

**CITY OF WIXOM
49045 PONTIAC TRAIL
PLANNING COMMISSION MEETING
MONDAY, OCTOBER 3, 2016**

Approved
10/24/16

The meeting was called to order by Chairman Day of the Planning Commission at 7:30 p.m. at which time allegiance was pledged to the American flag.

PRESENT: William Day (Chairman), Phillip Carter, Anthony Lawrence, Joe Barts, Ray Cousineau and Sandro Grossi

ABSENT: Peter Sharpe (Excused)

OTHERS: Carmine Avantini (CIB Planning) and Nancy Fisher (Recording Secretary)

Determination of a Quorum:

A quorum of the Planning Commission was present for this meeting.

Agenda:

There were no changes made to the agenda.

Approval of the September 7, 2016 Planning Commission Meeting Minutes:

MOTION and seconded by Commissioners Carter and Lawrence to approve the September 7, 2016 Planning Commission Meeting Minutes.

VOTE:

MOTION CARRIED

Correspondence:

There was no correspondence to review.

Call to the Public:

There were no comments made by the public.

Unfinished Business:

There was no unfinished business listed on the agenda for this meeting.

New Business:

1. **PUBLIC HEARING FOR SPECIAL USE #16-006: JAMES & JENNY DILLON CHILD GROUP DAY CARE, 4161 WARRINGTON DRIVE, WIXOM, MI 48393:**
The applicant is seeking special land use approval to operate a child group day care home (7 to 12 children less than 24 hours per day). The Municipal Code, Section **18.09.020**, **Table 9.02**, requires approval from the Planning Commission for this request. The property is located at 4161 Warrington Drive, and is zoned R-2, One-Family Residential District, where child group day care homes are special land uses in that district. The parcel number is 17-30-103-002.

Mr. Avantini referred to his September 26, 2016 review letter. He noted that the applicant has been offering in-home day care for up to 6 children for a number of years. She is now moving to a larger home and would like to increase that to 12 children. Most of the children she cares for are aged 4 and under and she tends to care for siblings. Special land uses involve special conditions. One of those conditions is

that it be in character with the general vicinity. The day care will be on the lower level and the home has a fenced yard. Specific conditions include the need for the driveway to be sufficient for drop-offs and loading. That condition is met. She will need a State license and can apply for that after approval by the Planning Commission. Zoning requirements for adult and child care are prescribed by the State and are not dictated by the City. We can say what residential districts they are allowed in and whether they are permitted or special land uses but we cannot exclude them. He recommends approval conditioned upon: 1) a site plan must be provided for the outdoor play area which illustrates the location of the required fencing and includes the dimensions and area of the play space; 2) submittal of a State of Michigan license; 3) the State license must be prominently displayed on the premises; and 4) any operations associated with the use that results in traffic or noise impacts shall be appropriately managed so as to eliminate the nuisance. If these conditions are not maintained, the special land use could be withdrawn following a public hearing.

Commissioner Cousineau confirmed with Mr. Avantini that the number of children is regulated by the State. The City is compelled to allow day care uses in residential districts. As long as it complies with the Zoning Ordinance, they are bound to approve it. The Planning Commission's review is limited to the standards and the Ordinance and whether those standards are met.

Commissioner Barts sought to confirm that the applicant is currently caring for six children in the current location. Mr. Avantini said no; she is moving to a larger home where she would be able to care for 12 children which is regulated by the State. However, the Planning Commission can establish conditions but one to six children are permitted as of right.

Jenny Dillon, 4161 Warrington Drive, Wixom (applicant). She has been operating a home day care for 15 years. She was born and raised in day care and her mom has been doing day care for 45 years. They purchased this home to be able to do this since it has a walkout basement and a fenced yard. Currently, she cares for four siblings which lessens the number of cars. Her hours are 7:30 a.m. to 5:00 p.m. with drop-offs usually from 7:30-9:30 a.m. and pick-ups from 3:30-5:00 p.m. She cannot stay open later in the day. She has had no issues in her home on Weyhill. She and her husband just sold her old home for an above market value.

