

**LOWELL CHARTER TOWNSHIP PLANNING COMMISSION  
PUBLIC HEARING AND REGULAR MEETING  
March 9, 2020**

**PRESENT:** Blough, Batchelor, Simmonds, Clements, Edwards  
**TOWNSHIP PLANNER:** Tim Johnson  
**TOWNSHIP ATTORNEY:** Clifford Bloom  
**CITIZENS IN ATTENDANCE:** 21

The Regular Meeting of the Lowell Charter Township Planning Commission was called to order by Chairperson Simmonds at 7:02 pm.

**APPROVAL OF MINUTES OF FEBRUARY 10, 2020 MEETING:**

Mr. Edwards offered one change, which was accepted. He then moved that the Minutes of February 10, 2020 as amended be approved. Motion seconded by Mr. Batchelor. All in favor and the Minutes of February 10, 2020 as amended are approved.

**APPROVAL OF MINUTES OF FEBRUARY 24, 2020 MEETING:**

Mr. Edwards offered three changes, which were accepted. He then moved that the Minutes of February 24, 2020 as amended be approved. Motion seconded by Mr. Blough. All in favor and the Minutes of February 24, 2020 as amended are approved.

**CHANGES OR ADDITIONS TO THE AGENDA:**

There were no changes to the agenda.

**PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA:**

The meeting was opened to public comment at 7:08 pm. No one spoke. Public comment was closed at 7:08 pm.

**ANNUAL REVIEW OF SPECIAL USE PERMITS:**

- **Impact Church.** No one appeared to present. The review was postponed until the April 2020 meeting.

- **Maple Ridge Assisted Living Facility.** Howard Barriger presented. Construction is behind schedule due to weather. The exterior is 60% complete while the interior is 75% complete. Chairperson Simmonds noted that a July 2020 opening was planned. Mr. Edwards felt that the facility fits in well with the location and looks nice. It was stated that the Township Enforcement Officer has noted that water from the retention pond currently overflows across the road. Applicant indicated a deeper retention pond will help correct the problem, and they are moving to resolve the issue as weather permits.

There being no further questions or comments, Mr. Batchelor moved to confirm that the Lowell Charter Township Planning Commission has reviewed the Maple Ridge Special Use Permit and finds that it is in compliance with the Special Use Permit and its conditions granted in March 2019 and that the next annual review will be held in March 2021. Motion seconded by Mr. Edwards. All in favor and Maple Ridge is found to be in compliance with its Special Use Permit.

**- Timpson Orchards Sand Mine.** John Timpson presented. This was their busiest year. Wet weather has been a challenge. Mr. Batchelor asked for an estimate of sand remaining. Applicant was not sure due to insufficient information to estimate how much deeper the sand layer goes. It's possible that 75% of the sand has now been removed. There is also clay on the property for use in reclamation activities. Chairperson Simmonds noted the newer equipment for dust control. Colleen Timpson spoke of grass being planted.

There being no further questions or comments, Mr. Clements moved to confirm that the Lowell Charter Township Planning Commission has reviewed the Timpson Orchards Sand Mining Special Use Permit and finds that it is in compliance with the Special Use Permit and its conditions granted in April 2004 and that the next annual review will be held in March 2021. Motion seconded by Mr. Batchelor. All in favor and the Timpson Orchards Sand Mining is found to be in compliance with its Special Use Permit.

**- Timpson Orchards Motor Freight Warehouse.** John Timpson presented. Blacktopping has been put down and dust is under control. More fencing has been put up but he may not fence the entire property. Chairperson stated that Applicant has had the Special Use Permit since 2008. The property looks good and there have been no problems. The Township Enforcement Officer has indicated that there have been no complaints.

There being no further questions or comments, Chairperson Simmonds moved to confirm that the Lowell Charter Township Planning Commission has reviewed the Timpson Orchards Motor Freight Warehouse Special Use Permit and finds that it is in compliance with the Special Use Permit and its conditions granted in February 2008 and that no further annual reviews are required at this time. Motion seconded by Mr. Batchelor. All in favor and Timpson Orchards Motor Freight Warehouse is found to be in compliance with its Special Use Permit and no further annual reviews are required.

**- Timpson Orchards Concrete Crushing.** John Timpson presented. He noted that there are lots of crushers in operation now, with crushed concrete being in demand. The height of the pile of concrete waiting to be crushed is not expected to be as high this year.

