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**NOTICE
OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

REGULAR MEETING – VIRTUAL

Participate through this Zoom link:
<https://us02web.zoom.us/j/82243207890>

Or by calling: 1-929-205-6099
Meeting ID: 822 4320 7890

(Refer to the www.oshtemo.org home page or the third page of this packet for additional virtual meeting information)

**THURSDAY, MAY 27, 2021
6:00 P.M.**

AGENDA

- a) Call to Order
- b) Roll Call and Remote Location Identification
- c) Pledge of Allegiance
- d) Approval of Agenda
- e) Approval of Minutes: April 29th, 2021
- f) Old Business
 - a. Discussion – Section 57.90 Zoning Ordinance Regarding Nonmotorized
- g) Public Comment
- h) Other Updates and Business
- i) Adjournment

**Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8:00 am- 5:00 pm, and on Friday 8:00 am-1:00 pm. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
Clare Buszka	216-5221	cbuszka@oshtemo.org
<u>Trustees</u>		
Cheri L. Bell	372-2275	cbell@oshtemo.org
Kristin Cole	375-4260	kcole@oshtemo.org
Zak Ford	271-5513	zford@oshtemo.org
Kizzy Bradford	375-4260	kbradford@oshtemo.org

Township Department Information			
<u>Assessor:</u>			
Kristine Biddle	216-5225	assessor@oshtemo.org	
<u>Fire Chief:</u>			
Mark Barnes	375-0487	mbarnes@oshtemo.org	
<u>Ordinance Enf:</u>			
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org	
<u>Parks Director:</u>			
Karen High	216-5233	khigh@oshtemo.org	
Rental Info	216-5224	oshtemo@oshtemo.org	
<u>Planning Director:</u>			
Iris Lubbert	216-5223	ilubbert@oshtemo.org	
<u>Public Works:</u>			
Marc Elliott	216-5236	melliott@oshtemo.org	

Zoom Instructions for Participants

Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to “**Join via computer**” as well as phone numbers for a conference call option. It will also include the 11-digit Meeting ID.

To join the videoconference:

1. At the start time of the meeting, click on this link to [join via computer](#). You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio works, click on “Join audio by computer.”

You may also join a meeting without the link by going to [join.zoom.us](#) on any browser and entering this **Meeting ID: 822 4320 7890**

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet or smartphone then you can join via conference call by following instructions below.

To join the conference by phone:

1. On your phone, dial the teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **822 4320 7890#**

Participant controls in the lower-left corner of the Zoom screen:



Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- Participants – opens a pop-out screen that includes a “Raise Hand” icon that you may use to raise a virtual hand. **This will be used to indicate that you want to make a public comment.**
- Chat – opens pop-up screen that allows participants to post comments during the meeting.

If you are attending the meeting by phone, to use the “Raise Hand” feature **press *9 on your touchtone keypad.**

Public comments will be handled by the “Raise Hand” method as instructed above within Participant Controls.

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**OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

DRAFT MINUTES OF A VIRTUAL MEETING HELD April 29, 2021

Agenda

PUBLIC HEARING: SPECIAL USE, BIGGBY BCUBED DRIVE-THRU

Wayfound, LLC, with consent from Meijer Inc and Meijer Stores Limited Partnership, is seeking Special Use and Site Plan approval to construct a 349 square foot BCubed drive-thru for Biggby Coffee within the Meijer parking lot located at 6660 W Main Street.

**PUBLIC HEARING: SPECIAL USE, EMBERLY ACRES II CONDOMINIUM
EXPANSION**

Prime Homes LLC is seeking Special Use and Site Plan approval to expand the Emberly Acres II Condominium to the West. The proposed expansion will include the extension of Glendora Lane and twenty new condominium units onto the neighboring 5.84 acre vacant parcel.

PUBLIC HEARING: SPECIAL USE, STARTING POINT PRESCHOOL

Center Point Church is seeking special use approval to establish a child care center as an accessory use to their existing private preschool.

A virtual meeting of the Oshtemo Charter Township Planning Commission was held Thursday, April 29, 2021, commencing at approximately 6:00 p.m.

ALL MEMBERS WERE PRESENT:

	LOCATION
Bruce VanderWeele, Chair	Oshtemo
Micki Maxwell, Vice Chair	Oshtemo
Kizzy Bradford	Chicago IL
Deb Everett	Oshtemo
Alistair Smith	Madison WI
Anna Versalle	Not in Oshtemo
Chetan Vyas	Oshtemo

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, and Martha Coash, Recording Secretary. Several guests were present.

Call to Order and Pledge of Allegiance

Chairperson VanderWeele called the meeting to order at approximately 6:00 p.m. and invited those in attendance to join in reciting the Pledge of Allegiance.

Approval of Agenda

Hearing no changes, the Chair let the agenda stand as published.

Approval of the Minutes of the Meeting of April 8, 2021

The Chair asked if there were additions, deletions or corrections to the Minutes of the Meeting of April 8, 2021. Hearing none, he requested a motion.

Mr. Smith **made a motion** to approve the Minutes of the Meeting of April 8, 2021 as presented. Mr. Vyas **seconded the motion**. The **motion was approved** **unanimously by roll call vote.**

Chairperson VanderWeele moved to the next agenda item and asked Ms. Lubbart for her presentation.

PUBLIC HEARING: SPECIAL USE, BIGGBY BCUBED DRIVE-THRU WAYFOUND, LLC, WITH CONSENT FROM MEIJER INC AND MEIJER STORES LIMITED PARTNERSHIP, IS SEEKING SPECIAL USE AND SITE PLAN APPROVAL TO CONSTRUCT A 349 SQUARE FOOT BCUBED DRIVE-THRU FOR BIGGBY COFFEE WITHIN THE MEIJER PARKING LOT LOCATED AT 6660 W MAIN STREET.