Chairman Day asked the applicant how she would manage too much vehicle traffic. She said that she has offered families the option of arriving before 7:30 a.m.; i.e., at 7:10 or 7:15 a.m. Chairman Day asked where her home is located. She said that it backs up to Charms Road. She has met with her new neighbors on both sides. In response to Chairman Day's question, the applicant said that her home is near the entrance to the subdivision. Commissioner Cousineau confirmed with the applicant that the day care will only operate Monday through Friday. The applicant said that she does not take latch key children. Her oldest child is 4 years old and she will no longer care for them after the age of 4.

Commissioner Barts confirmed that the applicant's backyard fence is 4 feet high. The applicant noted that the State does not require fencing until the children are over the age of 6.

Robert Ray, 4188 Warrington, Wixom. It is against the homeowner association's rules and the subdivision's covenants which states that the homes are only supposed to be single-family residential. What about the next special use that is requested? Is the applicant's basement compliant with Americans With Disabilities Act (ADA)?

Chairman Day noted that State law trumps subdivision covenants. Mr. Avantini noted that all the childcare and adult care uses are handed down from the State and cities are not given the ability to deny it. Chairman Day inquired who governs ADA concerns. Mr. Avantini said it would be decided by State

licensing. The applicant said that with six children, one care giver is required. From 6-12 children, she would also require an assistant. She has someone working for her that will park in her driveway. Commissioner Lawrence confirmed with the applicant that day care providers decide whether to accept disabled children. She said since her home is not handicap-accessible, she would not accept a disabled child.

Michael Kirk, 4160 Warrington Drive, Wixom. He is the former President of the Wexford Mews Homeowner's Association (HOA). He is absolutely against this. He has heard a lot of promises made by the applicant tonight. They are zoned R-2; however the referenced Article 18.09.20 deals with M-1 and M-2 zoning laws. How does that effect the legitimacy of tonight's hearing? Most residents want to live by subdivision covenants which he cited. This is a business, even though the State has chosen to single out home day care facilities for special treatment. They are permitted six children. He does not agree with the twelve children being mandated. He disagrees with the standards regarding driveway drop-offs and traffic issues. He is concerned about: 1) home values (he is directly across the street); 2) parking and traffic; 3) noise; 4) the applicant's business is in direct violation to the subdivision's covenants; and 5) there should be an employee for every three children. Chairman Day asked whether he is aware of any complaints made against the Dillons. He said he does not recall a complaint during his tenure as HOA President although others on the HOA Board could have been the point of contact for complaints.

Frank Cooney, 4206 Warrington, Wixom. He lives west of the applicants. The driveway backs out into the intersection of Dover and Warrington. Although the applicant promises there will only be two vehicles in her driveway simultaneously, there is no requirement. If there are 12 children from different families, there could be 12 cars in addition to the vehicle(s) for the care givers. In 2005, the applicant was cited for having inadequate care givers onsite. She left the site and was not present. If you are caring for 12 children and you have two caregivers, you need an additional care giver for back-up which equates to the potential for 15 vehicles onsite. This location is not ideal for that amount of traffic. The residents purchased their homes relying on the subdivision covenants and the homeowner's association. They did not contemplate wagon trains of 12 children moving around the neighborhood. It could be detrimental to home values. The applicant says that she will only have children up to 4 years old; however, the license permits children up to 12 years old. That is a serious concern since older children are free to roam the entire neighborhood. When you think about a residential area in a particular location housing close to 20 people, if all of those people are outside simultaneously, it can have a detrimental effect on the character of the neighborhood. There are six reports from the State from 2005 and 2013 regarding the practices of the applicant. She was cited for violations. It would be prudent for the Planning Commission to review those. He distributed copies to the Commissioners. He thinks the notice for tonight's public hearing is faulty since the section number was wrong. It should be 18.03.020.

Elizabeth Stevens, 398 Wexford Drive, Wixom. She has been the President of the homeowner's association for 4 years and favors this use since she believes it serves the needs of the residents. The applicant cares for two of her grandchildren. In her tenure as president of the homeowner's association, she has received many complaints but never about the applicant's day care. She knows that the applicant's home sold far above the market value of comparable homes and that her yard is very orderly. There are many working mothers in the subdivision who require this service.