There being no further questions or comments, Mr. Edwards moved to confirm that the Lowell Charter Township Planning Commission has reviewed the Timpson Orchards Concrete Crushing Special Use Permit and finds that it is in compliance with the Special Use Permit and its conditions granted in May 2015 and that the next annual review will be held in March 2021. Motion seconded by Mr. Blough. All in favor and Timpson Orchards Concrete Crushing is found to be in compliance with its Special Use Permit.

## **PUBLIC HEARING ON FILL OPERATIONS ORDINANCE:**

The public hearing was opened at 7:27 pm. Chairperson Simmonds explained the process to those present. Mr. Clements read the published notice.

Chairperson Simmonds began by recognizing the extensive work that the Township Board, Township Planning Commission and those participating in the committee meetings have put into the proposed ordinance.

Planner Tim Johnson presented an overview of the proposed ordinance dated February 18, 2020. He explained that the Planning Commission would be making a recommendation to the Township Board, which will hold the final public hearing and would be in the position to enact the ordinance.

There are three types of fill operations covered by the ordinance. Class A Fill Operations would apply to areas less than 1 acre in size and have minimal requirements. Class B Fill Operations would apply to areas from 1 acre to 4.99 acres in size with review and approval by the Zoning Administrator required. Class C Fill Operations would be subject to review and approval by the Planning Commission as a special land use. Many of the requirements and site plan information for Class C operations are the same as those applying to mining operations.

Chairperson Simmonds stated that the current language of Section 22.09 o) [later corrected to 22.10 o) - TC], applying to existing non-conforming uses, was provided by Township Attorney Bloom, and he asked for clarification of that language from the attorney. The attorney addressed the language as relating to non-conforming uses (grandfathering) after this ordinance is passed, and that the use could continue but not expand. Mining, on the other hand, is a favored use of land, and expansion would be allowed. The proposed language would let an expanding fill operation continue for one year or up to a 50% expansion, whichever came first. The original land could continue to be filled indefinitely. He noted that more extensive operations are likely more commercial in nature.

Mr. Clements clarified with the attorney that expansion beyond the limits set in the ordinance would not prohibit the expanded fill operations, but would just require meeting the ordinance requirements before further expansion could occur.

Mr. Edwards asked Nick Curcio, attorney for Timpson Orchards, to define the term “abandonment”, which is used in the ordinance. The attorney explained that abandonment was tied to the intention of the person doing the land fill work, and that the Township would have the burden of proving abandonment. The Township can not automatically determine that an interest has been abandoned. Mr. Bloom responded that he generally agreed with that statement, but he was addressing a different form of abandonment, applying only to expansion beyond that allowed by the ordinance, and that this distinction was recognized in Michigan law. Mr. Edwards cited case law which Mr. Bloom said did not apply in this case. He also stated that if the landfill was not lawful in the first place continued use would not be supportable. Mr. Edwards indicated that he would like to remove Section 22.10 o) from the ordinance.

There being no further questions or comments from members of the Planning Commission, the Public Hearing was opened to Public Input at 7:52 pm.

Heidi Olesko – speaking for herself and several of her neighbors. Has been consistently involved in committee discussions of this proposed ordinance. She doesn't like several parts of the ordinance but feels that it provides a good framework, and she will continue to participate in discussions going forward. She is concerned about Section 22.10 o) regarding legal non-conforming use. Feels this was intended for protection of neighbors. She feels "dumping" is illegal under Section 6 (Ag-2) of the Ordinance, and that other townships and planners agree. Disputed that if something is not in the Ordinance then it is allowed; if it's not allowed you cannot do it. An illegal use cannot be grandfathered. She indicated that the Timpson fill operation near her home has been happening for 22 years. She would like 22.10 o) to remain in the ordinance for future legal activities.

Katie Roberson – pass

John Timpson – has been a long-term Township resident and knows dirt has been dumped here his entire life. Feels he is 99% done with filling near Olesko property. Filling takes unusable land and makes it usable when filling is completed. His current fill site is 20 acres in size, and he will not be expanding it in area, just filling further to bring up to road level. He will need clay which may take two or three years to dry before he can use it, then add topsoil. Mr. Timpson indicated that his fill operations have been continuous, and meet DNR and other regulatory requirements.