Ms. Lubbart said Wayfound, LLC, with consent from Meijer Inc and Meijer Stores Limited Partnership, was seeking Special Use and Site Plan approval from the Planning Commission to construct a 349 square foot BCubed drive-thru for Biggby Coffee within the Meijer parking lot located at 6660 W Main Street, parcel number 05-14-185-022 within the C: Local Business District.

6660 W Main Street is located on the north side of W Main Street, just east of the N 9th Street intersection. 6660 W Main Street is currently owned by Meijer Corporation. Wayfound LLC's intent is to lease 10,086 square feet of the Meijer parking lot to allow for the construction of a 349 square foot BCubed drive-thru for Biggby Coffee.

She explained the proposed BCubed drive-thru is a standalone modular drive-thru building with a walk-up window designed specifically for the Biggby Coffee brand with no indoor seating. It is a capital investment, first implemented in 2018, that is movable and expandable as the structure comes pre-plumbed and pre-wired. There are several installations of the BCubed drive-thru in Michigan already: Alpena, Stevensville, and Swartz Creek. This modular drive-thru design is unique as it is both permanent and temporary in nature. The Township Ordinance currently does not address these types of facilities. As there is no definitive time frame proposed and the project could remain onsite indefinitely, the request was being reviewed as a permanent structure through the standard site plan review process.

The entirety of the property in question is zoned C, Local Business District. Uses permitted in the C zoning district are outlined in Article 18 of the Township's Zoning Code. Restaurants are a Permitted Use within this district. Drive-in service windows or drive-through services for businesses are identified as Special Uses within this section. New construction of a Special Use requires the review and approval of the Planning

Commission (Section 64.20). When reviewing a Special Use there are two sets of criteria that need to be considered: the general Special Use review criteria outlined in Section 65.30 and the specific requirements for the use in question outlined under Section 49.70. In this case, Section 49.70 does not apply as the code does not contain any specific requirements for this use. Below is an analysis of the proposal against Section 65.30.

Section 65.30: Special Use Review Criteria

Ms. Lubbert indicated the proposed site plan is consistent with the criteria of Section 65.30.

Section 64: Site Plan Review

She said the proposed use is also consistent with the criteria of Section 64, but noted the following necessary change regarding the landscaping requirements under Section 53.30:

Landscaping

The proposed site plan includes the installation of one shade tree, and a mixture of new lawn area and 3" thick hardwood bark mulch. In general, the proposed landscaping plan meets the intent of the landscape ordinance and will improve the appearance of the site. All requirements appear to be met other than: 53.30 C. Site coverage – "Developed portions of the site not devoted to building floor area, parking, access ways or pedestrian use shall be appropriately landscaped with live plant material and maintained in a neat and orderly manner. Developed portions of the site shall mean the physical extension and/or construction of any man-made change or alteration to an improved or unimproved property". As noted under the Access and Circulation section of this report the proposed plan primarily uses striping to delineate the drive thru aisle. Per section 53.30 C. these areas should be landscaped.

Ms. Lubbert explained the applicant was requesting a deviation from section 53.30 C. The following rationale was provided in the letter of intent:

1. "As this is a leased space, it is expected that the landscaping requirement would apply to the existing property in its entirety, not the leased space.
2. The plan neither adds paved area to nor does it remove any existing landscaping from the site.
3. The existing improved areas of the site will be minimally changed or altered for the duration of the lease.
4. The originally approved ratios of parking area to landscape will not change. It is not expected that greenery installed in a parking lot will have success of survival. However, we love the idea of having a Red Maple planted in a manner that mimics the other small shade trees on the south end of the parking lot."

She said as this is the first site plan of this nature to be presented to the Planning Commission for review, unique factors warranted consideration to decide if the requested deviation is appropriate.

Photometric Plan

A photometric plan was provided and meets code standards overall. However, LED wall light packs are proposed to be used to illuminate the building, see image to the right. Per section 54.60 of the Ordinance all luminaires are required to be cut-off fixtures. The proposed LED Wall light pack does not meet this requirement.

Signage

Three wall signs are proposed each on different sides of the building. Proposed signage meets code standards.

Engineering

Prein & Newhof, the Township's civil engineering agent, has reviewed the project site plan. All onsite concerns have been addressed.

Fire Department

The Township Fire Marshal has reviewed the project site plan. All onsite concerns have been addressed with that note that the BCubed drive-thru should not have a shared address with Meijer.

Ms. Lubbert recommended the Planning Commission approve the proposed Special Use and Site Plan for the construction of a BCubed drive-thru within the 6660 W Main Street parking lot, with the conditions outlined below.

1. Approval of the requested landscaping deviation from 53.30 C. allowing the applicant to keep the striping shown on their plan.
2. An updated lighting plan, with cut off fixtures, shall be provided to staff for administrative review prior to building permit issuance.
3. An individual address shall be required for this lease area prior to building permit issuance.

Chairperson VanderWeele thanked Ms. Lubbert for her presentation and asked whether Commissioners had questions for her.

Mr. Smith asked her to clarify the landscape deviation request.

Ms. Lubbert said code requires only one tree for the area in question, but also requires landscaping in the developed areas not devoted to specific use for buildings, parking or walkways. The applicant wishes to keep striping in that small, affected area rather than landscape.

Mr. Vyas noted there are a lot of auto accidents involving east bound left turns onto M-43 from the Meijer parking lot and suggested the direction be changed to east-west frontage rather than north-south, to reduce increased accident possibility.

Ms. Lubbert said that this is being resolved through planned modifications to the area via the Advia Site plan approval. The Chair added there will be a new traffic light at Advia.

As there were no further questions, Chairperson VanderWeele asked if the applicant wished to speak.

Mr. Matthew Lemmer, owner, said he had spent a lot of time with the project engineer and Oshtemo Staff on this issue and they believe this plan will keep people from coming into the ring road and address the congestion/possible accident concern.