Emmet Stedman, 4140 Warrington, Wixom. He is concerned about home values and loss of their subdivision covenants. He mentioned that Ms. Stevens was the applicant's realtor. He does not want a residential area to turn into a commercial area. He questions whether the State should be able to overrule their covenants. Also, increasing the number of children to 12 is questionable. He is retired and will be home during the day when the children are there. There is a bus stop at the intersection of Warrington and Dover which creates parking congestion issues. There is no parking on the side street where the applicant's house is and there are already issues there. If her driveway is full, then people will be parked

in front of her house. That is illegal since it is a fire lane. There is no guarantee about what the applicant will do in the future. He has no problem with her personally and it is the use that he objects to. He is totally against it.

Kristen Barrett, 4266 Warrington, Wixom. She bought one piece of property which is hers to maintain. She has thought about this and thinks it is a positive for home values. She would have loved to have had a home day care available for her children. Young kids make the neighborhood vital. She does not think that noise will be an issue since it will be in the applicant's basement and backyard. There are lots of things on the exterior of homes which violate the covenants that she is more concerned about; i.e., trailers, campers and extra cars. She does not worry about traffic congestion since it is a 5-minute drop-off in a driveway. Having wagon trains of kids is what a neighborhood is about. People are assuming the worst. She wants to take the applicant at her word. She is in favor of this.

Todd James, 4173 Warrington, Wixom. He lives directly next door to the applicant and he favors it. He has known the applicants for 30 years. His son went to the applicant's day care for 3 years. You would never know that they ran a day care out of their home. It is immaculate and does not have a lot of driveway traffic. It is nothing to worry about.

Kim Galecki, 4067 Delphine, Wixom. She favors it. She is concerned that she could be kicked out of the neighborhood since her 14-year old daughter runs a babysitting service. She would seek out day care and does not think it devalues homes. Raising kids is not a business.

Mary Kirk, 4160 Warrington, Wixom. She lives directly across the street. She does not have a problem with a mom babysitting kids. This is about the variance. If it is kids age 6-12, it becomes a business. She would not buy her home if she knew there was a day care across the street. She thinks several of the immediate neighbors may feel the same way. There is also a school bus stop at the corner of Dover and Warrington.

Brian Breen, 2029 Dover, Wixom. He has lived there for 2 years. He previously lived next to the applicants on Weyhill Drive and there were never any traffic issues there. He was never concerned for his kids. Their home was immaculate and he favors this.

Jennifer Ludwig, 4239 Delphine, Wixom. Children don't get picked up at the bus stop until after 8 a.m. That is not an issue. She has known the applicants for 9 years and the applicant's home is in perfect condition. She favors this.

Garrett Breen, 2029 Dover, Wixom. The bus stop for the elementary school is at a later time and will not conflict with the child drop-off time. The bus stop for the high school is down the road. Cars have never been an issue. Noise was never an issue. There will not be children over the age of 12. The applicants maintain their home.

Mike Kirk, 4160 Warrington, Wixom. He does not think that the character of the applicants is in question, how they keep up their house or run their business. They are here to increase the number of children from 6 to 12.

Jenny Dillon said that she is not aware of any violations. Only two providers are required for 12 children and one provider for six children. She cannot exceed 12 children. If she does, she would have to open a business. Chairman Day asked whether she is one of the care givers. Ms. Dillon said that she is.

James Dillon inquired about whether members of the public are entitled to more than 5 minutes speaking time during the open call to the public at tonight's meeting. Chairman Day said that he was inclined to let people have their say.

Frank Cooney referred to the previously mentioned site visits by regulatory agencies. The applicant was cited for a violation on February 22, 2005 and he provided copies of this to Chairman Day.