Mary Beth Read – Thanked Ms. Olesko for her work on behalf of the neighbors. Indicated Timpson fill operations were 'great' for a long time, not causing a problem. It has become an issue in the last seven years. Activities have increased to the point of becoming a nuisance. As an example, it is a problem when she is entertaining outdoors. Issues have been raised with the Township without response. She feels that there should be a limit somewhere. Wants quality of life balanced against activities of business owners. Bigger issues as Township grows.

Mr. Timpson responded to her comments by saying there seemed no way to stop the banging of dump truck tailgates, but since he will be reversing the direction of his fill operations the trucks will be facing the opposite direction when they dump.

Ms. Olesko still feels the operation is illegal, and that facing the trucks the opposite direction just creates problems for the neighbors on the west side of the fill site.

Mr. Bloom acknowledged that a complaint has been received by the Township and is under review. They are trying to check if this is a legal use of the land.

Jerry Roth – Thinks there are too many rules in Township. No dumping would prevent further building.

Ms. Olesko clarified that she never opposed filling, just wants regulation of it.

Colleen Timpson – Doesn't object to ordinance as Timpson Orchard project is almost done. Doesn't think can be completed in one year, but perhaps in three years. Shutting down in less than that time is unfair to those who need a place to dump fill. Noted that the last year of operations would be for reclamation.

Mr. Timpson clarified that he is filling 16 acres, trying to preserve last four acres, although fill may be used to create a slope into these four acres.

Mr. Bloom indicated that without the current section 22.10 o) language operators could not continue to fill. The Zoning Administrator would make the initial decision on expansion. This could be appealed to the Zoning Board of Appeals for a determination of whether the ordinance had been violated.

Mr. Edwards asked if fill operations in the Ag-2 Zone are illegal, and was told that this is under review by the Township. He expressed concern that there is no case law addressing this type of fill operation. Mr. Edwards also raised the need to include noise restrictions in ordinance.

Mr. Batchelor asked that discussion return to general input, and not just address the Timpson Orchard situation.

Nick Curcio – acknowledged the difficulty of the issues raised. He stated that fill operations are always part of creating usable land, and is legal. Mr. Bloom disputed this. Mr. Curcio believes that all of the Timpson Orchards land is already appropriated for fill activities, since all of it is regulated by Kent County and issued permits. Raising the number of years for allowing expansion would help. He suggested that reclamation could occur after the fill activities time had expired.

Steve Vanderziel – feels proposed ordinance has been well crafted. Asked about Section 22.10 o) and was advised it would allow Timpson Orchards to fill for another year, and then they can continue filling by complying with the ordinance. If Section 22.10 o) was dropped from the ordinance, they would immediately need to comply with the ordinance to continue operations. While there is no guarantee that the Township would grant approval, they could continue under either option. Without the ordinance language their fill operation would end if they could not acquire the Special Use Permit.

Greg Fortde [TC] – feels ordinance was written for the Timpson situation. Doesn't like 22.10 o) being included. Feels one year rule would only harm one citizen in Township. Noted that the Township Ordinance does not explicitly allow spreading manure in Ag-1; questioned the need to add activities to the Township Ordinance before they are allowed.

Ms. Olesko felt the ordinance was written to apply to everyone.

Chairperson Simmonds questioned if the one year period can be set by the Planning Commission during the Special Use Permit process. Mr. Johnson indicated that process is not generally used.

Mr. Batchelor feels bringing in topsoil is different from fill operations. Noted if time is set in permit but more time is needed, the permit could be amended. Chairperson Simmonds pointed out the amendment process would be expensive.

Joel Bieri – Timpson fill operation is next to him. Would like to know how he would be affected if ordinance passed. Suggested 5 years to complete fill operation, rather than just one.

Mr. Bloom expressed the opinion that an end date is advisable, and that this would be placed in the Police Power Ordinances for grandfathered fill operations.

Ms. Timpson felt that if Mr. Bieri wants to fill, it would be over-regulating to make him follow an ordinance not in place six months ago.

Steve Matthews – noted that the ordinance would cover the entire township, not just the Timpson property. This would affect Tip-Top Gravel as well.

Mr. Blough asked if there were other land fill operations currently active in the township. None are currently active so far as anyone knew, but it was said that the County is continually filling in the township.