Mr. Smith stated he loves coffee shops but wonders whether this will cause an additional traffic hazard if traffic is backed up M-43, noting he regularly sees cars backed up almost to M-43 at Starbucks.

Mr. Vyas said there should be enough room when entering from the Meijer lot to avoid much back up.

Ms. Lubbert said staff does not believe this will be a problem. There is substantial parking lot to the north. Even if the seven spaces are full there is still substantial room for cars to line up without getting near West Main. In her opinion a back-up problem here is remote to none.

Mr. Lemmer explained he is the owner and operator. He currently has a Biggby's in Battle Creek. There is room there to stack seven cars and there is not a problem with cars backing up into Columbia Avenue. He indicated he will hire the best staff and will use best practices at the new location.

Hearing no further Commission comments, Chairperson VanderWeele opened a public hearing. After determining no one wished to speak, he closed the hearing and moved to Board Deliberations.

Ms. Maxwell said she had no objections to the request. Hearing no further comments, the Chair asked for a motion.

Ms. VerSalle **made a motion** to approve the Site Plan and Special Use Permit as presented by Staff with the three recommended conditions:

1. Approval of the requested landscaping deviation from 53.30 C. allowing the applicant to keep the striping shown on their plan.
2. An updated lighting plan, with cut off fixtures, shall be provided to staff for administrative review prior to building permit issuance.
3. An individual address shall be required for this lease area prior to building permit issuance.

Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Chairperson VanderWeele moved to the next agenda item and asked Ms. Lubbert for her presentation.

PUBLIC HEARING: SPECIAL USE, EMBERLY ACRES II CONDOMINIUM EXPANSION

PRIME HOMES LLC IS SEEKING SPECIAL USE AND SITE PLAN APPROVAL TO EXPAND THE EMBERLY ACRES II CONDOMINIUM TO THE WEST. THE PROPOSED EXPANSION WILL INCLUDE THE EXTENSION OF GLENDORA LANE AND TWENTY NEW CONDOMINIUM UNITS ONTO THE NEIGHBORING 5.84 ACRE VACANT PARCEL.

Ms. Lubbert said Prime Homes LLC is seeking special use and site plan approval to expand the Emberly Acres II Condominium to the West. The proposed expansion will include the extension of Glendora Lane and twenty new condominium units onto the neighboring 5.84 acre vacant parcel. The subject property is located north east of the S 8th Street and Stadium Drive intersection, directly south of the Lasalle Subdivision.

She explained the Emberly Acres condominium project was originally approved by the Planning Commission as a special exception use on February 12, 1998. The previous project totaled six acres, which were zoned R-3, and included 23 units in eight building clusters. At some point past this date, construction on the project ceased and the builder walked away from the project. Only two of the three-unit buildings were constructed for a total of six units. In 2006, the original six acres was divided into two separate parcels, one totaling 1.56 acres and containing the original six units and is owned and maintained by the Emberly Acres Homeowners Association and one totaling 4.28 acres, which was sold to a new owner, Prime Homes LLC.

Prime Homes LLC approached the Township in the fall of 2017 indicating they wished to complete the development under the 1998 approved site plan. However, to continue with construction the new project would have had to conform to the original site plan. Due to storm water issues in this area and the developer wanting to make some changes to the site design, particularly the placement and design of the new residential units, a new site plan was required, and special exception use approval sought through the Planning Commission.

A site plan for Emberly Acres II was submitted. The proposal was to extend the existing Glendora Lane to the west, ending in a one-way cul-de-sac. The proposal included 17 new units that were designed in five new building clusters. The Planning Commission reviewed and approved the new site plan at their June 28, 2018 regular meeting. She provided copies of both the 1998 and amended 2018 plans.

She said Prime Homes LLC was now requesting to expand Emberly Acres II to the west utilizing Article 42, Residential Condominium Development Standards, of the Ordinance. This Article of the code offers an alternative to traditional subdivisions through use of the Condominium Act, Public Act 59 of 1978. Condominium

developments are permitted as a special exception use in the R-2, R-3, and R-4 Residence Districts.

The 5.84 acre parcel for the proposed expansion of Emberly Acres II is zoned R-2, Residence District Per Article 42. Condominium developments are permitted as a special exception use in the R-2 Residence District. New construction of a Special Use requires the review and approval of the Planning Commission (Section 64.20). When reviewing a Special Use there are two sets of criteria that need to be considered: the general Special Use review criteria outlined in Section 65.30 and the specific requirements for the use in question outlined under Section 42.30. She provided an analysis of the proposal against Section 65.30 and 42.30.

Section 65.30: Special Use Review Criteria

Ms. Lubbert indicated the proposed development is generally consistent with the properties current zoning designation and the Township's zoning ordinance.

She noted different uses and zoning classifications surrounding the project site. The LaSalle Subdivision to the North is zoned R-2, Residential. Emberly Acres and Emberly Acres II are to the East, both Zoned R-3, Residential. All three are residential uses allowing for a density of four dwelling units an acre. The property immediately to the South is zoned C, Commercial and currently houses a water tower. Commercial uses directly south of the water tower with frontage along Stadium Drive include: Auto Trim Group, Womens Healthcare Specialists, and DDS Comprehensive dentistry. Property to the West of the proposed expansion site is zoned I-1, Industrial.

She said the currently vacant site will require some clearing and alteration to accommodate the proposed development. The applicant will limit tree removal to only what is necessary. While underbrush will be removed from the common open spaces, the existing trees will be preserved.

In addition, she said the applicant proposes to extend the existing utilities currently serving both Emberly Acres and Emberly Acres II to serve the expansion area. Prein & Newhof, the Township's civil engineering agent, has reviewed the existing and proposed infrastructure and found it sufficient.

Ms. Lubbert provided the following Site Plan Review (Section 64) and Development Standards (Section 42.30) information.

