel just leased it.

Cripps moved, supported by Hitt to accept the report by Hudson and approve the continuation of the Superior Gravel permit for another year as the criteria for review had been met. The motion passed unanimously.

Open discussion

Hudson indicated that the MEAEP planning conference is coming up. The Kalamazoo area was hosting it. The activity was considered to be training and the township would pay for it if any of the planning commissioners wished to attend. The conference is Wednesday, Thursday and Friday. Hudson indicated that he would email the planning commission members with the information.

Cabel Young indicated that she had spoken with Hudson concerning the property at 2338 East Main. This was the former Heritage Hall property which she had purchased on a tax sale/land contract. Her plan was to utilize the property as a 20-bed adult foster care/assisted living facility. She had indicated that the old ordinance had zoned the property for residential use. Now that residential option was gone and the proposed use was residential in nature. The property had been used sporadically for large parties and she thought that this use could return the property to an active use. She inquired as to whether there could be an amendment that would return the property to residential use. Seeber indicated that there were a few options—rezoning, conditional rezoning or text amendment. Hudson was in favor of a text amendment. The group discussed whether the use could be a permitted use or a special land use. Hudson was unsure of the zoning of the property under the new ordinance. Young indicated that long term care is becoming difficult to find. The fire marshal, she said, had tentatively approved the building for the use she had in mind. Hudson indicated that the property was in the C-2 district zoning classification. The group considered the location of the property on the zoning map. Seeber indicated that a text amendment and rezoning take about the same amount of time. Either one would be 30 to 45 days before it became effective. Seeber indicated that it could be noticed as either a special use or a permitted use. Chapman moved, supported by Leuty to put the matter on the agenda for the November, 2016 Planning Commission meeting for a text amendment to allow for a 20-bed adult foster care facility as either a permitted or special land use in the C-2 district zoning classification. The motion passed unanimously.

Michael Porath indicated that he owns commercial property in Parchment. He bought a house in Grand Prairie Acres in 1982. It was on a cul-de-sac on Sagebrush Street but a couple of years ago Howard Homes had constructed a neighborhood in the back. He has been complaining for three years. This would never happen in Parchment because there would be bloodletting. The property owner had changed the topography and moved a lot of dirt around. This had resulted in a change to the water flow and now there is a swamp area where the farm used to be. They took out ten train-sized loads of dirt. He had been complaining to the county for years and nothing was done except they were required to put a berm in there. The developers had hired a company to regrade the property. They had reshaped it so that everything now runs to his property. The berm never got put in. The property needs a dry well to prevent the water from escaping onto his property. The only response from county was that they were required to put a berm in there. The developers had hired a company to reshape it. They reshaped it so that everything runs onto his property, onto his driveway and into his patio. The gutters drain onto the driveway and into his patio. It had rained today, and there was less water than usual. The water runs north to south and runs into a big drainage pond. The neighbors had curved everything

so badly that the water gushes up to your knees there. A little drain handles all of the houses on the cul-de-sac. The house he is complaining about is next to his house at 2507 Sagebrush. He rents the property. Dingemans understood the situation, but was unsure that the planning commission had any ability to do anything about it. Nagler suggested that if the water pooled in the road that the road commission could be notified. Leuty indicated that he should go to the drain commissioner or to the road commission on the problem. The planning commission was not in a position to help with the situation. Leuty also suggested that the county's soil erosion and sedimentation control department should be contacted. Porath indicated that they had done the work without a legal survey. He was now out $400 for the survey that he had to get. He thought someone was coming out with gravel, but no one ever did. He is getting ready to lay cement on top of the mess.

Bruce Snow, 3425 Douglas Avenue inquired as to whether he would be on the planning commission agenda for November. He was concerned that he had lost a month on his issue. He had appeared at the September planning commission meeting inquiring what his house was zoned and how he could get his mortgage. Hudson had not been able to determine the zoning on the property. To his knowledge the property was last used as a church. It was not a house. It was commercially zoned as far as he knew. Seeber inquired as to whether the mortgage company would take a letter indicating what the use was. Snow was unsure. He wanted to go ahead with the rezoning as soon as possible so that he could get his mortgage. He had turned in his application at the meeting. He wanted an assurance that the matter would be on the agenda for November. He had already lost too much time. Hudson indicated that he was not due back in the office until Monday so he wasn't sure when he could get it processed. Seeber indicated that she would get the notice done to ensure that it was on the next month's planning commission meeting. If Snow could get a letter, he should notify Hudson. Hudson would need to check the current zoning on the property before the matter could be noticed. Snow brought a copy of the last tax bill.

Diane Sauer wished to speak directly with Fred Nagler. She was concerned that no one was doing anything about Quality Precast. They were not moving and they were still polluting up the area. The place is a nuisance and the township just went and gave them another extension. They are in violation right now and no one seems to care but her and her family. She was extremely frustrated with the lack of progress. Nagler was unsure as to why he had been singled out. Sauer indicated that Bates had pointed him out to her during the meeting. Leuty indicated that the Township Board was aware of the situation and to his knowledge, it was being addressed. In response to an inquiry from the Chairman, Seeber indicated that she was aware of the situation. She accepted a document from the DEQ which Sauer offered. Someone needed to do something about this situation, Sauer said, because it had been more than a year since she first started complaining and nothing was getting done. She thought that if she came to the planning commission it would address the matter because it was a zoning violation. "I'm just old and tired and frustrated that nothing is being done", she said.

Seth Koches indicated that he is undergoing the citizen master planner course and he needs to give a presentation to a planning commission in order to obtain class credits. He inquired as to whether the planning commission would accept his presentation on the new medical marijuana laws. The planning commission accepted his offer.

Leuty welcomed Hitt to the planning commission. He reported that the township board had accepted a continuation of the Republic Waste contract for recycling. The idea was to align the single trash hauler contract with that of the recycling contract. The board expected competitive bids for both of these contracts, which may be even better if both of the contracts were aligned. He reported that the

Kalamazoo Area Building Authority is now open on Nazareth Road. A new, lower fee schedule had also been adopted. More sidewalk work was being done. He, KPEP, Fire Chief Obreiter, Supervisor Ron Reid and other members of the Township had cleared a sidewalk on Olmstead from several inches of overgrowth. The Township was meeting with the County Brownfield Authority over the next month to try to get an understanding of the roles of each.

Chapman inquired as to whether there was a citizen advisory board in the Township. Hitt introduced himself. Dingemans appreciated the efforts of the Planning Commission at the meeting and thanked all for their time.

Adjournment

There being to further business to come before the Planning Commission, upon motion of Hitt, supported by Nagler and unanimous voice vote the meeting was adjourned at 11:26 p.m.

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Robert Talbot, Secretary

SYNOPSIS OF ACTIONS

The Kalamazoo Township Planning Commission undertook the following actions at the October 7, 2016 meeting:

1. Approved Special Exception Use and Site Plan for hookah lounge at 1747 W. Main.
2. Made changes to Special Exception Use and Site Plan approval for Pizza Hut at 1930 West Main.
3. Scheduled rezoning request public hearing for Snow property at 3425 Douglas for November 3, 2016.
4. Scheduled consideration of amendment to C-2 district zoning classification to allow adult foster care as a permitted or special use for November 3, 2016 meeting.