There being no further questions or comments, the Public Input portion of the Public Hearing was closed at 8:47 pm.

Mr. Batchelor moved that the Public Hearing be closed. Motion seconded by Mr. Blough. All in favor and the Public Hearing was closed at 8:48 pm.

The Regular Meeting of the Lowell Charter Township Planning Commission then commenced.

### **Consideration and decision on Fill Operations Ordinance**

Mr. Edwards felt there was much to be addressed with the present language of the proposed ordinance, despite a desire to minimize changes to the current language.

He does not feel the current Noise Ordinance is specific enough to be of use in controlling truck noises during fill operations. He would like to include specific noise standards in this ordinance.

Mr. Batchelor reported that revision of the noise ordinance had been brought up at committee meetings, but it was felt that addressing it now would take much longer to resolve.

Chairperson Simmonds brought up the option of maintaining reference to the current noise ordinance in the proposed Fill Operations ordinance, but also adding a review of the current Noise Ordinance to the Planning Commission list of projects for 2020. Mr. Bloom indicated that the Noise Ordinance is under the Police Power, although the Township Board could direct the Planning Commission to address the Noise Ordinance. A proposed motion for the Planning Commission to review the Noise Ordinance was then withdrawn.

Mr. Johnson suggested the noise issue be addressed during the Special Use Permit process.

Mr. Batchelor pointed out that there was no obligation to make a decision to pass this ordinance to the Township Board at this meeting. Mr. Bloom thought the ordinance was good enough to approve as written, even if not perfect. Mr. Edwards felt the ordinance language needed to be addressed fully. Mr. Johnson would also like to see the ordinance passed at this meeting.

After consideration, Chairperson Simmonds moved to table discussion of the draft Fill Operations Ordinance until the next regular meeting of the Planning Commission on April 13, 2020. Motion seconded by Mr. Edwards.

Mr. Edwards has other issues about the draft ordinance which he thinks need to be addressed. Mr. Johnson suggested that these issues are covered by other sections of the Township Ordinance, and can be addressed at specific Special Use Permit hearings. It was decided that Mr. Edwards should send a list of his issues with the draft ordinance to Mr. Johnson and Mr. Bloom before the April 13<sup>th</sup> meeting.

There being no further questions or comments, the motion was put to a vote and passed unanimously. The matter is tabled until April 13, 2020.

#### **OLD BUSINESS:**

#### **Review draft ordinance for the Highlands at Cumberland Ridge Open Space Planned Unit Development; a major amendment to the Cumberland Ridge Open Space Planned Unit Development Zoning District**

Mr. Johnson presented an overview of his memo of March 3, 2020, and the most recent draft of the proposed ordinance amendment. Mr. Batchelor expressed concern about the number of conditions outstanding and that the Planning Commission would not see the site plan again.

There being no further questions or comments from members of the Planning Commission, Mr. Clements moved that the Lowell Charter Township Planning Commission recommend to the Lowell Charter Township Board approval of the following changes to the Cumberland Ridge Open Space Planned Unit Development Zoning District dated February 22, 2005 (Ordinance 01-2005):

1. The Highlands shall consist of 26 residential buildings, with each building containing two one-family attached dwellings and two single-family detached dwellings, together comprising a total of 54 dwelling units. The total number of dwellings in the Highlands shall not exceed 54 dwelling units.
2. Fifteen of the dwellings shall have basements, and 39 of the dwellings shall have footings, all subject to the requirements of the Township Zoning Ordinance as amended.

3. Exterior lights for each dwelling unit in the Cumberland Ridge Planned Unit Zoning District shall include dusk to dawn light fixtures which shall automatically turn on at dusk and off at dawn. All exterior lighting in the Cumberland Ridge Planned Unit Zoning District shall comply with the applicable requirements of Section 4.28 of the Township Zoning Ordinance as amended.