Section 64: Site Plan Review

General Zoning compliance

Zoning: Parcel 05-34-230-070 is zoned R-2, Residence District. Ms. Lubbert said the proposed residential condominium development is permitted as a Special Use within this district.

Parcel Dimensions: She indicated the proposed project is an expansion of Emberly Acres II. Both R-3 and R-2 zoning districts require a minimum width of 200 feet for parcels. Emberly Acres II, which this expansion will become a part of, has 200 feet of frontage along 8th Street. The property under consideration exceeds the code lot dimensions standards.

Setbacks: Properties within a R-2 Residence district require a 30-foot front yard setback from the street right of way. As the development has a private drive and is over 600 feet from S 8th Street this requirement is not applicable. The newly proposed structures will be 32 feet from the southern property line, 70 feet from the western property line, and over 100 feet from the northern property line. The proposed site layout exceeds the minimum setbacks required by the code.

Access and Circulation

Access: The proposed site plan does not introduce a new curb cut on S 8th Street but will utilize the existing private drive, Glendora Lane. The proposed development does not connect to LaSalle Subdivision's Belle Chase Boulevard to the north. Glendora Lane's proposed expansion meets all width and circulation standards.

There are two conditions that our code provides in which a secondary point of access is required. The first is if the proposed overall length of a drive or street exceeds 1,500 feet. With the expansion Glendora Lane will have a total drive length of 1,202 feet. The second is if the condominium is proposing 50 or more units. If the expansion is approved, Emberly Acres II would have a total of 37 units. The neighboring Emberly Acres has 6 units that also utilize Glendora Lane. Overall, with this expansion, there would be 43 total units. A secondary access point is not required by code.

Parking: Per Section 52.50 a minimum of 2.5 parking spaces are required for each proposed dwelling unit. Each proposed unit in the development has a two-car garage with a 16 feet wide paved driveway. Four cars could be accommodated per unit, two in the garage and two in front.

Sidewalk: Per Section 57.90 sidewalks indicated on the Township's Non-motorized Plan shall be installed by the developer when properties adjacent to planned nonmotorized facilities receive site plan approval from the municipality. The Township's adopted Non-motorized Plan shows a 6-foot-wide path along this section of S 8th Street. The segment of the shared use path along the frontage of Emberly Acres II is included as part of the site plan set for the proposed development.

Building Design

Elevations for the proposed duplex units within the Emberly Acres II expansion were provided. The duplexes will be one story with a double car garage. Grey

siding and shake are proposed for the body of the buildings with white trim and windows and black roofs.

Per section 50.20 of the Township Ordinance, two family dwellings are required to have a minimum of 1,000 square feet of living area. Each duplex is shown with a footprint of 3,520 square feet (each unit 1,760 square feet). The proposed garages are 21 feet by 21 feet (441 square feet). Minimum unit size requirements are met.

Landscaping

The submitted landscaping plan for this development was reviewed against Sections 53.40 Screening Between Land Uses, 53.70 Interior Site Landscaping, and 53.100 Landscape Elements. All landscaping requirements have been met.

Photometric Plan

The only lighting proposed to be installed in the Emberly Acres II expansion are outdoor lanterns that are to be placed on each side of every unit's garage. Typical residential light fixtures on residential buildings are exempt from the cut off fixture requirements of the code. Providing lighting in residential condominium developments is not required.

Engineering

Prein & Newhof, the Township's civil engineering agent, has reviewed the project site plan. Overall, all onsite concerns have been addressed. Both water and sanitary sewer are being provided (private utilities).

Fire Department

The Township Fire Marshal has reviewed the project site plan and is satisfied with the site design.

Section 42.30: Development Standards

Density

The overall density of a condominium development in the R-2 District shall be 4 dwelling units per acre. Emberly Acres II expansion is proposed with a density of 3.4 (20 units on 5.84 acres).

Units Per Building

Two-unit buildings shall be permitted in the R-2 District. Duplexes are proposed.

Height

No unit shall be taller than two stories or 25 feet. Single story units are proposed under 25 feet in height.

Interior Transportation Network

Private drives are permitted within a condominium development. All private drives must be two way with a minimum surface width of 24 feet exclusive of any

area used for parking. The proposed private drive expansion is 24 feet wide. No on street parking shall be permitted. The applicant intends to install no parking signs on the sides of the drive. One access point is proposed. For condominium developments with 50 or more units, at least two primary points of ingress or egress must be provided. Including this expansion, 43 units total would utilize Glendora Lane. Code does not require a secondary access point.

Nonmotorized Transportation

Sidewalks shall be provided on both sides of any transportation network within the condominium development. Sidewalks are proposed within the Emberly Acres II expansion. Note that when the existing Condominium for Emberly Acres II, Phase I, was approved it was under a previous version of the code where sidewalks were not required. For continuity staff anticipates the developer would extend the sidewalk through Phase I.

The Township's adopted Non-motorized Plan shows a 6-foot-wide path along this section of S 8th Street. The segment of the shared use path along the frontage of Emberly Acres II is included as part of the site plan set for the proposed development.

Open Space

At least 10 % of the total condominium project must be dedicated as common open space for residents' recreational use. 12.7% common open space was proposed. Per code the dedicated common open space shall be easily accessible to residents of the condominium, including both visual accessibility from the residential units as well as pedestrian linkages through sidewalks and/or trails.

The applicant was proposing to limit the use of the proposed common open space to walking paths and other activities entailing enjoyment of the natural environment through a declaration of restrictions. However, no pedestrian linkages are proposed in the submitted plan set to provide clear access to this space. There are no visual indications that this space can be utilized as common open space for residents' recreational use. The site plan should be updated to include the walking paths noted by the applicant.

Utilities

Public water and sanitary sewer shall be provided as part of the development. All private utilities shall be placed underground. Both public water and sanitary sewer are being provided underground.