Chairman Day asked Mr. Avantini whether the special land use runs with the property or whether it is specific to the applicants. If the applicants sell their home a year from now, can someone else use the applicant's license for different ages of children? Mr. Avantini said that special land uses run with the property. However, in this case, State requirements are involved. If someone else bought the applicants' property, a day care would have to be run exactly as proposed by the applicants. The day care license is issued to an individual so that would require legal interpretation. Mr. Avantini noted that there was a typographical error in tonight's meeting notice and that it should have said Section 18.03, which is a table indicating what uses are permitted. They need to determine whether that was a material fact in whether residents did not attend because public notification was erroneous and whether tonight's hearing should be re-scheduled. If the Commissioners feel it is material, then the hearing should be re-noticed.

Commissioner Barts asked whether this is not similar to a liquor license where the license goes with the business. Mr. Avantini said that he would think so since it is based on the operation of a child care in the home and a designated individual. He cannot make a legal interpretation but as a planner, he feels it runs with the applicant. The Commissioners have the capacity to require it only service children up through pre-school age. The applicants can always come back before the Planning Commission if they want it changed. Commissioner Barts asked the applicant about how many children her relatives who provide day care handle. The applicant said that her relatives are licensed to care for 12 children.

Chairman Day does not see property value being an issue here. He lives in a neighborhood with adult day care. He is sympathetic about the residents' concerns about traffic. However, the State says that if the applicant meets the conditions, the Planning Commission must grant permission. The Planning Commission can place conditions on the age of the children but he does not have a problem with older children. There must be a substantial reason for denial beyond the concerns raised tonight. Commissioner Carter concurs with Chairman Day and he is comfortable with this. Commissioner Cousineau agrees with Chairman Day and Commissioner Carter. He sought to confirm with the applicant how many children she currently has and their ages. The applicant said she could go from 6 to 8 to 12 children since the license allows her to offer that. Commissioner Cousineau believes that placing conditions upon the children's age provides the neighbors with some security. He confirmed with Mr. Avantini that if there are any issues, the Planning Commission can re-review the use and rescind or modify it. Mr. Avantini noted that it must be maintained and operated so as not to have a negative impact upon the neighborhood. If the original conditions are not being met, the Commissioners can withdraw approval. Commissioner Cousineau believes that the approval is for the Dillons operating the business and not any future occupant.

Commissioner Carter inquired about the relevance of the typographical error on the notice for public hearing. Mr. Avantini noted that per tonight's discussion amongst the Commissioners, it was deemed not to be a material fact and reflection of that fact in the Minutes will be sufficient.

MOTION and second by Commissioners Lawrence and Cousineau to approve Special Use #16-006, James & Jenny Dillon Child Group Day Care to operate a child group day care home (7 to 12 children less than 24 hours per day). This approval is conditioned upon: 1) a site plan must be provided of the outdoor play area which illustrates the location of the required fencing and includes the dimensions and area of the play space; 2) submittal of a State of Michigan license; 3) the State license must be

prominently displayed on the premises; and 4) any operations associated with the use that results in traffic or noise impacts shall be appropriately managed so as to eliminate the nuisance. If these conditions are not maintained, the special land use could be withdrawn following a public hearing. The property is located at 4161 Warrington Drive, is zoned R-2 and the parcel number is 17-30-103-002.

VOTE:

MOTION CARRIED

- 2. REQUIRED PARKING SITE PLAN AMENDMENT, SPR #08-018-16, MTM VENTURES (TOTAL SOCCER) 48225 WEST ROAD, WIXOM, MI 48393.** The applicant is seeking an amendment to the parking required for site plan approval granted to Total Sports at 48225 West Road. The property is located on the south side of West Road, between Beck and Wixom Roads, and includes a 22,111-sq. ft. industrial building and a 4,876-sq. ft. pole barn. The applicant originally proposed use of the facility for soccer games but now will be using the building for baseball and soccer practices, which will decrease the demand for parking. As a result, the applicant has requested current construction of the front parking lot only and deferral of the rear parking lot until use of the building dictates the need for more spaces. The front parking lot is proposed to accommodate approximately 52 spaces and the applicant estimates a peak demand for 44 spaces. The rear parking lot is proposed to accommodate an additional 23 parking spaces. The property is zoned M-1, Light Industrial District, where commercial recreation uses are considered special land uses. The parcel number is 22-08-200-001.