These changes are subject to the following conditions and requirements:

- a) Buildings may be two-story.
- b) Dwelling units in the Highlands shall contain a minimum of 1479 square feet on the main floor with a minimum of 400 square feet on the second story or in a daylight basement.
- c) The buildings shall be constructed substantially in compliance with the description of the buildings and the elevation drawings and photographs contained in the Narrative for the Highlands at Cumberland Ridge submitted by the CRP-2 LLC and attached to this Ordinance.
- d) Each two-family residential building and each single-family detached dwelling shall be constructed as shown on the Cumberland Ridge Condominium Association Plan and the Highland Plan. The lot area, lot width, and road frontage required for a residential condominium unit shall be as determined by the Planning Commission and as approved by the Township Board so that the actual location of each building can be situated to preserve natural topography as much as possible, to minimize the cutting and filling of land and the potential for soil erosion.
- e) A Road Maintenance Agreement between the Homeowners Association for Cumberland Ridge and the Homeowners Association for the Highlands will be provided to the Township, and this agreement will be recorded. Construction-related damage to the existing road will be repaired by the developer of the Highlands.
- f) A ground sign may be installed at the entrance to the Highlands at Cumberland Ridge, subject to the requirements for the R-2 Zoning District, as specified in the Township Zoning Ordinance. The stone wall or stone pillars illustrated on the approved site plan are subject to approval by the Planning Commission before installation. The sign must be a minimum of 5 feet from the boundary line of the Cumberland Ridge Condominiums.
- g) The Highlands shall comply in all respects with the Final Development Plan for the Highlands and referred to herein as the Highlands Plan with the most recent revision date (\_\_\_\_\_) prepared by Roosien and Associates, except where the Highlands Plan has been changed, revised or modified by this Ordinance. In such cases, the provisions of this Ordinance shall control.
- h) The following revisions to the Highlands Plan must be met:
  1. Label the 39 units to be built on footings and the 15 units to be built on full basements.

2. Add this note to the site plan: “The following minimum setback requirements for all dwelling units in the Cumberland Ridge Planned Unit Development District shall be: Front yard 20 feet from the edge of the street pavement, rear yard 25 feet, and a minimum of 20 feet of space between dwelling unit buildings as measured between the closest walls of the buildings. Dwelling units in the Highlands shall also be a minimum of 5 feet from the boundary line of the Cumberland Ridge Condominiums”.
3. Illustrate the setbacks in Item 2 on the site plan.
4. Revise the site plan to show that Buildings 1, 27, 28 and 54 are at least 5 feet from the Cumberland Ridge Condominium boundary line and 20 feet from any buildings.
5. Provide a profile drawing of the private street that is the same as the profile on the 01-25-05 approved Final OS-PUD site plan for the Cumberland Ridge OS-PUD.
6. Illustrate the proposed contours and stormwater management provisions and obtain approval of the stormwater management plan from the Township Engineer.
7. Revise the site plan so it contains the same notes and open space / conservation areas & calculations as contained on the approved 01-25-05 site plan. The area adjacent to Cumberland Avenue labeled as man-made 20% slopes should be labeled as “Other Open Space”.
8. The trees proposed in the center of the loop road open space in the Highlands shall be installed prior to an occupancy permit being issued for any dwelling units in the Highlands.
9. Illustrate the utility easement connecting to Twin Oaks.
10. Label the dotted lines at the rear of the dwelling units.
11. The proposed loop road has two names: Center Hill Road and Melton Hill Road. The Applicant should seek permission from the Kent County Road Commission to designate the entire road as Center Hill Road to avoid address issues. If permission is granted the street names on the site plan shall be changed. The amendment is recommended to the Township Board for approval.
12. These revisions must be made before the site plan is submitted to the Township Board for review.

Motion seconded by Mr. Edwards. Mr. Batchelor received confirmation that Item 3 of the motion would result in changing the lighting provision for the entire OS-PUD. In discussion with Mr. Johnson, Mr. Edwards supported having Item 2 of the motion specify the exact number of units with and without basements. Applicant indicated he was fine with these unit counts being fixed.

There being no further questions or comments, the motion was put to a vote and passed unanimously.

**NEW BUSINESS:**

There was no new business.

**COMMISSIONER COMMENTS:**

Mr. Blough asked that paper copies of documents sent by email to members of the Planning Commission also be placed in his folder at the Township office.

Chairperson Simmonds noted that there would be a Special Meeting on March 23, 2020 to review the Fairgrounds site plan.

**Adjournment:**

Motion to adjourn made by Mr. Clements. Motion seconded by Mr. Blough. All in favor and the meeting of the Lowell Charter Township Planning Commission was adjourned at 9:51 pm.

Submitted \_\_\_\_\_ Secretary

Timothy Clements

Approved \_\_\_\_\_