Master Deed and Bylaws

Language shall be included in the master deed and bylaws indicating common elements are to be properly and adequately maintained and that failure to do so will permit the Township to intervene, make the necessary improvements and ensure adequate maintenance, through an assessment to the property owners. The version of the Master Deed that staff has on file for Emberly Acres II does

not provide such language. The applicant has provided an amendment to the master deed of Emberly Acres II Condominium. Said amendment does not reference the common elements of the development.

RECOMMENDATION

Ms. Lubbert said Staff recommended approval of the requested site plan and special use for the Emberly Acres II expansion, with the following conditions:

1. No on street parking shall be permitted. No parking signs shall be installed on the sides of the private drive.
2. Prior to building permit issuance, the site plan shall be modified so that the common open space is easily accessible to residents of the condominium. Walking paths in the common open space shall be included in the site plan and installed, including a pedestrian linkage to the paths through sidewalks and/or trails.
3. Sufficient documentation of ownership or control in the form of agreements, contracts, covenants, and/or deed restrictions shall be provided to the Township that address the dedicated common open space requirements outlined in the code.
4. The amendment to the master deed shall be updated to include language indicating that common elements are to be properly and adequately maintained and that failure to do so will permit the Township to intervene, make the necessary improvements and ensure adequate maintenance, through an assessment to the property owners.
5. General items
 - a. A SESC Permit will be required from the Kalamazoo County Drain Commission prior to building permit issuance.
 - b. The proposed water main connection shall be coordinated with the City of Kalamazoo Department of Public Services.

She noted the applicant submitted paperwork for numbers 3 and 4 but that staff had not had time to look at it. She also indicated the applicant was present.

Chairperson VanderWeele asked if there were questions for Ms. Lubbert from Commissioners.

Ms. Maxwell asked whether the sewer was public or private and who would be responsible for maintenance.

Ms. Lubbert indicated the majority was private.

Attorney Porter advised that the existing sewer agreement is sufficient to move ahead with the development.

Mr. Vyas asked whether street parking is allowed in the first phase of Emberly Acres II.

Ms. Lubbert said that the first phase of Emberly II was approved under different criteria.

Ms. Everett asked if owners in Emberly I will have a right to the new open space.

Attorney Porter said they would not. Attorney Porter explained Emberly I has no rights in the Emberly II expansion.

Ms. Everett said at one time there was a substantial drainage problem in Emberly I and asked if it had been resolved.

Attorney Porter indicated that had been addressed by Marc Elliott, Public Works Director.

Hearing no further questions, Chairperson VanderWeele asked if the applicant wished to speak.

Paul Schramm, Architect designer for the condominiums, said the first phase was completed in 2018 and all units have been sold. The second phase is similar to the first architecturally. He said drainage will be directed to a new pond. There will be 1.3 acres of open space for which they are prepared to issue a revised plan with a manicured walking path around the pond, trees and hill that has a natural vista. He indicated the home owners association (HOA) will be responsible for upkeep.

There were no questions for the applicant, so the Chair moved to Public Hearing.

Mr. Douglas Post, property manager for Emberly I addressed the Commission on behalf of the HOA. He stated when the lot was split for parcels A & B, an easement that was agreed to was never recorded on Glendora. He said a cross-access agreement had to be agreed upon. He said no notification of zoning change had been received and that when parcel C was clear cut, that was the first they were aware of the proposed development. Water crossing private land was not in easements. They are also concerned about snowplowing and how common maintenance will be handled and that things are happening quickly. He asked the Planning Commission to review their concerns about whether water is in a public right-of-way or not, or is crossing public land. The sewer is all private, not public. He said the HOA feels let down by the Township.

Note: Materials Mr. Douglas submitted to the Planning Commission to consider are appended to these minutes

Mr. Pat Lennon, Attorney, said the expansion plans were heavily vetted and worked through with the Township. The proposed development meets every

requirement of the ordinance. He understands some residents do not want development near them. The easement has been analyzed and vetted as well. The issues brought up are a civil issue, not a Township issue. If there are problems, the forum to address them is not here. He said the project is ready to go and contains nothing they do not know about. It is a continuation of the original project and meets all requirements. The project complies with the ordinance. He thanked the Commission for their consideration and asked them to approve the request.

Attorney Porter said he and Township staff looked at the proposed development closely. The Township did not make an improper split. The easement was designed for roads and utilities to serve the original five acres as well as the expansion area if it did not exceed 21 units, which it does not. He said the water issue statement was false. Glendora Lane is outside of Emberly 1. The public water line is within the ROW designated and issued by the City of Kalamazoo. He urged the Commission to move ahead and if the development were challenged it would go to circuit court.

The Chair closed the public hearing and moved to Board Deliberations.

Ms. Lubbert noted Commissioner Bradford had left the meeting.

Ms. Maxwell asked for clarification regarding the sewer.

Attorney Porter said a private agreement for utilities and maintenance was signed by Prime Homes, the parcel owner, that allows the sewer to flow through Emberly Acres to the public sewer system. It was designed to serve both the original and the expansion areas. It is not a concern for the Planning Commission.

Hearing nothing further, the Chair asked for a motion.

Ms. Maxwell **made a motion** to approve the Site Plan and Special Use as presented by Staff with the five conditions recommended by Staff:

1. No on street parking shall be permitted. "No parking" signs shall be installed on the sides of the private drive.
2. Prior to building permit issuance, the site plan shall be modified so that the common open space is easily accessible to residents of the condominium. Walking paths in the common open space shall be included in the site plan and installed, including a pedestrian linkage to the paths through sidewalks and/or trails.
3. Sufficient documentation of ownership or control in the form of agreements, contracts, covenants, and/or deed restrictions shall be provided to the Township that address the dedicated common open space requirements outlined in the code.
4. The amendment to the master deed shall be updated to include language indicating that common elements are to be properly and adequately maintained and that failure to do so will permit the Township to intervene, make the

necessary improvements and ensure adequate maintenance, through an assessment to the property owners.