Mr. Avantini referred to his staff report. He noted that the Planning Commission approved the site plan for this matter a short time ago. At that time, the applicant showed the number of parking spaces to the rear of the property. They have since discovered that they will not be doing games but instead will do practices, which lessens their parking demands. They are requesting a deferral for the parking spaces to the rear. The drive is only impassable in the rear. When they review uses like this without an easily identifiable standard, the applicant provided information regarding peak demand. He thinks the triggering mechanism is when there is a switch from practices to games. The applicant would like to get some relief on making the expense until it is needed. There is not a recommendation since there is no real standard. The applicant is still building the parking lot in the front of the building.

Chairman Day is in favor of less impervious surface. If the applicant finds its parking is inadequate for its business, they will offer more.

Anthony Moscone, 1804 Welling Drive, Troy. They are thinking of adding a field or outdoor storage on the southern portion of the property. If that is developed, then they would add more parking.

Commissioner Carter asked whether they are planning on offering food or vending machines. The applicant said that they will have one to two vending machines. Commissioner Carter asked whether practices run for an hour or for a longer period of time. The applicant said it would likely be an hour because these are younger children. Commissioner Carter said this looks to be more than adequate. Commissioner Cousineau concurs.

MOTION and second by Commissioners Carter and Cousineau to approve Special Use #SPR #08-018-16, MTM Ventures (Total Soccer)'s request for an amendment to the parking required for site plan approval granted as submitted and deleting the requirement of the rear parking lot and allow the applicant to construct a front parking lot only. This approval is conditioned upon the side drive and rear parking improvements being made when the facility is used for games and not just practices. The property is located at 48225 West Road, is zoned M-1, Light Industrial District and the parcel number is 22-08-200-001.

VOTE:

MOTION CARRIED

Call to the Public:

There were no comments made by members of the public.

Staff Comments:

Mr. Avantini noted that he discussed the idea of a Village Center Area (VCA) presentation with Ms. Barker and this has been moved to become part of the upcoming City-wide joint meeting. They have been working with Bob Gibbs, an expert in urban design, as part of the Master Plan update. Mr. Gibbs has laid out all of the property owned by the Pootas to show them how it can be developed as traditional VCA. Chairman Day said that he has a lot of respect for Mr. Gibbs' ideas and he would love to hear him speak at the joint meeting. Mr. Avantini will inquire with Mr. Gibbs as to his availability for that.

Mr. Avantini noted that Allor & Sons was granted a special land use. They decided they did not want it; however, the new owners would do the same thing and meet the same conditions. Unfortunately, the new owners have been arguing over compliance. He informed them that they can come back before the Planning Commission regarding parking of vehicles in the front parking lot. He will personally speak to the owners of the building and tell them the City wants compliance or for the tenants to offer alternatives to the Planning Commission. The vehicles being parked in front belong to employees and/or are being worked on. The next step would be to document it and then hold a public hearing to withdraw the special land use. Chairman Day inquired what the procedure is for this. Mr. Avantini said he would direct staff to schedule a public hearing. Commissioner Barts sought to confirm which business this is and said he noticed new signs. Mr. Avantini said it is Detroit Diesel and that they installed a sign without a permit.

Commission Comments:

Commissioner Barts noted that for there were five residents against and five residents for the in-home day care proposal tonight and that two of them did not live there. There are a few other day cares in the subdivision. What if someone else did it across the street and around the corner? He thinks it is a little scary. Commissioner Carter noted that the Commissioners' job is to make sure the Ordinance meets the specific land use and it is incumbent upon them. Commissioner Barts asked about the rights of the residents.

Commissioner Barts noted that the sign at the Fire Department says that the Zoning Board of Appeals (ZBA) meetings are the first and third weeks of the month. This is wrong and has always been wrong. The Planning Commission meetings are the first and fourth weeks of the month, not every other week. Chairman Day noted that when the schedule was originally adopted, they did not conduct business during the second meeting of the month and it was a workshop meeting. Now, they conduct business at both meetings. Mr. Avantini will reserve some time for workshops during the next few meetings.

ADJOURNMENT:

This meeting of the Planning Commission was motioned and adjourned at 9:03 p.m.

Nancy Fisher
Recording Secretary