5. General items

- a. A SESC Permit will be required from the Kalamazoo County Drain Commission prior to building permit issuance.
- b. The proposed water main connection shall be coordinated with the City of Kalamazoo Department of Public Services.

Ms. VerSalle **seconded the motion**. The **motion was approved** unanimously by roll call vote. (6-0)

Chairperson VanderWeele noted due to past involvement with Center Point Church he would recuse himself from the next item and asked Vice Chair Maxwell to assume the duties of the Chair. Vice Chair Maxwell moved to the next agenda item and asked Ms. Lubbert for her presentation.

**PUBLIC HEARING: SPECIAL USE, STARTING POINT PRESCHOOL
CENTER POINT CHURCH WAS SEEKING SPECIAL USE APPROVAL TO
ESTABLISH A CHILD CARE CENTER AS AN ACCESSORY USE TO THEIR
EXISTING PRIVATE PRESCHOOL.**

Ms. Lubbert said Center Point Church, located at 2345 North 10th Street, parcel no. 3905-11-280-045, was requesting special use approval to establish a child care center as an accessory use to their existing private preschool. The approved preschool is permitted to serve children ages 30 months to 5 years. If approved, the child care center would allow the site to also provide care for infants and toddlers under 30 months of age. No additional capacity is requested; the maximum number of children served will remain at 110 as previously approved by the Planning Commission on April 30, 2020. The child care center, like the existing private school, is required to follow Michigan's Licensing and Regulatory Affairs (LARA) standards. No renovations to the building or site layout are proposed to the existing church facilities located at 2345 N. 10th Street. Both the preschool and the proposed child care center will utilize space within the existing building.

She said 2345 N 10th Street falls entirely within the R-2 zoning district. Uses permitted in the R-2 zoning district are outlined in Article 7 of the Township's Zoning Code. *Public and private schools, which may have a Child Care Center as an accessory use*, are identified as a Special Use within this section and require the Planning Commission's review and approval.

When reviewing a Special Use there are two sets of criteria that need to be considered: the general Special Use review criteria outlined in Section 65.30 and the specific requirements for the use in question outlined under Article 49. Overall, she said the requirements of both Section 65.30 and Article 49 had been met.

Ms. Lubbart explained this property already accommodates, and neighbors are accustomed to, the traffic flow generated by the Church's Sunday services and special events. The applicant requested permission to operate the child care center weekdays, Monday through Friday, with an earliest available drop off time of 7 am and latest available pick up time of 6 pm. This is a change from their currently approved hours for drop off and pick up of 8 a.m. to 6 p.m. The applicant requests that the drop off time for the preschool be changed to allow 7 am drop off as well. The traffic generated by the child care center, including the earlier drop off time, would not conflict with nor be as impactful as the traffic generated by the Church.

RECOMMENDATION:

Ms. Lubbart indicated Planning Department staff were satisfied the project meets all Special Use requirements and recommended the Planning Commission grant Special Use approval for the child care center as an accessory use to the private preschool for up to 110 children located at 2345 North 10th Street, subject to the following conditions:

1. Prior to the Certificate of Occupancy, documentation is provided to staff verifying that the proposed preschool's curriculum, construction, staffing etc. have met Michigan's Licensing and Regulatory Affairs (LARA) preschool standards.
2. The preschool and child care center will run Monday through Friday with the earliest available drop off time of 7 a.m. and latest available pick up time of 6 p.m.

She noted one letter was received, that was included in the Commission's packet, that felt the child care center is too extensive for a residential neighborhood, but had no objection if traffic would not be impacted.

Vice Chair Maxwell thanked Ms. Lubbart for her report and determined there were no questions for her from Commissioners. She asked if the applicant wished to speak.

Larry Harper said there would be no increase in the number of children that would be served (110), just an expansion of age.

The Vice Chair opened a public hearing and determining no one was present who wished to speak, closed the hearing and moved to Board Deliberation.

Mr. Vyas asked that the letter in the packet be read.

Ms. Lubbart read the letter from Mr. James Palmitessa, 2504 Ramblewood Drive, who was opposed to the Center Point request.

Note: the letter is appended to these minutes.

Mr. Vyas said the church was previously approved for 110 children and they are not exceeding that number. One hour earlier for drop off will not change traffic patterns. He felt it was perfectly ok to approve the request as presented.

Attorney Porter asked members to ignore the comments in Mr. Palmitessa's letter regarding Covid-19, that it is within the bounds of the church's rights to hold services and that is not a relevant issue for their consideration.

Vice Chair Maxwell asked for a motion.

Mr. Smith **made a motion** to grant Special Use approval for the child care center as an accessory use to the private preschool for up to 110 children located at 2345 North 10th Street, subject to the following conditions:

1. Prior to the Certificate of Occupancy, documentation is provided to staff verifying that the proposed preschool's curriculum, construction, staffing etc. have met Michigan's Licensing and Regulatory Affairs (LARA) preschool standards.
2. The preschool and child care center will run Monday through Friday with the earliest available drop off time of 7 a.m. and latest available pick up time of 6 p.m.

Mr. Smith **seconded the motion**. The **motion was approved** by roll call vote, 5-0.

Chairperson VanderWeele resumed the chair.

PUBLIC COMMENT ON NON-AGENDA ITEMS

As there were no public comments, Chairperson VanderWeele moved to the next agenda item.

OTHER UPDATES AND BUSINESS

There were no updates or other business.

ADJOURNMENT

With there being no further business to consider, Chairperson VanderWeele adjourned the meeting at approximately 7:15 p.m.

Minutes prepared:
April 30, 2021

Minutes approved:
_____, 2021



May 21, 2021

Mtg Date: May 27, 2021

To: Planning Commission

From: Iris Lubbert, AICP, Planning Director

Subject: Discussion Cont. - Section 57.90 Zoning Ordinance Regarding Nonmotorized

Background:

Oshtemo Township continues to grow and simultaneously, the Township is hearing community requests for a quality of life that is connected by sidewalks and paths. Over the years the Township has adopted several policies and ordinances to establish a physical and cultural environment that supports and encourages safe, comfortable, and convenient ways for a diverse population of pedestrians and bicyclists to travel throughout the Township and into the surrounding communities. The most recent of which was through the *Go!Green Oshtemo – 5 Year Parks and Recreation Master Plan*. Part of the plan included an action strategy to continue to require provisions for nonmotorized transportation facilities with site plan reviews. The Zoning Ordinance language that continues to implement this action strategy is Section 57.90, language provided below.

“For those uses requiring Site Plan review under this ordinance, an internal sidewalk network (including connection to and establishment of a sidewalk in the right-of-way of any arterial, collector, or local road indicated on the Non-motorized Facilities Map abutting the site) shall be required within public street rights-of-way and/or private street easements unless the reviewing body grants a deviation from this provision. Deviation may be considered if the street is a cul-de-sac, or if there are constraints as the result of severe topography or natural features.” (57.90 Sidewalks)

In essence, Section 57.90 does three things: 1) when a site plan is submitted to the Township, any and only the nonmotorized facilities shown on the adopted Nonmotorized Facilities Map, attached, needs to be installed as part of the site plan review and approval process, 2) An internal sidewalk network is required within the site itself (including a connection from the proposed development to the adjacent nonmotorized path – if there is one), and 3) the reviewing body can grant a deviation if warranted.

What exactly that deviation can be was not specified in the code. As such, the Township’s reviewing bodies have over the years waived the requirement to install sidewalk with a number of different approaches. Most recently by requiring the applicant to sign a sidewalk SAD agreement. It has also become common practice that if the property in question cannot directly connect to an existing nonmotorized facility a deviation is granted so to avoid “sidewalks to nowhere”.

The Township Board discussed this section of the code and the Township’s current sidewalk policies at their March 9th regular meeting. At that meeting the Board agreed that sidewalks should be installed more aggressively in urbanized areas of the Township, the “sidewalks to nowhere” argument is no longer a valid reason for a deviation in those urbanized areas, and this section of the code needs to be revisited and refined.

Staff presented the Township Board’s request to the Planning Commission at their regular March 25th meeting. Based on feedback collected a code amendment was drafted and presented to the Planning Commission at their regular April 8, 2021 meeting. An amendment to that draft based on the directions of the Commission,

which integrates existing code sections and feedback from legal, will be presented to the Planning Commission for discussion at their regular May 27th meeting.

Requested Discussion:

The Planning Commission is asked to review the second draft of the proposed amendment to Section 57.90 of the Ordinance and provide feedback to staff. Proposed changes are shown in red. To help inform the discussion a number of relevant supplemental documents are attached to this memo.

57.90 Sidewalks and Non-motorized Facilities.

For those uses requiring Site Plan review under this ordinance, ~~an internal contribution to the non-motorized facility sidewalk~~ network (including connection to and establishment of a sidewalk ~~or shared use path~~ in the right-of-way of any arterial, collector, or local road indicated on the Non-motorized Facilities Map abutting the site) shall be required within public street rights-of-way and/or private street easements. ~~unless the reviewing body grants a deviation from this provision. Deviation may be considered if The street is a cul-de-sac. there are constraints as the result of severe topography or natural features.~~ Sidewalk easements on private property may be entered into and utilized if determined appropriate by the Township Engineer.

However, unique circumstances may exist such that the installation of non-motorized facilities in compliance with this article may not be appropriate. Accordingly, the property owner may in lieu of constructing the required non-motorized facility, request to enter into an Escrow Agreement with the Township as outlined in Section 294.005 H of the Ordinance. The reviewing body is authorized to approve an Escrow Agreement in lieu of the required non-motorized facility in the following instances:

1. Where strict application would result in extraordinary difficulty, including, but not limited to, severe variations in topography, unsuitable soils, or difficulty in providing safe separation between pedestrian and vehicular traffic due to site location, layout, or existing building arrangements.
2. The Township has plans to install sidewalk along the property in question in the next five years or in coordination with an anticipated project.

The following Site Plan reviews are exempt from this Section:

1. Uses requiring site plan review that entail an alteration or expansion to an existing building involving less than 2,000 sq. ft.
2. Uses requiring site plan review that fall into the categories of 'Change in Use' or 'Accessory Structures and Site Improvements' in the Table under Section 64.20 Applicability.

Attachments: Excerpt from Ordinance Section 64, Excerpt from Ordinance section 294, Adopted Nonmotorized Plan

ZONING ORDINANCE ARTICLE 64

64 – SITE PLAN REVIEW

64.20 APPLICABILITY

- A. Prior to the establishment of a use, addition to an existing use, or the erection of any building, a Site Plan shall be submitted to and approved by the Township in accordance with the procedures of this Article, and the development requirements of this and other applicable ordinances.
- B. The Township shall not approve the issuance of a building permit until a Site Plan, where required, has been approved and is in effect. Obtaining Site Plan approval does not guarantee issuance of a building permit.
- C. No grading, removal of trees or other vegetation, landfilling, installation of utilities, or other construction improvements shall commence for any development which requires Site Plan approval until a Site Plan is approved and is in effect, except as permitted by this ordinance or by Section 56.30.
- D. Site Plan review shall be required for the activities or uses listed in the table below. The Planning Commission, Zoning Board of Appeals, or Planning Department through Administrative Approval shall have the authority to review and to approve, approve with conditions, or deny Site Plan applications as provided in this Article, in accordance with the table below. If all Site Plan application requirements are met, the Site Plan shall be approved, approved with conditions, or denied within 60 days of receipt of the completed application.
- E. The Planning Director shall have the discretion to forward any Site Plan submitted for administrative approval to the Zoning Board of Appeals for final determination.
- F. If administrative approval is denied, the applicant may appeal the decision to the Zoning Board of Appeals.
- G. Single-family and two-family dwellings are exempt from these requirements.

Activity/Use	Administrative Review	Zoning Board of Appeals	Planning Commission	Township Board
NEW CONSTRUCTION				
Open Space Developments			Approve	
Planned Unit Developments (PUD)			Approve	
Multi-Family Developments/Buildings		Approve in R-4 District	Approve in R-3 District	
Mobile Home Community			Recommend	Approve
Any Nonresidential Building, Structure or Use (unless Special Use)		Approve		
Special Uses			Approve	

EXPANSION/MODIFICATION TO EXISTING BUILDINGS				
Alteration or expansion involving less than one-fourth of the floor area of an existing structure or is no greater than 2,000 sq. ft. whichever is less	Approve			
Alteration or expansion involving more than one-fourth of the floor area of an existing structure or is greater than 2,000 sq. ft.		Approve		
Expansion/Intensification of a Special Use			Approve	
CHANGE IN USE				
Reuse of an existing building where no building expansion is proposed, if the Planning Director determines the new use is similar or less intense in terms of parking, traffic generation, drainage, utility needs, noise, aesthetics and other external effects	Approve			
Change of land or building to a more intensive use, as determined by the Planning Director, that may involve substantial change in parking, traffic flow, hours of operation, public services, effluent discharge, or substantial alteration of the physical character of the site		Approve		
Change to a Special Use			Approve	
Temporary uses, buildings and structures	Approve			
Change of use/occupancy of an individual suite within a Commercial Center	Approve			
ACCESSORY STRUCTURES AND SITE IMPROVEMENTS				
Accessory structures/buildings that are one-fourth the size of the principal building or less and does not affect other Zoning requirements	Approve			

Accessory structures/buildings that are more than one-fourth the size of the principal building and/or affect other Zoning requirements		Approve		
Outdoor storage, sales and display for more than one day			Approve	
Modification or expansion of existing off-street parking, stacking spaces or loading and unloading areas	Approve			
Construction, relocation or erection of signs, screening walls, fences, waste receptacles, sidewalks, lights, and poles	Approve			
Modifications to comply with accessibility requirements	Approve			

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294.000 - NON-MOTORIZED FACILITIES/SIDEWALKS

294.005 - Construction regulations.

Sec. V.

- A. Sidewalks/Multi-purpose Paths/Facilities Required - All developers shall, upon development of, **or major improvement to**, real property, construct a sidewalk or non-motorized multi-purpose path/facility in accordance with the Township's Zoning Ordinance and/or Subdivision/Site Condominium Ordinance, as guided by the Township's Master Land Use Plan.
- B. Sidewalk/Multi-purpose Path/Facility Construction Standards - All sidewalks or non-motorized paths/facilities shall be constructed in accordance with the design and construction standards which shall be approved, from time to time, by the Township Board.
- C. Permit Required - No sidewalk or other non-motorized path/facility shall be constructed without application for, and issuance of, a permit from the Township, in addition to any other state or local permits which may be required. The developer shall pay a permit application fee in accordance with the schedule adopted by the Township Board by resolution.
- D. Construction Plan Review - No sidewalk or other non-motorized path/facility shall be constructed, and no permit issued for same, prior to the review and approval of construction plans for same by the Township's Planning Department, the Township Engineer and any other required review body, including the Kalamazoo County Road Commission, or Michigan Department of Transportation, if applicable. The developer shall pay a fee for plan review in such amount as may be adopted by the Township Board by resolution from time to time. This fee may be in lieu of, or in addition to, any escrow fees, site inspection fees or certificate of occupancy inspection fees paid by developer, as determined by Township.
- E. Sidewalk Completion - All sidewalks or other non-motorized paths/facilities shall be constructed, inspected and approved by the Township prior to occupancy of a building on a site or in the case of a subdivision, prior to final plat or site condominium approval except as may be allowed in Paragraph G below.
- F. Inspection Required - The construction of the sidewalk or other non-motorized path/facility shall be inspected by the Township prior to the Township's approval thereof. The developer shall pay a fee for inspection in such amount as may be adopted by the Township Board by resolution from time to time. This fee may be in lieu of, or in addition to, any escrow fees, site inspection fees or certificate of occupancy inspection fees paid by developer, as determined by Township.
- G. Performance Guarantee - If weather or other unanticipated conditions prohibit completion of a sidewalk or non-motorized path/facility prior to Certificate of Occupancy issuance, prior to recordation of a final plat or prior to site condominium final approval, the developer/owner may provide the Township with a performance guarantee in an amount equal to the cost of the construction of the sidewalk or non-motorized path/facility system. The cost figure shall include the costs of site preparation, construction, site restoration and site inspection, and shall be based upon the construction plans as reviewed and approved by the Township. The performance guarantee provided to the Township shall be valid for the

entire completion period allowed for sidewalk or non-motorized path/facility installation, inspection and approval.

H. Escrow Agreement - When the Township determines it is in the Township's best interest to delay construction of sidewalks, the developer/owner of the real property may pay the cost of construction of the sidewalk (as determined by the Township Engineer) to the Township and shall execute the Township's standard escrow agreement to guarantee completion of the sidewalk or non-motorized path/facility, pursuant to all Township standards and requirements. The cost figure shall include the costs of design, site preparation, construction, site restoration and site inspection.

(Amended: Ord. No. 559, § I, 2-24-2015)

Nonmotorized Transportation Implementation

The Nonmotorized Transportation Network Map provides both multi-use paths and sidewalks that follow roadways, as well as ideas for off-road connections intended throughout the Township. This is a long-range plan of existing and envisioned facilities that will connect the entire Township. The intent of the future nonmotorized efforts is to create a network of links to adjacent jurisdictions, provide access to destinations within and around the Township, and ensure a system of “loop connections” throughout the community.

